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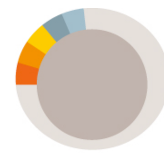

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Access to therapeutic and preventive interventions: ethical options

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What's the Problem? Why and what Ethics?

When we question the issue of access to therapeutic interventions in the context of a pandemic state, we face many ethical options. All of them favour some particular criteria and in that regard, certain philosophies have been very influential. Of course, our perspective should not remain theoretical. What we need are concrete recommendations to support decision making, which could potentially face very difficult dilemmas. In fact, some resources would become too scarce in a pandemic situation (vaccines, staff, reanimation facilities…). How can ethics help to allocate resources? Which ethical point of view should be ours?

Many levels of action can be distinguished, with regard of the different actors involved:

- public health policy makers, who have a moral focus on population safety;

- hospital directors, who have a moral focus on patients and on their institutions' interests;

- doctor and nurses, who have to care for patients.

The Hippocratic ethics is a very influential one. Robert Veatch remarked that a doctor following Hippocrates' oath would care for one patient at a time, even in a disaster scenario. He added that *"the greater needs of another do not permit the Hippocratic physician to abandon the patient under his or her care. Neither does the fact that the physician would do more good in toto if the patient of*

the moment were abandoned"[1]. In other words, such a physician would proceed in a sequential manner, treating one patient after having finished treating the previous one. But what we need are rules to establish priorities which transcend the doctor/patient setting.

Do we have to follow a "first come, first serve" rule? Should we take into account age or fortune criteria? Should we give priority to the worst off or the most vulnerable? Maybe priority access could be reserved to those who will benefit the most from treatment (or vaccine, etc.). Moreover, the interest of society matters too. Then, should we grant priority to healthcare workers, to essential services collaborators, to leaders? If key social functions are ineffective, the whole society collapses. Which ethics should we resort to?

Utilitarianism: only the sum of good generated by the use of scarce means matters

Basically, in utilitarianism, only outcomes and consequences matter. The goal of any rational action should be to maximize utility. Thus, the end justifies the means. But what is "good" and how can it be aggregated? Is pleasure, happiness, health or anything else involved? The meaning of health maximization is quite unclear, even if in the utilitarian vision the allocation of scarce resources should maximize public health benefits. But what will an indicator of such a maximization look like? Mackenbach underlined that utilitarianism "*is an attractive theory for public health professionals, because it provides their large-scale altruism with a quantitative method for determining what is a good, and what is a wrong decision*"[2].

In the perspective of priority setting, utilitarianism will resort to epidemiological criteria in order to maximise population health. Furthermore, it will lead to take into account social utility. Doctors should take care of family fathers rather than of grandfathers. Following the same pattern, they should pay more attention to the fate of the manager than to those of the beggar. And to mention disadvantaged groups, it appears that children should be given some priority on the basis that their longer life expectancy, which allow them experience more happiness that old people. Following utilitarianism, essential workers would be given a very high priority as the society well being depends on what they do.

It should be strongly emphasized that utilitarianism makes it easy to balance the "good" of some against that of others as only the aggregate sum counts. What could be disturbing is that it is blind to any principle of fair distribution. Moreover, it is very demanding to individuals. Some of them will have to self-sacrifice on the behalf of global happiness. Mackenbach noticed that it "*provides no guidance for how to deal with individual autonomy, another important value in Western societies*".

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[1] Veatch, 2005.

[2] Mackenbach, 2005

Libertarianism: you have to pay for access

Liberty is one of our cardinal individual rights. As a theory, libertarianism can be described as a self-ownership and anti-redistribution one. Individual rights are perceived as absolute and sacred. In fact, nothing is legitimated to interfere with egos. Robert Nozick said that: "*individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable*"[3]. This inviolability applies to individuals' possessions too.

To deal with priority setting in the allocation of scarce resources, libertarianism grants priority to those entitled to intervene regarding the setting for public health professionals and policy makers. Medical care is like any commodity (doctors own their skills) one can afford or not. Thus, everybody should have to pay for any priority. Nobody is entitled to claim a doctor's help. The vulnerable and disadvantaged then will have to count only on charity. Clearly, libertarianism conflicts with much of our convictions when it comes to access to preventive and therapeutic prevention.

