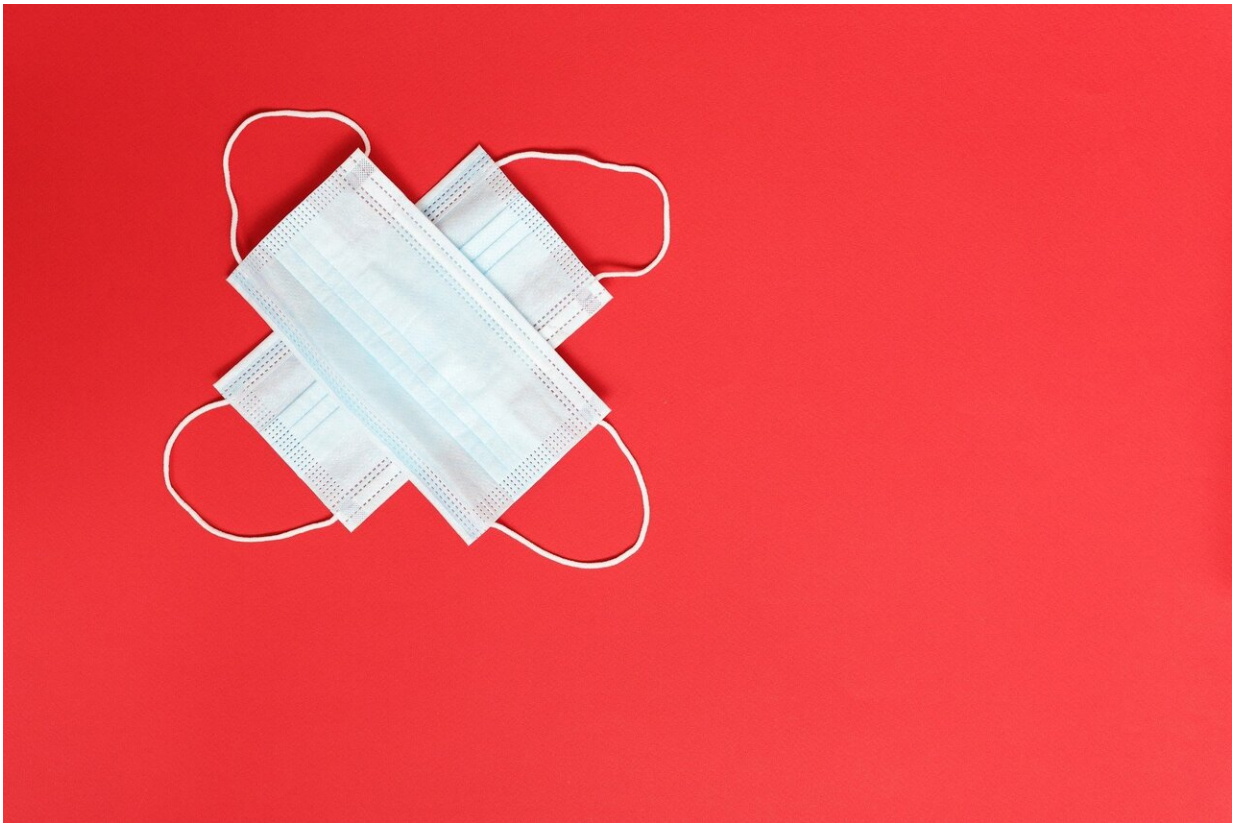


Why coronavirus rules should be about more than just stopping transmission

November 25 2020, by John Coggon



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The success or failure of coronavirus regulations is often assessed on whether they affect the rate of transmission in the community, and whether or not people comply with them. But what about the ethics

behind the measures?

With inevitable and complex value judgments at play, responses to COVID-19 have shown how the regulations' success also requires us to pay attention to their moral authority.

Links between [public health policy](#), social ethics, and political philosophy have long been recognized; on more and less favorable terms. One of the most prominent voices in favor of strong public health leadership, the editor of the medical journal *The Lancet*, Richard Horton, has [described public health](#) as "the science of social justice." By contrast, one of the most forthright critics of public health measures, the late Petr Skrabanek, a doctor and professor of medicine, wrote: "The roads to unfreedom are many. Signposts on one of them bears the inscription HEALTH FOR ALL."

The contest between such positions is about which values should be at play when governments make decisions about the health of communities, and on what basis they have the moral authority to intervene.

These questions are all the more pertinent during the second wave of coronavirus. In England, prime minister Boris Johnson, who has long had a tendency towards libertarian positions, has overseen enormous restrictions on liberties through regulations that have now included two national lockdowns, as well as regional restrictions of varying degrees of intensity. If we accept that such measures have been justified as necessary to contain the spread of the virus, serious ethical questions still arise and demand attention. At the heart of these are challenges to what lends authority to the laws themselves, which requires consideration of the institutions that issue them.

