Edukacja Etyczna 18/2021 ISSN 2083-8972

Andrew Pavelich
University of Houston-Downtown in Houston
ORCID: 0000-0003-4191-7360
DOI 10.24917/20838972.18.3

COVID-19 and the Limits of Consequentialism

At the time of this publication, the worldwide posture towards dealing with COVID-19 has begun to enter a new phase: vaccines are becoming widely available, and after more than a year of the social and legal practices collectively called "social distancing" —which included restricting travel, implementing stay-at-home orders, and closing many businesses—much of the population is returning to a kind of normalcy. This presents an opportunity to critically reflect on this event from a stance of familiarity, not crisis. Epidemiologists and public health officials will no doubt have many lessons to learn from studying this episode of social distancing, but I think that there are important lessons for ethicists to learn as well. I expect there will be many debates about whether social distancing restrictions were moral, but in this paper I am interested in the somewhat larger question of how such a judgment should be made.

The global implementation of social distancing practices in response to the COVID-19 pandemic was unprecedented in living memory. The world had seen pandemics in years prior to COVID-19, but not the kind of widespread and global responses that it has seen with this pandemic. We have seen terrorist attacks and political revolutions that have fundamentally and rapidly altered normal economic and social order, but these changes affected most people for only a relatively short time. There have been both natural and human-caused disasters that have fundamentally and permanently altered daily life in parts of the world, but only locally, where the effects of the disaster were most directly felt. There have been global economic recessions that quickly reached much of the world, but not in a way that resulted in such rapid government intervention in everyday life as the COVID-19 outbreak. All these examples point to the fact that we have very few shared experiences that we can draw on to judge the morality of the response to this pandemic so far.

From a certain perspective, the fact that this pandemic was largely unprecedented should not matter to making a moral judgment about the responses to it. If we start with a robust moral theory, all that is required is to plug in the relevant facts and draw conclusions. That the facts are

novel should not matter, since it is the theory that does the work. But moral philosophy is rarely done from pure theory. Different theories give different answers, and barring the appeal to shared first principles, the only way to choose between theories is by finding some analogous situation that carries a shared sense of moral clarity. In what follows I will look at ethical analyses of prior pandemics, at compulsory vaccinations, and at conscientious objections to military service as a means to account for which moral theory best captures the COVID-19 situation. My primary conclusion is that a consequentialist reading of the morality of the current pandemic response—what I call the "Standard Model"—does not adequately capture our intuitions about the outbreak. I will argue that a more appropriate theory is instead a version based on Care Ethics, and that our attention should turn to developing such a Care Model in understanding the current, and future, pandemics.

The Standard Model of Pandemic Ethics

I will begin the process of trying to frame the ethical questions about the COVID-19 response by looking at the moral analyses of various responses to prior pandemics, in particular the mandatory quarantines put into place in response to the recent outbreaks of SARS and Ebola. The picture that emerges from these analyses is what I will call the "Standard Model" of pandemic ethics, which is fundamentally a consequentialist position. Even when theorists add nuances that attempt to accommodate moral intuitions that go against simple consequentialism, this Standard Model retains its basic framework.

A famous subject of theories of justified quarantine is Kaci Hickox—a nurse who, in 2014, traveled to Sierra Leone to help with the Ebola outbreak and was involuntarily quarantined upon her return to New Jersey. She showed no symptoms, and tested negative for the virus, but was detained nonetheless. After her quarantine, she sued the state on the grounds that they did not have the authority to detain her against her will. The case was eventually settled out of court, but even while the case was ongoing, it drew the attention of moral theorists. Robert Gatter framed her quarantine in explicitly utilitarian terms: "Unnecessarily quarantining professionals when they return home erodes volunteerism, reduces the public health work force, and thereby undermines population health."[1] The argument is that Nurse Hickox was quarantined unjustly, and the reason for this judgment is utilitarian: it reduced the odds that she and others would provide such help in the future. Presumably,

1 Robert Gatter, "Quarantine Controversy: Kaci Hickox v. Governor Chris Christie," *Hastings Center Report,* May 2016, 46, no. 3: 7.

if she had been quarantined in such a way that it would not have this effect, Gatter would have found it to be morally justified.