Justice: explicit and reasonable decision rules with possibilities of contest

When the perspective of justice is involved, institutions have a commitment: to promote fair equality of opportunity. Justice requires to protect health and to meet health needs. Then medical interventions are not just a commodity which can be substituted by any other one. Contrary to libertarianism's logic, the notion of justice calls for redistribution.

Following Norman Daniels, facing a crisis causing an absolute scarcity, fair processes should be kept[4]. Consequently, they advocate a procedural justice that insures:

-transparency and publicity about decision grounds;

-calls for rationales that can all be accepted as relevant in order to meet health needs;

-procedures for revising decisions with respect to challenges to them.

Procedures of justice ensure accountability. Nevertheless, complying with rules does not give any criterion for resources allocation *per ipse.* If justice is a matter of legal forms, it has to be guided by principles.

To Madison Powers and Ruth Faden[5], human well being has six components[6]. Health is one of them: "*Justice (…) requires ensuring for everyone a sufficient amount of each of the essential dimensions of*

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[3] Nozick, 1974.

[4] Daniels, Sabin 2002.

[5] Powers, Faden 2006.

[6] Reasoning, self-determination, attachment, personal security, respect and health.

well-being, of which health is one (…) Insofar as possible." No relevant dimension should be avoided when public policies and decisions have to be evaluated. This matters for discussion purposes, but it does not tell us how allocate scarce resources.

Interestingly, Gostin and Powers assumed: "*in the context of influenza, the United States focuses on key personnel and (…) essential workers or first responders. These apparently neutral categories mask injustice.*

In each case, people gain access to life-saving technologies based on their often high-status employment. This kind of health planning leaves out, by design, those who are unemployed or in "nonessential" jobs – a proxy for the displaced and devalued members of society.

Consequently, public health planning based on pure utility, although understandable, fails to have sufficient regard for the disenfranchised in society"[7]. Daniels would completely disagree. To his mind, prioritizing "key personnel" is necessary to make justice stand in the long run, particularly in difficult times. Moreover, these personnel take care of the vulnerable and the disadvantaged. They prevent health inequalities from reaching intolerable levels.

The disagreement between Powers and Daniels shows us that two close conceptions of justice can lead to conclusions that do absolutely not overlap.

If respect and care is due to all, justice has to face a dilemma. Legitimate decisions have to be made. Doctors, for example have to decide who will benefit from limited resources. They will have to follow rational and established procedures. Furthermore, justice has to take into account the fate of the most vulnerable in society.

Some authors assume that any sort of priority is unjust. Other ones advocate prioritization on the behalf of justice.

In conclusion, how ever distribution would concretely look like, in the perspective of justice:

-it must not follow *only* the utilitarian principle;

-it must meet health needs and not ignore vulnerable and disadvantaged groups;

-it should comply with procedures and rules (first come first served, chance, accountability);

-accountability for "reasonableness" implies the setting out of concrete, detailed guidelines for crises in advance and make them public.

Ethics for practice: beyond the ivory tower

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[7] Gostin, Powers 2006.

All the previous ethical approaches remind us of something of moral importance, and give us some plausible guidance. We can mention: respect for individual autonomy (libertarianism), *beneficence and non-malfeasance* (hippocratic ethics), justice (involving criteria of Daniels, Powers/Faden, etc.), health maximisation, efficiency of resource allocation processes (utilitarianism). Decision makers will have to find contextualised balances based on the different principles and their criteria.

What can be advocated in practice? Ideally, we would be able to propose concrete checklists to practitioners, in order to shed some light on dilemma situations. We cannot automatically infer ethical options from theory. All we can do is use principles and draw different theories to elaborate criteria and to make reasons and argumentations explicit.

First, we will have to establish what our ethical options are. Then, ethicists should get involved to work on principles and criteria that can be shaped into guidelines and "checklists" for practitioners. This method is of high interest even for reasons of procedural justice.