



CMEL

THE UNIVERSITY OF HONG KONG
CENTRE FOR MEDICAL ETHICS AND LAW

The Centre for Medical Ethics and Law (CMEL) develops new ideas and solutions in response to the big ethical, legal and policy questions of medicine and health.



EDITORIAL

APPOINTMENTS AND UPDATES

We are delighted to announce the appointment of [Dr Eric C. Ip](#) as CMEL's Deputy Director and the re-appointment of [Ms Daisy Cheung](#) as CMEL's Deputy Director. Dr Ip and Ms Cheung are Associate Professor of Law and Assistant Professor of Law at the University of Hong Kong ("HKU") respectively.

We would like to welcome [Dr Haochen Sun](#). Dr Sun is Associate Professor of Law at HKU and has recently joined our centre as a CMEL Research Fellow. He specialises in intellectual property law, technology law, and Chinese law.

The Master of Laws (LLM) in Medical Ethics and Law programme is being restructured and will not be admitting any students from the coming Academic Year (commencing in September 2022) until further notice. Current students will not be affected by this change.

In this newsletter, online talks organised in February, March and April are featured, along with upcoming events (organised by either CMEL or our collaborator(s), the Centre for the Humanities and Medicine and/or the Medical Ethics and Humanities Unit) scheduled for April and May. Additionally, video recordings of our recent webinars are now available online.

We have also presented in this newsletter a number of publications and media interviews of CMEL members as well as case law updates relating to Gross Negligence Manslaughter, vaccine pass and sex re-assignment surgery.



LATEST CMEL RESEARCH

JOURNAL ARTICLES

"Control in the community: A qualitative analysis of the experience of persons on conditional discharge in Hong Kong"
[Open Access]

In *International Journal of Law and Psychiatry*

By [Daisy Cheung](#)

<https://doi.org/10.1016/j.ijlp.2022.101791>

This is the first study on the service user perspective of the conditional discharge ("CD") regime under section 42B of the Mental Health Ordinance (Cap 136), which is Hong Kong's form of mandatory outpatient treatment (like the community treatment order ("CTO") in the UK).

"Mapping the legal foundations of planetary mental health"
[Open Access]

In *Global Mental Health*

By [Eric C. Ip](#) and [Daisy Cheung](#)

<https://doi.org/10.1017/gmh.2022.22>

This article conceptualises "planetary mental health law" and explains why it matters. It is argued that, while a "planetary mental health law" can be said to already exist, albeit in preliminary form, it is in great need of being developed into a clearer and more coherent regime. Prior to proposing fundamental changes to the international system, soft law should be resorted to as a complement to existing international obligations, and states need to bolster their level of national commitment to defend the right to mental health on a healthier planet.

"The natural law ethics of public health lockdowns" [Open Access]

In *Notre Dame Journal of Law, Ethics & Public Policy*

By [Eric C. Ip](#)

https://jleppdotorg.files.wordpress.com/2022/04/14.ip_.final_.pdf

This article is the first to bring a neoclassical natural law ethical framework to bear on the morality of public health lockdowns. It affirms that public health lockdowns are not intrinsically immoral, insofar as they meet several conditions required by the fundamental precepts of natural law, a viable alternative to the usual framing of public health moral dilemmas as a conflict between individual liberty and collective interests, or trade-offs in the maximization of the greatest health of the greatest number, which deserves a hearing for focusing on human fulfillment instantiated in the irreducible human goods.

"WHO guidance on COVID-19 vaccine trial designs in the context of authorized COVID-19 vaccines and expanding global access: Ethical considerations" [Open Access]

In *Vaccine*

[Calvin W. L. Ho](#) is a co-author.

<https://doi.org/10.1016/j.vaccine.2022.02.038>

"Streamlining ethics review for international health research"

In *Science*

[Calvin W. L. Ho](#) is a co-author.

<https://doi.org/10.1126/science.abn0675>

"A study on how governance of genetic scissors CRISPR-Cas9 for research on embryos can encourage a researcher to have a sense of responsibility — focus on the Bioethics and Safety Act Article 47" [In Korean only]

In *The Korean Society of Law & Medicine*

By [Minsung Kim](#)

<http://doi.org/10.29291/kslm.2022.23.1.121>

POLICY BRIEF

World Health Organization Policy Brief: "Ethics and medical radiological imaging: a policy brief for health-care providers" [Open Access]

[Calvin W. L. Ho](#) is a contributing author.