We can see similar reasoning in theorists' discussion other pandemics. In a wide-ranging and detailed study of the ethical justification of quarantine during the SARS epidemic, Alberto Giubilini and his co-authors make a case for when forced quarantine is justified, framing the question in explicitly consequentialist terms:

> We will take it that quarantine and isolation can be justified, and indeed morally mandatory, when the expected benefit to others and to society, in terms of infectious disease prevention or limitation, out-weighs the expected costs, including the moral costs of coercion and compulsion, and satisfies three further constraints.[2]

The important point to see here is that this entire discussion is framed transactionally, in a way that would make perfect sense to a consequentialist. There is a cost and a benefit to quarantine, and therefore it is moral when the benefit outweighs the cost. The mention of "moral costs" is telling—just like with Gatter's analysis of the Hickox case, there may be some moral objections to forced quarantine, but these are just a part of the consequentialist calculus.[3]

This thinking is extended by Giubilini et. al. as the "three further constraints" mentioned above are laid out. They are (1) that the outbreak being contained by the quarantine must be severe and significant, (2) that there not be a less restrictive method of managing the outbreak, and (3) that the restrictive quarantine be proportional to the severity of the outbreak.[4] These constraints as laid out make sense, given a cost/benefit approach. Any restriction on liberty is a cost, and so the disease being contained must itself be costly enough to warrant it. To use Giubilini's example, gastroenteritis is not severe enough of an illness to warrant quarantine, but the highly fatal Ebola is. Likewise, if an outbreak could be controlled by vaccination, that would be preferable to (that is, have a lower cost than) quarantine. The final constraint is an acknowledgement that such situations are not bivalent, but continuous—there are

2 Alberto Giubilini, Thomas Douglas, Hannah Maslen, and Julian Savulescu, "Quarantine, isolation and the duty of easy rescue in public health," *Developing World Bioethics,* 2018, 18: 183.

3 Michael Selgelid puts the same point this way: "Rather than thinking that any given liberty-infringing intervention is categorically either acceptable or unacceptable, it may be more fruitful to think in terms of degree: the more DALYs [Disability Adjusted Life Years] at stake, the more acceptable the liberty infringement would be." Michael Selgelid, "A Moderate Pluralist Approach to Public Health Policy and Ethics," *Public Health Ethics* 2, July 2009, no. 2: 202.

4 Giubilini, Douglas, Maslen, and Savulescu, "Quarantine," 185.

obviously extreme conditions like Ebola that warrant extreme responses like quarantine, and there are milder conditions like gastroenteritis that do not. In between these extremes there are a range of possible outbreaks that would in turn warrant a scalable range of responses.

In a later article, Giubilini and Savulescu ground this analysis is what they call "the duty of easy rescue". If we are able, through minimal effort, to save a life, then we have a duty to do so. And if the rescue requires more than minimal effort, then the state has an obligation to compensate those who are being asked (and possibly compelled) to make the sacrifice. Anything beyond easy rescue requires some kind of incentive for the individual:

> The most ethical solution, we have suggested, is to acknowledge and mitigate the demandingness of certain public health policies by implementing a system of incentives and/or compensations: the former provide individuals with non-moral reasons to do something supererogatory (with the size of the incentives proportionate to the level of harm or risk of harm imposed), and the latter compensate individuals for being forced to do something supererogatory.[5]

This solution again fits into the consequentialist framework. An action can only be justified if the benefits outweigh the costs—this is why we have a duty of easy rescue, but not of expensive rescue. If the costs for some individual of performing a rescue are too high, then those should be offset with compensation, to bring that balance back in favor of the benefits.

Thus, we have the Standard Model of quarantine ethics: collective interests are balanced against individual interests, and when an individual is asked to make significant sacrifices, it is appropriate that they should be compensated. The compensation serves to balance the scales—to make the individual sacrifice acceptable to individuals. And if the payoff—the purpose of the individual sacrifice—is not enough, then the sacrifice is not worth it. Quarantining a handful of people to prevent the spread of a deadly virus is moral, but quarantining many people to prevent the spread of a merely uncomfortable virus is not. It's an intuitively appealing framework for understanding pandemic ethics, but as we'll see, it's not clear that it applies to the case of COVID-19.

5 Alberto Giubilini and Julian Savulescu, "Demandingness and Public Health Ethics," *Moral Philosophy and Politics* 6, 2019, no. 1: 85.

The Failure of Standard Model

Giubilini and Gatter were both writing about the forced quarantining of individuals who are, or who have a high probability of being, actually contagious. In this respect, the response to COVID-19 is significantly different from the responses to Ebola and SARS. Social distancing regulations were designed in part to prevent people from becoming infected, by effectively quarantining people with a low probability of being currently infected. There are reasons for this difference: the virus that causes COVID-19 is less lethal than the Ebola or SARS, and is more easily spread than Ebola.[6] The Standard Model seems to work with these prior, highly lethal diseases because the benefit is so high, and the cost is borne by so few. With COVID-19, this was not the case, and the cost was borne by everyone, and the benefit is distributed across the population.

