

GLST 287, COVID-19: A Global Crisis Examined
October 21, 2020 Ethical Decision Making During a Pandemic
Pre-lecture materials

Lecture Description:

What are ethically justified answers to the tension between individual freedom and public health in mask wearing, following stay-at-home orders, using challenge trials to speed up vaccine trials, and vaccine compliance? This session will focus on these specific issues after noting some of the other ethical tensions in the current pandemic – between limited resources and dire need, and patient will and the need for caregivers to act without clearly discerning what that will is. The frameworks of ethical reasoning provided by two influential moral theories often yield conflicting conclusions on specific issues. On these pandemic issues, do the conclusions they yield conflict or align? In any case, how persuasive are they?

Key Vocabulary:

Philosophy, one branch of which is **Moral Theory** (or Normative Ethics):

What is the foundation of ethical judgment? What makes a right act right, a wrong act wrong?

Two moral theories:

Utilitarianism: focus is on the benefits and harms that result from an action. Action should aim to achieve the maximum aggregate well-being of everyone affected.

Rights in a utilitarian framework are liberties and protections crucial for minimizing harm and enhancing well-being.

Kantian Ethics (one form of “deontology” or an ethic of rules):

Universalization: an action is right only if it represents a rule (principle) that the person can will everyone else to follow. Otherwise the person is carving out an unfair exception for herself.

Respect for persons: treat every individual with dignity, as an “end-in-themselves” and never merely as means to an end.

Rights in a Kantian framework are liberties and protections required by the universalization procedure and respect for persons.

The Free-Rider Problem: Individuals benefit from a social practice of cooperative protection even when they do not “do their part.” This is unfair if such persons cannot be excluded from the benefit. Others do their part (some sort of sacrifice, usually) in order to gain the benefits of cooperative action, but free-riders gain the benefits anyhow.

Example: herd immunity. Once 80% are immune (what’s required, say, for a specific disease), the disease cannot spread into an “outbreak” even if a particular individual gets the disease. Those who do not vaccinate cannot be excluded from the benefit of no longer having outbreaks.

Solutions: Persuade or entice free-riders to do what others do to obtain the benefit, or if that is ineffective, *require* all to make the common sacrifice.

Four Readings:

“**Utilitarianism and the Pandemic.**” Savulescu, Julian, Ingmar Persson, and Dominic Wilkinson. *Bioethics*. May 20, 2020.

Description: The authors introduce the moral theory of utilitarianism and describe the connection between rights and well-being.

Please just read the abstract, introduction, and sections 1.1 and 1.9.

Link:<https://onlinelibrary.wiley.com/doi/10.1111/bioe.12771#:~:text=According%20to%20utilitarianism%2C%20the%20value,illness%20that%20affected%20younger%20patients.>

“COVID-19 and the Global Ethics Freefall.” Venkatapuram, Sridhar. The Hastings Center. March 19, 2020.

Description: Venkatapuram argues that public health should not be considered a zero sum game between the interests of individuals vs. the interests of the group, but rather that it is “about how we organize our society, how we relate to one another, to ensure that every individual is able to pursue a good life.”

Link:<https://www.thehastingscenter.org/covid-19-and-the-global-ethics-freefall/>

“Principles of Kantian ethics.” Steinbock, Bonnie, John D. Arras, and Alex John London. “Moral Reasoning in the Medical Context.” *Ethical Issues in Modern Medicine: Contemporary Readings in Bioethics*. 8th Ed. New York: McGraw-Hill, 2013. pp. 15-16

Description: This excerpt from the Introduction by the editors summarizes the principles of Kantian ethics.

...To find out whether a proposed action is consistent with duty, and morally permissible, the right question to ask, Kant says, is not “What are the likely consequences of doing (or not doing) this action?” but rather, “*Can I, as a rational agent, consistently will that everyone in a similar situation should act this way?*” If we convert this question into an imperative, we get “Act always on that maxim (or principle) that you can consistently will as a principle of action for everyone similarly situated.” Kant calls this rule the “categorical imperative,” and it is the foundation of his ethical system. If the proposed action is one that would be wrong if done generally, then the particular action is wrong, too— even if it would not, in the case at hand, have harmful consequences. What matters is that the maxims of these actions cannot be consistently universalized. While it may seem entirely abstract and formal, universalization is, in part, a mechanism for ensuring equal respect for persons. It achieves this by not allowing us to make exceptions of ourselves, but requires us always to act only on principles that we could consistently will that everyone follow.