<https://www.who.int/publications/i/item/9789240047785>



HKU CENTRE FOR MEDICAL ETHICS AND LAW (CMEL)

UPCOMING BOOK TALK ON RESEARCH ETHICS

ZOOM Book Talk
For the Common Good: Philosophical Foundations of Research Ethics (OUP, 2021) with the Author

29 April 2022 (Fri), 9 pm – 10:10 pm HKT

Speaker & Author:
Professor Alex John London
Clara L. West Professor of Ethics and Philosophy
Director, Center for Ethics and Policy
Carnegie Mellon University,
United States

Details and Registration: click [here](#)

VIDEO RECORDINGS OF RECENT WEBINARS

The video recordings of CMEL's following webinars are now available online:

- "Annual Review of Hong Kong Health Law in 2021"
23 February 2022 (Wed), 6:30 pm – 8 pm HKT
[Video Recordings and Abstracts](#)
- "The Governance of the Progress of Gene-Editing Technologies: A Critical Response from a Biomedical, Ethical, and Legal Perspective"
24 March 2022 (Thu), 10 am – 12 pm HKT

[Video Recording and Abstracts](#)

- **"Protecting Policy Holders' Interests in Health Insurance"**
31 March 2022 (Thu), 8 pm - 9:30 pm HKT
[Video Recording and Abstracts](#)
- **"Personal Data Protection Regimes and the Sharing of Human Genetic Data for Research"** [co-organised with the PHG Foundation, University of Cambridge]
22 April 2022 (Fri), 8 pm – 9:30 pm HKT
[Video Recording and Abstracts](#)

UPCOMING TALK
ON INDIGENOUS
HEALERS

HKU Science, Technology, and Medicine Seminar Series

Indigenous Healers and Ayahuasca Tourists in a Capitalist World

Date & Time: 29 April 2022 (Fri), 9 am HKT

Delivery: via Online Zoom

Registration Weblink: <https://bit.ly/3u1UC3n>

Speaker: Alex K. Gearin, PhD (Assistant Professor, Medical Ethics and Humanities Unit, HKU)

Co-hosted by:

- * Centre for the Humanities and Medicine, HKU
- * Medical Ethics and Humanities Unit, HKU

Talk Abstract: Ayahuasca is an Indigenous psychoactive brew traditionally used for healing, social welfare, and magic across parts of the Amazon basin. Although its use was declining during the twentieth century, the increasing global interest in drinking ayahuasca for psychological and spiritual healing has revitalised and transformed Indigenous shamanism in recent decades. Based upon ethnographic fieldwork conducted during 2019 at an ayahuasca healing retreat near Pucallpa in remote Peru, this presentation illustrates how Indigenous Shipibo practices of curing and sorcery have adapted to the demands of international clients seeking primitivist healing. It explores how asymmetrical global relations shape the intercultural healing practices and visionary experiences at the retreats.

All are welcome.

The poster features a collage of three images: a person in a white shirt, a person in a pink shirt playing a wooden instrument, and a person in a red shirt. The text on the poster includes the title, speaker information, date and time, and a QR code for registration.

Indigenous Healers and Ayahuasca Tourists in a Capitalist World

Ayahuasca is an indigenous psychoactive brew traditionally used for healing, social welfare, and magic across parts of the Amazon basin. Although its use was declining during the twentieth century, the increasing global interest in drinking ayahuasca for psychological and spiritual healing has revitalised and transformed Indigenous shamanism in recent decades. Based upon ethnographic fieldwork conducted during 2019 at an ayahuasca healing retreat near Pucallpa in remote Peru, this presentation illustrates how Indigenous Shipibo practices of curing and sorcery have adapted to the demands of international clients seeking primitivist healing. It explores how asymmetrical global relations shape the intercultural healing practices and visionary experiences at the retreats.

Speaker: Alex Gearin
(Assistant Professor, Medical Ethics and Humanities Unit, HKU)

Discussant: Glenn Shepard
(Medical Anthropologist and Research Associate, American Museum of Natural History, New York)

Date: Friday, 29 April 2022
Time: 09:00 Hong Kong / 11:00 Sydney (Thursday, 28 April @ 21:00 New York / 20:00 Lima)

Registration Weblink: <https://bit.ly/3u1UC3n> or scan the QR code

All are welcome. Please register and the Zoom link will be sent to you prior to the event. For enquiries, please contact Mr. Adrian Lam by email at adlam@hku.hk or by phone at +852 2859 1000. View our website: www.hku.hk

UPCOMING TALK ON PERSON- CENTRED CARE

The Medical Ethics and Humanities Unit (MEHU) in the School of Clinical Medicine at HKU invites you to an insightful talk on the challenges of person-centred care in the context of existential events. Professor Lin draws upon 30 years of experience in public health to consider how birth and death provide a space for reflecting on issues core to healthcare practice.