When the COVID-19 pandemic came to the United States, there was a great deal of talk about using social distancing to "flatten the curve". The "curve" here refers to the graph of infections across time—the idea being to slow the spread of the virus so as to ensure that there is no spike in infections that exceeds the capacity of the health care system to deal with them. But flattening the curve did not mean that the total number of people who would become infected was changed—it was meant to spread out the rate of infection over time. This made sense based on the assumption that the vast majority of infected people would survive the infection, and that some would need serious medical intervention to do so.

So far, this fits with the Standard Model: we were asked to make sacrifices so that the virus would spread slowly enough that those affected could be cared for. But something gradually changed in the way many people thought about this pandemic. Instead of spreading out the rate of infection, the goal started to become stopping the spread entirely, or at least slowing it significantly, until a vaccine could be developed, tested, mass produced, and distributed, thus reducing the total number of people who would eventually become infected. The reasoning behind this approach to the pandemic then began to seem less grounded in the Standard Model.

6 Ebola has a lethality rate of around 50% (WHO, "Ebola Virus Diseasek," Accessed May 14, 2020, https://www.who.int/news-room/fact-sheets/detail/ebola-virus-disease), but as a blood-borne virus it is less contagious than COVID-19. SARS's lethality is around 15% (WHO "Consensus document on the epidemiology of severe acute respiratory syndrome (SARS)," (2003): 10, https://www.who.int/csr/sars/en/WHOconsensus.pdf). It is too early for there to be confident numbers for COVID-19, but one study put the initial lethality rate in the United States at 1.3% (Anirban Basu, "Estimating The Infection Fatality Rate Among Symptomatic COVID-19 Cases In The United States." *Health Affairs* 39, no. 7 (May 7 2020): 1232, https://doi.org/10.1377/hlthaff.2020.00455).

Consider a round-table discussion about the ethics of governmental responses to the COVID-19 outbreak that was published in the *New York Times Magazine* at the height of the pandemic.[7] In the discussion, Peter Singer put forth what is essentially the Standard Model answer to the question of whether the quarantine should continue or not:

> I think the assumption, and it has been an assumption in this discussion, that we have to do everything to reduce the number of deaths, is not really the right assumption. Because at some point we are willing to trade off loss of life against loss of quality of life. No government puts every dollar it spends into saving lives. And we can't really keep everything locked down until there won't be any more deaths. So I think that's something that needs to come into this discussion. How do we assess the overall cost to everybody in terms of loss of quality of life, loss of well-being, as well as the fact that lives are being lost?

Singer's view makes perfect sense according to the Standard Model. The lockdown of movement and business put a burden on almost everyone, and a severe burden on many. If this continues until a vaccine is developed and universally distributed, it would have a cumulatively enormous cost, and the payoff of doing so would be saving the lives of a small minority of the population. Governments have compensated individuals for lost wages, but because this compensation is not being sustained at a level that actually mitigates the sacrifices being made, the Standard Model would say that it social distancing should be lifted.

It is interesting to note that nearly all of the top-promoted reader responses to the online version of this article are deeply critical of Singer's response. Some people agree with his reasoning, but the vast majority express the basic idea that it was not worth risking lives to bring our economy back to normal. Nor is it an isolated case of this response. When Texas Lieutenant Governor Dan Patrick publicly suggested that older Americans (like himself) should be willing to risk their health so that the majority of people could get back to life as normal, it was not taken seriously by the public at large.[8] Even those who agreed with Pat-

7 New York Times Magazine, "Restarting America Means People Will Die So When Do We Do It? Five thinkers weigh moral choices in a crisis," April 10, 2020.

8 From an interview on with Tucker Carlson aired on Fox News on March 23, 2020: "This on no one reached out to me and said, 'As a senior citizen, are you willing to take a chance on your survival in exchange for keeping the America that all America loves for your children and grandchildren?' And if that's the exchange, I'm all in. And that doesn't make me noble or brave or anything like that. I just think there are lots of grandparents out there in this country like me, I have six grandchildren, that what we all care about and what we love more than anything are those children."

rick's conclusion do not agree with his reasons—more commonly they said that ending social distancing could be done without endangering anyone.[9] That is, even those who agreed that we should end social distancing did not say that we should be willing to pay the price in lives. The Standard Model implies that there is some amount of non-lethal sacrifice by some amount of people that in aggregate is simply too steep of a price to pay for the benefits of quarantine. That this basic idea is overwhelmingly rejected is not a matter of rhetoric or details, but a basic rejection of the Standard Model itself, at least as applied to COVID-19.

