33rd Meeting of the National Ethics Councils
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Session 3 – Facing Scarcity

Prioritizing Among the "Prioritized" and Protecting Marginal Populations: A Double Ethical Tension in Times of Scarcity

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Prioritisation as a tool for dealing with scarcity

- Prioritisation scale as an **imperative of Justice and Efficiency** in times of health crises
- **Health needs are unequally supported** →, "basic" rules ("first come, first served", "draw lots") are unsuitable by themselves
- Establishing a prioritization will require **many complex trade-offs based on**
  - ✓ ethical reasoning,
  - ✓ political rationality,
  - ✓ logistical constraints

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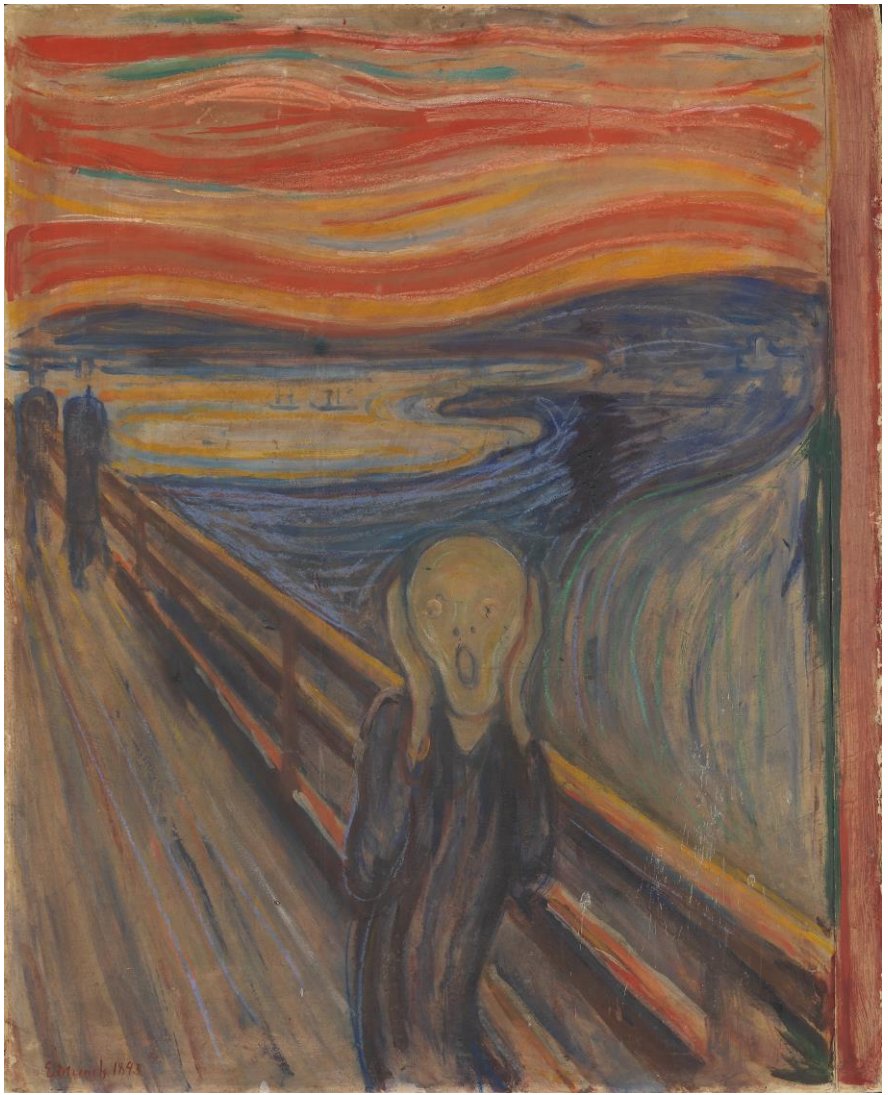
During Public Health Crises

Reduction of the usual (long) timeframe between the drafting of NECs' opinions and the consideration/implementation of these opinions by the public authorities : rationality conflicts become more apparent!



The Scream,
Edvard Munch,
1893 — National Gallery of Norway
https://commons.wikimedia.org/w/index.php?curid=69541493

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Belgian NEC and the Pandemic

- **Pandemic-related published positions: 9**

6 opinions + 1 recommendation + 2 opinions "by letter"

https://www.health.belgium.be/fr/liste-des-avis

- **Scarcity as a transversal theme**

➢ Scarcity in the context of pandemic (usually linked to disruption) → early insufficient vaccine supplies (A)

➢ Scarcity as the result of the pandemic response (≠ in terms of responsibility) → prioritization for healthcare (ICU) access (B)

According to the situation (A or B) the ethical meaning of prioritization changes!!!