From Birth to Death: What Might Person-Centred Care Look Like?

Professor Vivian Lin – Executive Associate Dean, Professor of Public Health, HKUMed

Births and deaths are those life events that illustrate how health care is a partnership. People-centred health care and people-centred health systems have been proposed by international bodies, researchers, and community advocates alike, if not by the health professions themselves. System factors, such as financing incentives and poor information connectivity, are often cited as barriers to the realization of these aspirations. Professor Lin will offer personal stories of experiences in the healthcare system in the US and Australia to illustrate what person-centred care can look like despite the structural constraints of healthcare systems. The journeys leading up to and beyond birth and death offer lessons for thinking about reflexive education for health professions.

Professor Vivian Lin is Executive Associate Dean at the LKS Faculty of Medicine, The University of Hong Kong. She has more than 30 years of experience in public health, with a variety of leading roles in policy and programme development, health services planning, research and teaching, and senior administration in complex organizations.

Date/Time: 23 May 2022 (Mon),
12:30 pm – 2pm HKT

Venue: Via Online Zoom

Language: English

Registration required:

https://hkuems1.hku.hk/hkuems/ec_hdetail.aspx?guest=Y&ueid=81066



We hope you will join us for this timely presentation and discussion.

HKU Med School of Clinical Medicine
Medical Ethics & Humanities Unit
香港大學醫學倫理及人文學系

MH CONVERSATIONS AND CONNECTIONS SERIES

**FROM BIRTH TO DEATH:
WHAT MIGHT PERSON-CENTRED
CARE LOOK LIKE?**

Births and deaths are those life events that illustrate how health care is a partnership. People-centred health care and people-centred health systems have been proposed by international bodies, researchers, and community advocates alike, if not by the health professions themselves. System factors, such as financing incentives and poor information connectivity, are often cited as barriers to the realization of these aspirations.

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Speaker

Professor Vivian Lin
Executive Associate Dean, LKS Faculty of Medicine, HKU

Mediator

Dr Alex Gearin
Assistant Professor, Medical Ethics and Humanities Unit, HKU

23 May 2022 (Mon)
12:30pm – 2pm

Zoom, online

Register

https://hkuems1.hku.hk/hkuems/ec_hdetail.aspx?guest=Y&ueid=81066

All are welcome. Please register and the Zoom link will be sent to you prior to the event. For enquiries about event registration, please email Mr Michael Cheung at mcc1112@hku.hk or if you are interested in presenting a talk in our Medical Humanities series, please email Dr Alex Gearin at algearin@hku.hk. Visit our website: <https://mehu.hku.hk/>



KNOWLEDGE EXCHANGE

MEDIA INTERVIEWS

["The End Game of China's Zero-Covid Policy Nightmare"](#)

In *WIRED* (18 February 2022)

In an interview with *WIRED*, our [Dr Calvin W. L. Ho](#) shared his views on vaccination against COVID-19 in Mainland China.

["It has to be reasonable': as Hong Kong weighs coronavirus testing lockdown, experts consider legal implications"](#)

In *South China Morning Post* (3 March 2022)

In an interview with the *South China Morning Post*, our [Dr Calvin W. L. Ho](#) shared his views from a legal perspective on the option of imposing a lockdown in Hong Kong for its universal testing drive.

["Uncertain whether COVID-19 vaccination is urgent under the Mental Health Ordinance given the lack of definition of 'urgency'"](#) ("精神健康例無定義「緊急」 學者：打針算否未確定") [In Chinese only]

In *Ming Pao* (26 March 2022)

In an interview with *Ming Pao*, our [Ms Daisy Cheung](#) shared her views on whether it would be lawful for a doctor to administer a COVID-19 vaccine to a person lacking mental capacity without consent from the guardian under the Mental Health Ordinance (Cap 136).

MEDICAL LAW UPDATES



**APPEALS IN THE
"DR BEAUTY"
GROSS
NEGLIGENCE
MANSLAUGHTER
CASE: *HKSAR v
CHOW HEUNG
WING, STEPHEN*
[2022] HKCA 313
AND *HKSAR v
MAK WAN LING*
[2022] HKCA 387**

HKSAR v Chow Heung Wing, Stephen [2022] HKCA 313

A customer who underwent a treatment launched by the DR Group died as a result of the infusion of a contaminated blood product into her body ("the DR Beauty Treatment Blunder"). The first defendant ("D1"), the owner and the person in control of the DR Group of companies who happened to be a medical practitioner, was convicted of gross negligence manslaughter in respect of the customer's death.

The Court of Appeal refused the application by D1 for leave to appeal against his conviction and dismissed his appeal against conviction, but granted D1 leave to appeal against sentence and allowed his appeal against sentence.