Why is the Standard Model so difficult to accept in this situation? The reason, I think, is that a consequentialist moral theory will always weigh the value of individual lives against the collective good. This will mean that at some point, it becomes morally required that we disregard the individual. John Stuart Mill himself thought that individual liberty should not be suppressed lightly, but only instrumentally, because in general it serves the greater good.[10] This, I take it, is the sticking point, and one that critics of utilitarianism have voiced from the beginning: that there need not be any justification beyond the actual aggregate public good in order to take away an individual's life or liberty.

But it is not just liberty per se that the Standard Model devalues—it is individuality itself. To illustrate this point, let us return to Singer. The passage quoted above is far from the only time Singer's blunt utilitarianism has led to deep discord. When Singer was given a faculty position at Princeton in 1999, his utilitarian thesis that babies born with severe birth defects should be painlessly killed was seen by many as abhorrent; it was, it seemed, the tip of the spear of eugenics. This led to a public debate with disability activist Harriet McBryde Johnson. a later analysis of that debate by Mark Hopwood lands pretty close to the point I'm trying to make here:

> If the goal of moral reasoning is simply to come up with answers to questions posed in a generalized form—Is abortion morally justifiable? Do we have an obligation to keep alive the terminally unconscious?—then it makes

9 For example, Arizona Representative Andy Biggs said the following: "We all want to take care of those who are vulnerable, and we want to protect them but we also want to be able to live our lives. I think everybody's important. The people that are huddled up there, they're not being treated as if they have rights, so not being treated as if they're important" (Juliegrace Brufke, "House Conservatives Call to Immediately Reopen the Economy," *The Hill*, April 19, 2020).

10 Wendy Parmet puts it like this: "Mill both respected and limited liberty not primarily because he thought that individuals have an inalienable right to it, but because he believed that liberty was the most effective way to advance the greater good". See "J.S. Mill and the American Law of Quarantine," *Public Health Ethics* 1, November 2008, no. 3: 216.

> sense to say that our reasoning ought to take place on a similarly general level. If, however, we think that moral reasoning has other goals besides arriving at answers to such questions, we may be prepared to entertain the value of forms of reasoning that are not easily translated into general principles.[11]

The problem was not, Hopwood thinks, that Singer made any mistakes in moving from his starting position to his conclusion—it's that the very starting position of utilitarianism requires an impersonal approach: "The main problem with Singer's approach to moral philosophy as McBryde Johnson sees it is that it has the effect of denying her humanity."[12] For utilitarianism, individuals only matter insofar as they are a part of the larger calculation of costs and benefits. McBryde's point was that individuals should be valued in themselves, regardless of their contribution to utility.

The difference I am trying to point to here can also be seen in a recent article by Garbutt and Davies that critiques the British National Health Service. Both authors are physicians working within the NHS system, and their critique is of the essentially utilitarian nature of the system's management. NHS prescribes treatments and procedures for their doctors to use based on wide-scale resource allocation models. Patient meeting times, prescriptions of medicines, and treatments are all prescribed. These prescriptions are based on the good of the whole population being served by the NHS, but some doctors in the system resist it. Good patient care, Garbutt and Davies argue, is essentially deontological. What matters when a doctor sees a patient is the good of the patient, and that is all that matters:

> It is an ethic that values the particularity of each individual patient. In this ethic the patient is an end in themselves, and not a means towards anything else. It is very patient centered, highly valuing individuals, their narratives and relationships over time expressed as continuity of care.[13]

The point is not that the NHS administration is doing a bad job of allocating finite resources (although they do make that argument elsewhere in the article), but that a focus on utilitarian concerns of resource allocation misses the central moral relationship of good medical practice.

11 Mark Hopwood, "'Terrible Purity': Peter Singer, Harriet McBryde Johnson, and the Moral Significance of the Particular," *Journal of the American Philosophical Association* 2, Winter 2016, no. 4: 649f.

12 Hopwood, "Terrible Purity," 652.

13 Gerard Garbutt and Peter Davies, "Should the practice of medicine be a deontological or utilitarian enterprise?" *Journal of Medical Ethics* 37, May 2011, no. 5: 268f.