Public trust of course wavered in light of the "Dominic Cummings effect," after the prime minister's senior adviser apparently broke his

government's own rules by driving hundreds of miles across the country in the middle of the first lockdown. Hypocrisy hurts public health efforts.

But there are broader issues that challenge the moral authority of pandemic responses and must be taken seriously. Questions of equality under the law sit alongside structural inequalities within society. The disproportionate impact of COVID-19 on different communities—for example the ethnic inequalities we have seen in morbidity and mortality—has [invigorated debates](#) on social justice, shedding sharp light on pre-existing, systematic disadvantage.

These pervasive inequities are reflected further in distinctions, for example, in the apparent importance of different religions' celebrations relative to the imperative to have more or less restrictive regulations – [Diwali](#) and [Eid](#) both took place under lockdown conditions this year, while there has been enormous government focus on changing regulations for [Christmas](#).

Challenges for the laws have come too in how they are supposed to be understood. "Simple messaging" and "simplistic messaging" are not the same. Yet monosyllabic messaging has prevailed even where complexity undermines pithy slogans; as if, for example, "[the rule of six](#)" adequately summarizes the regulations and exemptions that it is intended to cover. The detail of new rules has often been presented only shortly before implementation, and often lacked clarity for some time afterwards. Additional challenges to understanding are presented by [the distinct approaches](#) and rationales seen in England, Northern Ireland, Scotland, and Wales.

All of these ethical dimensions only heighten the importance of assuring a clear moral mandate when regulations are issued and implemented. Here are some factors to keep in mind when exploring these points.

Transparency and clarity

People [have a right to know](#) what underpins pandemic measures—the deliberations, evidence, and priorities that support them. The [range of experts](#) on the government's Scientific Advisory Group for Emergencies, which provides guidance during the pandemic, highlights the diversity of knowledge and understanding that may be called on. The diversity of expertise itself [belies the simplistic slogan of "following the science"](#).

Choosing between different sources of data, theoretical insights, or rationalizations entails its own value judgments that should be clearly explained. Reductive trade-offs, such as "health versus the economy," fail to account for the realities of the different impacts of measures on different communities. They obscure the challenge of health/health trade-offs, where different forms of health and [social care](#) are prioritized over others—for example, cancer treatments being postponed to make way for COVID-19 treatment—or where protection from one disease brings heightened risks of other harms to physical and mental health. And they avoid exploration of when, and by whom, different effects will be felt.

Scrutiny

No democratic government should see scrutiny as a threat—to the contrary, it is crucial to good governance. Scrutiny may come through political methods (for example, parliamentary debate), legal challenges (for instance regarding measures' disproportionate or discriminatory impacts), and broader public scrutiny (such as through reporting and public debates in the media).

The government should welcome serious, sustained analysis, and in turn offer justification and—where needed—correction or modification. The [Coronavirus Act 2020](#) became law following a rushed passage through

parliament that lasted just a matter of days. More sustained deliberation is now possible, and should be the norm.

Respect for human rights

The pandemic has reaffirmed questions of disparity and social injustice. The government deems its coronavirus regulations to be consistent with the UK's [human rights](#) commitments, yet serious questions have arisen about the impacts of measures and policies on [different groups and communities](#). Human rights provide basic constraints, as well as principles to assure balance, equality, and proportionality.

Early in the pandemic, the threat of judicial review led the National Institute for Health and Care Excellence, to [revise its critical care guidelines](#) after they were [challenged](#) for unjustifiably discriminating against people with disabilities. Human rights must remain a robust measure of sound law and policy, and a viable source of constraint on measures that might be instituted.

The rule of law

Laws are essential to public health. They provide legitimacy to government interventions. They guard against excesses of executive power. And laws underpin good governance through clear and enforceable prescriptions. In contexts of emergency legislation, [it is of especial importance to uphold the rule of law](#): to ensure legal measures' equal application; that laws are clearly and publicly promulgated; and that they accord with principles of fairness and respect for human rights.

The importance of moral authority

COVID-19 responses require well-resourced and well-supported [public](#)

[health](#) infrastructure, with clearly rationalized goals and methods. This is essential for the [public trust](#) that such regulations require and should inspire.

The quality and success of [coronavirus](#) regulations cannot just be measured by reference to the R number and levels of individuals' compliance with the law. The authoritativeness of laws, and of related advisory guidance, depends on consistency with meaningful moral authority, derived from basic measures of democratic legitimacy. This is something legislators and political decision-makers should keep in mind as the pandemic continues.

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