This was an application by D1 to certify five points of law of great and general importance, which were said to be involved in the decision of the Court of Appeal above, pursuant to section 32(2) of the Court of Final Appeal Ordinance (Cap 484). His application was dismissed by the Court of Appeal. Click [here](#) for a briefing.

HKSAR v Mak Wan Ling [2022] HKCA 387

The third defendant ("D3"), the registered medical practitioner who administered the contaminated blood product to the customer in the DR Beauty Treatment Blunder above, was convicted of gross negligence manslaughter in respect of the customer's death.

D3 applied for leave to appeal against her conviction. The Court of Appeal refused to grant leave where leave is required and otherwise dismissed D3's appeal. Click [here](#) for a briefing.

**CHALLENGE TO
THE VACCINE
PASS SYSTEM:
*LAW YEE MEI v
CHIEF EXECUTIVE
OF HONG KONG
SAR AND OTHERS*
[2022] HKCFI 688**

A person who was unvaccinated against COVID-19 ("the Applicant") applied for leave to apply for judicial review to challenge (a) the legislation and commencement of the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap 599L) ("VP Regulation"); and (b) announcements and decisions made pursuant to Cap 599F to add venues such as markets, supermarkets, malls and restaurants to a Vaccine Pass.

The Applicant was unable to identify any specific ground of public law challenge but the Putative Respondents addressed the merits of the intended challenge by reference to the fundamental rights potentially or conceivably relied upon by the Applicant as being engaged. Reference was made to the liberty of movement under Article 8 of the Bill of Rights and the right to private life under Article 14 of the Bill of Rights.

Dismissing the application, Hon Coleman J held that:

1. the Vaccine Pass ("VP") requirements were prescribed by law; and
2. applying the proportionality test, (i) the VP requirements were rationally connected with the advancement of the legitimate aim of protecting public health and (ii) neither the VP Regulation nor Cap 599F was manifestly without reasonable foundation, which was the applicable standard of review, and (iii) the impugned measures seemed to strike a reasonable balance between the societal benefits of the restriction or encroachment and the restricting of the Applicant's individual rights.

Click [here](#) for the judgment.

**CHANGING SEX
ENTRY ON
IDENTITY CARDS:
Q v
COMMISSIONER
OF
REGISTRATION;
TSE HENRY
EDWARD v
COMMISSIONER
OF REGISTRATION
[2022] HKCA 172**

Two female-to-male transgender persons ("the Applicants") challenged the policy ("the Policy") for transgender persons to change the sex entry stated in their Hong Kong identity cards, which policy required persons making applications to change the sex entry on their identity cards to produce a medical proof which should indicate that the specified criteria for the completion of sex re-assignment surgery ("SRS") were met.

The Judge gave the Applicants leave to apply for judicial review but dismissed the reviews. Dismissing the appeals by the Applicants, the Court of Appeal held that:

1. the challenge that the Policy amounted to an unconstitutional infringement of the Applicants' right to privacy under Article 14 of the Bill of Rights failed, since the restriction on the right to privacy, which in the present context covered the right to gender identity and the right to physical integrity, satisfied the 4-step proportionality test;
2. the right not to be subjected to cruel, inhuman or degrading treatment protected by Article 3 of the Bill of Rights was not engaged; and
3. the allegation that the Policy constituted indirect discrimination under section 5(1)(b) of the Sex Discrimination

Ordinance (Cap 480) could not stand because the Applicants failed to show that (i) the proportion of women who could comply with the SRS requirement was considerably smaller than the proportion of men who could comply with it and that (ii) the SRS requirement was to the detriment of the Applicants because the Applicants could not as a matter of fact comply with it.

Click [here](#) for the judgment.

CENTRE FOR MEDICAL ETHICS AND LAW HKU

ABOUT



The Centre for Medical Ethics and Law (CMEL) develops new ideas and solutions in response to the big ethical, legal and policy questions of medicine and health.

CMEL is the first cross-faculty interdisciplinary institution of its kind in the region. It was founded in 2012 by the LKS Faculty of Medicine and Faculty of Law at The University of Hong Kong as a joint inheritor of their vibrant intellectual traditions dating back to 1887 and 1969 respectively.

Today, CMEL brings together bioethicists, academic lawyers, medical scientists, and other scholars to conduct cutting edge bioethical and legal research and contribute to policy development in flagship areas like population and global health, mental health and capacity, and digital health and emergent technologies.

Research, teaching and knowledge exchange—CMEL's core initiatives—aim to ensure that developments in biomedicine and public health will be underpinned by ethical and legal considerations.

CONTACT

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