I believe this is why the Standard Model analysis of the COVID-19 response strikes so many people as unacceptable. The Standard Model weighs the loss of life against the aggregate cost of social distancing, without special regard for the actual lives lost. Those who reject Singer's and Patrick's position do so by insisting that each individual whose life might be lost matters, and not in a way that can be overruled by the aggregate utility of ending social distancing to reopen the economy and ease freedom of movement.

It is easy to make utilitarian calculations in a classroom, where the stakes are imaginary. But it's harder to make moral choices that way in reality. This does not constitute an argument that the impersonal model is wrong. If one starts from the transactional, consequentialist stance, then there will be no reason to think that concern for individual well-being matters (other than as part of the total aggregate amount of good in the world). There will, in fact, be every reason to think that such care for individuals clouds moral judgement. This paper is not the place to attempt to decide this on first principles, but I think it's clear that the strictly impersonal, consequentialist Standard Model does not adequately capture what much of the public felt—and continues to feel—about the COVID-19 outbreak. And if it does not resonate with the way that people generally feel about the situation, then it will not be an adequate framework to judge whether the response has been moral.

Other Moral Models

In this section I will begin the project of constructing an alternative to the Standard Model of pandemic ethics by pulling together threads from analyses of the ethics of related situations. We begin by noting that not every ethicist who has looked at pandemic responses has endorsed the Standard Model. In examining the case of volunteer Ebola nurse Kaci Hickox, Silva and Viens argue that compelling people to undergo involuntary isolation requires "showing gratitude to those who voluntarily subject themselves to loss-imposing ICMs [involuntary control measures] that seek to limit harm to others."[14] We can see the break from the Standard Model, in that the authors do not call for gratitude for utilitarian reasons—to ensure future help from health care workers, for example—but only because it is right. Silva and Viens do not think that gratitude balances a scale, exactly, but that it is morally required if someone is making personal sacrifices for others.

14 Diego Silva and A. M. Viens. "Infection Control Measures and Debts of Gratitude," *American Journal of Bioethics* 15, no. 4 (1015): 57.

Another example of a non-Standard Model approach comes from Wilkinson,[15] who argues that quarantine is justified as an act of self-defense. This marks an important change from the Standard Model, since self-defense does not weigh the well-being of the uninfected person equally with the well-being of the infected, isolated person. Wilkinson recognizes the break from consequentialism, saying "we should not rest content with defending public health compulsion, in simple-minded utilitarian fashion, by saying 'it does more good than harm'. People's rights constrain the pursuit of the greater good."[16] This account is focused on cases like Kaci Hickox, where the people being quarantined are themselves the potential vectors of disease. That governments, and not the individuals directly threatened with infection, are doing the quarantining does not change much, since "the principles underlying self-defence permit third parties to inflict harm on threats in other-defence."[17] I will not linger on Wilkinson's argument, since he believes that the self-defense model does not allow mass intervention into the rights of bystanders.[18] However, thinking about quarantine measures as defense leads us to what I think is a fruitful analog for mandatory social distancing: mandatory vaccinations.

The COVID-19 vaccines have rapidly changed the landscape of the pandemic, and there is great debate about whether, and in what contexts, they should be mandatory. But I will not discuss this here. The public debate about these vaccines is important, but complicated by its newness and overt politicization (at least in the United States). More importantly for the current context, moral philosophers have not offered robust analyses of the COVID-19 vaccine question. But they have of other, more familiar vaccine situations, and these can serve as another alternative to the Standard Model of pandemic ethics, since mandatory vaccination serves much the same function as social distancing: it is a measure that protects those who are vaccinated, but also protects others who are not. It is an action imposed on the many for the benefit of the few, and those who are compelled to get vaccinations are not necessarily at any particular immediate risk of being exposed to the disease (excepting vaccination for travel to novel disease environments, such as from the U.S. to sub-Saharan Africa). Mandatory vaccination ethics is also an important frame for this paper, since it tends to be analyzed in

15 T. M. Wilkinson, "Contagious Disease and Self-Defence," *Res Publica*, 2007, 13: 339–359.

16 Wilkinson, "Contagious Disease," 343.

17 Wilkinson, "Contagious Disease," 344.

18 Wilkinson, "Contagious Disease," 356.

non-consequentialist terms,[19] even by Giubilini, whose writings on pandemics were central to establishing the Standard Model, who says this about vaccinations:

> In the case of vaccination and antibiotic resistance the (moral) demand on individuals is not only and not necessarily that of preventing harm to others – which would be justified on consequentialist grounds and might give rise to a duty of easy "rescue"—but, arguably, also that of making their fair contribution to a collective enterprise.[20]

The duty to be vaccinated cannot be explained in solely in consequentialist terms. To see how this could be translated to the COVID-19 case, I will look in some detail at an account of vaccination ethics put forward by Dennis Sansom.[21]

Often in asking about public policy ethics, the rights of individuals are weighed against collective goods. Sansom's argument explicitly rejects this dichotomy. The individualistic, libertarian position requires that only individual rights matter, and an individual's rights can only be circumvented when another individual's rights are at stake. On the other hand, what Sansom calls the "conservative" approach completely disregards the rights of individuals in favor of the greater good. Sansom rejects both, instead arguing for a version of communitarianism:

> Communitarianism offers a more plausible account of the public good. It recognizes that the choice is not between the consensus of society and the autonomous individual but for how the social institutions and individuals shape and define each other.[22]

This approach, he writes, is the only way to capture the reality of moral individuals living in societies:

> It is because people learn "moral responsibilities" that they realize their experiences of self-making necessarily involve having the opportunity to contribute to social institutions such as families, schools, and businesses. People

19 It's not a universal approach, however. Flanigan argues strictly in terms of harms, and potential harms, that an unvaccinated person could cause to another. She addresses the reasons one might have for resisting vaccination, and argues, in a classic libertarian way, that the right to bodily integrity extends only as far as not harming another. See Jessica Flanigan, "A Defense of Compulsory Vaccination," *HEC Forum*, 2014, 26: 17f.

20 Giubilini and Savulescu, "Demandingness" 71.

21 Dennis Sansom, "Ethical Tensions Involved in Mandatory Immunizations Programs: a Communitarian Response," *Ethics & Medicine,* Fall 2015, 31, no. 3: 177-189.

22 Sansom, "Ethical Tensions," 179.

> are never only responsible to themselves or only to institutions. The responsibility involves finding the ways to experience human flourishing within established and continuous social relationships.[23]

The point is that there is no simple side to choose—our lives are lived between our individual projects and the collective institutions we inhabit.

The most important moral question in vaccination ethics is how governments should treat those individuals who have a moral or religious objection to vaccinations. Rather than choose one side or the other, communitarianism requires a recognition that every individual has a fundamental right to self-expression, while also recognizing the need for social engagement:

> Because the autonomy of individuals—including parents of children acting as their parental guardians—is essential to the experience of the public good, governmental agencies should acknowledge that even dissenters have the right of self-determination in the matter of immunization programs.[24]

The public has a duty to recognize the needs of individuals, just as the individuals have a duty to recognize the public good. Individuals who have moral objections to mandatory vaccinations must, he says, "articulate their commitment to public health and not to bring harm on others"; they must be committed to learning the facts from the government's educational program, and finally they must demonstrate a commitment to public health.[25] And if these conditions are not met? "If individuals refuse to comply in this way and their actions do in fact bring harm to public health, they nullify their moral argument in that they are not willing to balance their right of self-determination with the principle of no-harm."[26]

There are obvious parallels between mandatory vaccinations and enforced social distancing. In both cases, we see an attempt at universal intervention from the state into private lives with the goal of protecting the health of the public at large. In neither case are the people being made to adhere to government orders actually thought to be contagious.

23 Sansom, "Ethical Tensions," 179.

24 Sansom, "Ethical Tensions," 183.

25 Sansom, "Ethical Tensions," 186. The case may be a little different when the objection to vaccination is not based on religion, but on a fear of its danger. I would argue that governments should still respect autonomy, but the response should focus more on education than simple accommodation. For more on this, see Berth Manninen, "Balancing Parental Autonomy and Harm to Others in the Wake of the Modern Anti-Vaccination Movement," *APA Newsletter,* Fall 2016, 16, no. 1: 20–27.

26 Sansom, "Ethical Tensions," 187.

Vaccinations and social distancing are also both based on the idea that all individuals are asked to make sacrifices from a recognition of the need for a shared society. But there are also important dissimilarities. The biggest is that if one objects to vaccinations, there are ways to do so without endangering the general public. Clarke, Giubilini and Walker argue that a conscientious objector to vaccinations must voluntarily self-isolate.[27] But it is not clear just how this would translate to COVID-19 social distancing, since the very thing that objectors are objecting to is self-isolation. We will need one more step into an analogous situation that more closely emulates the kinds of sacrifices being asked in the current case: the ethics of conscientious objections to military demands.