Kant thought that consistency and universality are clearly part of our concept of morality and duty. In trying to explain why we ought to do certain things (like voting) or refrain from doing others (like cheating), we are liable to ask, “What would happen if everyone acted that way?” But note that we do not regard it as a rebuttal if it is pointed out that not everyone *will* act that way. Universalization requires us to abstract from the actual circumstances and to refrain from making exceptions of ourselves. This test of right action is considered so important that many moral philosophers hold that a person “has a morality” only if that person is willing to universalize his or her moral judgments.

Universalization is only one aspect of Kantian ethics. Equally important is Kant’s insistence that persons must always be treated as “ends in themselves” and never merely as means. This means that in our dealings with others, we are to realize that they have their own goals, aims, and projects. We are never to treat other people as if they do not matter or count, or as if they exist simply to fulfill our purposes. This Kantian idea is reflected in the insistence that patients and research subjects must give informed consent before they can be treated or used in experiments. We also show respect for persons by telling them the truth, even when such knowledge might be painful, and by allowing them to make their own moral choices, even when

we think they will choose unwisely. Thus, Kantian ethics has been a strong force against the medical paternalism that held sway until fairly recently.

If a proposed action fails either the universalization test or the respect for persons test, then it is contrary to duty and must not be done. Kantian ethics can help us determine what we must not do; but how are we to decide what we should do? For often in deciding what to do, we are faced with a range of alternatives, none of which conflict with duty and all of which are morally permissible. Kantian ethics does not provide a decision procedure for deciding which out of all morally permissible acts is the right act. It thus gives the individual a great deal more latitude than does utilitarianism, which commands us to choose the act that has the best consequences. At the same time, Kantian ethics give proportionately less guidance. This can be viewed as a deficiency, but it can also be viewed as an advantage, in that it allows for more individual autonomy...

“The Unfairness of Free-Riding.” Menzel, Paul.

Description: This summary of the unfairness of free-riding, also referred to as the Duty of Fair Play, is taken from several articles by Paul Menzel, based on the writings of many others.

Unfair free-riding occurs when individuals receive benefits from a collectively beneficial social practice to whose necessary costs and sacrifices they do not contribute. Sometimes free-riding can be prevented by excluding such non-cooperators from the benefits, but in the case of what are referred to as “public goods,” individuals cannot be excluded. The positive effect of the cooperative action extends well beyond those who participate. If non-cooperative individuals cannot be excluded from the benefits, then to avoid the unfairness, they should be required to pay their fair share of the costs or sacrifices. A formal Anti-Free-Riding Principle can then be stated: *A person should pay her fair share of the costs of a collective enterprise that produces benefits from which she cannot be feasibly excluded, unless she would actually prefer to lose all the benefits of the enterprise rather than pay her fair share of its costs.*

Public health is rich with such cases of collective action (“cooperative,” if you wish) that produces benefits for more than those who contribute. Air pollution, e.g. – smog from burning coal or wood in furnaces or fireplaces without stringent filters, or from excessively polluting vehicle engines – may be greatly reduced by the voluntary actions of many, and the resulting healthy air benefits even the relatively few who continue to pollute. Solution: mandatory vehicle emission standards (phased-in, perhaps).

Note the necessary empirical and moral claims needed to bring the Anti-Free-Riding Principle into play. Among them: (1) The cooperative action must in fact help create the results that follow. (2) Those results must be actual *benefits* (positive goods), including to the free-riders. In some cases people may reasonably disagree that what results is a real benefit. (3) Requiring free-riders to pay their fair share must not create its own considerable unfairness. For example, the cooperative action – the cost or sacrifice – may be a much greater burden to them than to those who have cooperated to create the benefit. (4) The resistant (objecting) person would not be willing to forgo the benefits if she had to do that to avoid paying her share of costs – that is, the benefits are worth the costs, even to her.

Does refusing to wear a mask when close to others in public places during the COVID-19 pandemic when many others do wear masks and social-distance, or refusing to be vaccinated when the rate of vaccination is already high enough to achieve minimal herd immunity (but barely so), unfair free-riding? This is a fairness question about these resistant activities,

noticeably different than the utilitarian question about what behavior will achieve maximum well-being in the society.

Finally, a comment about terminology. Requirements to wear masks or vaccinate can be seen as “restrictions” or as “cooperative protections.” Both terms are accurate but convey different perspectives.