

Responding to Covid-19: How to navigate a public health emergency legally and ethically

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Few novel or emerging infectious diseases have posed such vital ethical challenges so quickly and dramatically as the novel coronavirus. An early-view essay in the March-April 2020 *Hastings Center Report* offers guidance at a time when health care institutions and governments are desperately confronting these challenges.

The authors are Prof. Lawrence O. Gostin, director of the O'Neill Institute for National and Global Health Law at Georgetown University, director of the WHO Center on Global Health Law, and a Hastings Center fellow; Eric A. Friedman, the Global Health Justice Scholar at the O'Neill Institute; and Sarah A. Wetter, a law fellow with the O'Neill Institute.

Their essay addresses these vital questions as the United States responds to the Covid-19 pandemic:

- When the health system becomes stretched beyond capacity, how can we ethically allocate scarce health goods and services?
- How can we ensure that marginalized populations can access the care they need?
- What ethical duties do we owe to [vulnerable people](#) separated from their families and communities?
- How do we ethically and legally balance public health with civil liberties?

The full text of the essay, "[Responding to Covid-19: How to Navigate a Public Health Emergency Legally and Ethically](#)," is available for free.

"How we respond to this pandemic, whether we act ethically and safeguard the most vulnerable among us, will be a test of our humanity," Gostin said. "Everyone will suffer, and many will die, in the coming months, but those who are unemployed, uninsured, poor, or disabled will suffer most. As a society, we have an ethical duty to do all we can to meet the needs of the most disadvantaged among us."

To ethically allocate scarce goods and services, the authors point to a "World War II-style mobilization" and call on the president "to exercise his full authority under the Defense Production Act to mobilize industry to project urgently needed resources."

The authors discuss steps that should be taken to ensure that marginalized populations, like people with disabilities and people of color, receive a fair distribution of scarce resources. "In addition to identifying specific groups that need special care, ethical distribution requires a fair process in deciding," they write. That process should include the public and must be transparent and grounded in scientific evidence. Fair distribution is not only a national issue but also a global one. "Globally, lower-income countries will face much more scarcity than wealthier states and, if Covid-19 takes hold, a higher burden of disease," they write. "The United States is ethically obligated to assist—even if this means reducing American stockpiles—to maximally protect and equally value all human life."

The essay offers several recommendations for protecting vulnerable populations, including under- and uninsured persons and immigrants, and assuring that they have access to care. Among the recommendations is this: "Governments must assure that Covid-19 testing and care, and vaccines and treatment once available, are free so that cost does not cause anyone to delay or avoid care."

The authors address the economic and social disruption that results from physical distancing, quarantine, and other measures to control the spread of infections. To balance public health and civil liberties, they write, "a basic rule is that governments should employ the least restrictive means necessary to protect [public health](#)." That standard should "be based on rigorous scientific assessment of risk and effectiveness." Further, "containment measures must not be a subterfuge for discrimination."

"At a time of vast inequities, we are all only as safe as the most vulnerable among us—both in the United States and globally," the essay concludes. "We are in uncharted territory, where vital human connections and economic activity are disrupted in ways not seen in generations. If we want to safeguard the public's health while being

faithful to our most fundamental values, then we must ensure that our response is effective, ethical, and equitable."

More information: LAWRENCE O. GOSTIN et al, Responding to COVID-19: How to Navigate a Public Health Emergency Legally and Ethically, *Hastings Center Report* (2020). [DOI: 10.1002/hast.1090](https://doi.org/10.1002/hast.1090)

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