A country that requires military service from all of its citizens should recognize a right of conscientious objection. But a conscientious objector is required to serve in some other capacity, in recognition of the need to serve the country. This analogy has practical limits when applied to quarantine resistance, but it captures the idea that one can resist social well-being statutes without disrupting them. a final step is a related analogy concerning civilian compliance with wartime restrictions on movement and communication. This has not really been an issue in North America since the Second World War, but we did see new restrictions on travel when the Transportation Safety Administration was created, and users of airports suddenly had to undergo unprecedented scrutiny. There was, from the beginning, plenty of dissent. And while dissent is allowed, it was not allowed at airports. Even those who dissented understood this—dissent was valid, but not to the point of disruption. And here we can see what Sansom's communitarianism would say about resistance to the imposition of social distancing: however it is expressed, resistance must not endanger the public at large, and as long as it does not, such conscientious objections ought to be respected.

By putting these pieces together, we get an alternative model for judging the morality of the response to COVID-19. I will call it the "Care Model", since much of it is in the family of care ethics. The core of the Care Model recognizes that people care about each other, they care about their own well-being, and they care about the well-being of the society and institutions that support them. These are taken as goods, not to be weighed against each other, but to be promoted and protected as much as possible. Any public action, if done morally, should be an expression of this care—and in this case care must include both social distancing, and conscientious objection to social distancing. Those who object to public health policy must also recognize the value of both people and the

27 Steve Clarke, Alberto Giubilini, and Mary Jean Walker, "Conscientious Objection to Vaccination," *Bioethics,* March 2017, 31, no. 3: 160.

social institutions that allow them to thrive. Every individual has value, and none are to be treated as means to an end. Finally, those who make sacrifices to promote these values should be met with gratitude.

This is just the barest sketch of what a Care Model of pandemic ethics would look like, but we can already see the essential overlaps and disagreements with the Standard Model. To begin with the obvious, neither the Standard Model nor the Care Model would endorse bad planning or poor communication. Both would endorse governments helping individuals and businesses that are suffering from mandated social distancing. Neither would condone profiteering, and neither would allow for discriminatory enforcement of quarantine rules. Even when it comes to the central moral question of the COVID-19 pandemic, the difference in how one applies the models is subtle. The Standard Model says social distancing should be ended as soon the aggregate sacrifices of the public outweigh the potential number of lives saved. The Care Model, in insisting that we should value individuals and the social institutions they exist in, does not necessarily disagree. The advantage it has over the Standard Model is that it's the only one of the two that actually allows us to have a coherent theoretical reason to even consider that we should continue a practice like social distancing beyond the point where the objective costs outweigh benefits.

Conclusion

Since the beginning of the COVID-19 pandemic, there has been debate about the morality of mandatory social distancing. These debates often center around whether the practices worked, or how dangerous the virus really is. But they typically assumed the truth of the Standard Model. Even when this consequentialist framework was called into question, there has been little debate about what could replace it. This dynamic is not new, of course;[28] anyone who has taught an introductory course on moral theory knows how difficult it can be for people to recognize that they are operating from foundational moral theories that can be called into question. But we can, and should, call this framework into question.

28 Maxwell Smith and Diego S. Silva were pointing to the problem of a lack of clarity about the moral framework for responding to pandemics before the current outbreak. See "Ethics for pandemics beyond influenza: Ebola, drug-resistant tuberculosis, and anticipating future ethical challenges in pandemic preparedness and response," *Monash Bioethics Review,* 2015, 33: 140. Likewise, James Thomas, in a survey of the language of federal preparedness plans finds: "Although it recommends priorities for allocating scarce quantities of antiviral medications and vaccines and reasons for placing importance in particular sets of recipients, it does not articulate the underlying ethical values or principles that would enable states to re-think or refine the priorities" ("Ethics in a Pandemic: a Survey of the State Pandemic Influenza Plan," *American Journal of Public Health,* April 2007, 97, Suppl 1: 529).

As of this writing, the COVID-19 pandemic is far from over. There are still many thorny ethical issues (most obviously how to handle people who are reluctant to get vaccinated). But perhaps more importantly, it is clear that COVID-19 will not be the world's last pandemic. The next pandemic will require policy responses, and some of those will be informed—at least in some small way—by the work of medical ethicists. Now is the time to take the real lessons from COVID-19 and develop real alternatives to the Standard Model.

Work cited:

Basu, Anirban. "Estimating The Infection Fatality Rate Among Symptomatic COVID-19 Cases In The United States." *Health Affairs,* May 7, 2020, 39, no. 7: 1229-1236. https://doi.org/10.1377/hlthaff.2020.00455.

Clarke, Steve, Alberto Giubilini, and Mary Jean Walker. "Conscientious Objection to Vaccination." *Bioethics,* March 2017, 31, no. 3: 155–161.

Flanigan, Jessica. "A Defense of Compulsory Vaccination." *HEC Forum,* 2014, 26: 5–25.

Garbutt, Gerard, and Peter Davies. "Should the practice of medicine be a deontological or utilitarian enterprise?" *Journal of Medical Ethics,* May 2011, 37, no. 5: 267–270.

Gatter, Robert. "Quarantine Controversy: Kaci Hickox v. Governor Chris Christie." *Hastings Center Report,* May 2016, 46, no. 3: 7–8.

Giubilini, Alberto, Thomas Douglas, Hannah Maslen, and Julian Savulescu. "Quarantine, isolation and the duty of easy rescue in public health." *Developing World Bioethics,* 2018, 18: 182–189.

Giubilini, Alberto, and Julian Savulescu. "Demandingness and Public Health Ethics." *Moral Philosophy and Politics,* 2019, 6, no. 1: 65–87.

Hopwood, Mark. "'Terrible Purity': Peter Singer, Harriet McBryde Johnson, and the Moral Significance of the Particular". *Journal of the American Philosophical Association,* Winter 2016, 2, no. 4: 637–655.

Manninen, Bertha Alvarez. "Balancing Parental Autonomy and Harm to Others in the Wake of the Modern Anti-Vaccination Movement." *APA Newsletter,* Fall 2016, 16, no. 1: 20–27.

Parmet, Wendy. "J. S. Mill and the American Law of Quarantine." *Public Health Ethics,* November 2008, 1, no. 3: 210–222.

Sansom, Dennis L. "Ethical Tensions Involved in Mandatory Immunizations Programs: a Communitarian Response". *Ethics & Medicine,* Fall 2015, 31, no. 3: 177–189.

Selgelid, Michael J. "A Moderate Pluralist Approach to Public Health Policy and Ethics". *Public Health Ethics,* July 2009, 2, no. 2: 195–205.

Silva, Diego S., and A. M. Viens. "Infection Control Measures and Debts of Gratitude." *American Journal of Bioethics,* 2015, 15, no. 4: 55–57.

Smith, Maxwell, and Diego S. Silva. "Ethics for pandemics beyond influenza: Ebola, drug-resistant tuberculosis, and anticipating future ethical challenges in pandemic preparedness and response." *Monash Bioethics Review,* 2015, 33: 130–147.

Thomas, James. “Ethics in a Pandemic: a Survey of the State Pandemic Influenza Plans.” *American Journal of Public Health,* April 2007, 97, Suppl 1: 526–531.

WHO (World Health Organization). “Consensus document on the epidemiology of severe acute respiratory syndrome (SARS)”, 2003. https://www.who.int/csr/sars/en/WHOconsensus.pdf

WHO (World Health Organization). “Ebola Virus Disease.” Accessed May 14, 2020. https://www.who.int/news-room/fact-sheets/detail/ebola-virus-disease.

Wilkinson, T. M. “Contagious Disease and Self-Defence.” *Res Publica,* 2007, 13: 339–359.

COVID-19 and the Limits of Consequentialism

Abstract

In the philosophical literature on ethics of responding to pandemics, a consequentialist model is typically assumed the correct approach. The emergence of the COVID-19 pandemic, and the vast amount of public reaction to the measures taken to mitigate it, offers an opportunity to evaluate the usefulness of the usual model of pandemic ethics. This paper argues that standard, consequentialist model largely failed to describe the moral landscape created by COVID-19. The paper offers instead a competing model, one more typically seen in other medical ethics contexts that is based on Care Ethics. The paper concludes that just as the COVID-19 pandemic showed the medical community that there were gaps in the healthcare infrastructure that must be corrected before the next pandemic, so too the medical ethics community should focus on deepening this alternative moral model for understanding our obligations during pandemics.

Andrew Pavelich received a Ph.D. in Philosophy from Tulane University, and currently holds the rank of Associate Professor of Philosophy at the University of Houston-Downtown in Houston, Texas. He has published on a wide variety of philosophical topics, from the Problem of Evil, assisted suicide, and the metaphysics of time, and the ethical use of plagiarism-detection software.