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Belgian NEC's publications and the Pandemic

A- Scarcity **in the context of** pandemic

- Ethical standards for the roll-out of anti-covid-19 vaccination (Op.N° 75, Dec. 2020) (priority in access to vaccines) *(self referral)*

- Ethical aspects of prioritising care (Rec.,Dec. 2020)

B- Scarcity **as the result of** the pandemic response

- Acceptability of a Pass to access public spaces (Op.N° 77,May 2021) (Vaccinated/non infectious/been infected)

- Equal treatment for people living in nursing homes (Op.N° 78, Jun. 2021)

- Availability of medical care, including comfort and palliative care, in nursing homes in the context of a COVID-19 pandemic (Op.N° 84, March 2023)

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Belgian NEC and the Pandemic

- The ethical legitimacy of prioritisation in healthcare (Op.N° 85, Avril 2023)
- Hospital visiting rights (Letter n° 16, Apri.2023)

Other topics:

-Potential mandatory vaccination (Op.n° 80,Dec.2021)

- Anti COVID19-vaccination for children: available/strongly supported (letter n° 11, Dec.2022)

A. Scarcity in the context of pandemic

Early insufficient vaccine supplies

B. Scarcity as the result of the pandemic response

Prioritization for access to ICU beds

& hospital care

A. Scarcity in the context of pandemic

Early insufficient vaccine supplies

Scarcity in the context of pandemic

I. First Vaccines, insufficient supplies and Public Health needs

Aut. 2020:Interim data for safety/efficiency,
1/12/20: submission of the application for CMA

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Scarcity in the context of pandemic

I. First Vaccines, insufficient supplies and Public Health needs

Aut. 2020:Interim data for safety/efficiency,
1/12/20: submission of the application for CMA

Legal basis
Regulation (EC) No 726/2004 & Regulation (EC) No 507/2006

What is a conditional marketing authorisation?

« In the EU, CMAs allow for the authorisation of medicines that fulfil **an unmet medical need on the basis of less complete data than normally required.** (…). **However, the data must show that the benefits of the medicine or vaccine outweigh any risks.** Once a CMA has been granted, **companies must provide further data from ongoing or new studies within pre-defined deadlines to confirm that the benefits continue to outweigh the risks.** »

https://www.ema.europa.eu/en/news/ema-receives-application-conditional-marketing-authorisation-covid-19-mrna-vaccine-bnt162b2

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Scarcity in the context of pandemic

I. **First Vaccines, insufficient supplies and Public Health needs (Opinion N° 75),**

Self referral but regular contacts with the Task Force → insight of the planification process

- **First question: "***Adopting a vaccination strategy against COVID-19, an ethical choice?"*

- Rationale? Potential alternatives?
- only 3 applicable strategies (~~"Zero-COVID")~~

  - ✓ Let the virus "doing his job"
  - ✓ Ask the most vulnerable people to protect themselves by confinement, leave the others free to live their lives
  - ✓ Encouraging strongly vaccination and maintain some sort of social distancing until sufficient immunity be acquired

Scarcity in the context of pandemic

I. First Vaccines, insufficient supplies and Public Health needs (Opinion N° 75, self referral)

- **Let the virus "doing his job"**

→ Thousands of deaths → ethically unjustifiable

- **Ask the most vulnerable people to protect themselves by auto-confinement, leave the others free to live their live**

→ *« this option means undermining the very concept of interpersonal solidarity (intergenerational solidarity included), on which our society is primarily built »* → ethically unjustifiable

- **Encouraging strongly vaccination and maintain some sort of social distancing until sufficient immunity be acquired**

→ ***ethically justifiable****, provided that a large public concertation be conducted*

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Scarcity in the context of pandemic

Verbatim

*« **the health of a population, and in particular as regards resistance to infectious diseases, should not be understood and measured exclusively at a strictly individual level**. However, to the contrary, previous epidemics unfortunately taught us that **there is an interdependence between the health status of members of society.** Therefore, it is not an exaggeration to say **that collective immunity is a common good, the effects of which make it possible to protect all citizens, including those who cannot benefit from direct vaccine protection because of their age, contraindications to vaccination or a precarious situation that excludes them from health care. »***

the development of a vaccination strategy on a national scale in the fight against COVID-19 is a fully justified ethical choice.

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Scarcity in the context of pandemic

II - How to prioritize?

Disclaimer:

- Medical criteria : crucial but insufficient

- Ethics reasoning: not only a pure « Kantian » perspectiv + a consequentialist analyse to taken into account the effects of the prioritization on existing disparities in our society.

Medical criteria + Values

- risk of severe disease (+additional factor of fatality based on age)
- exposure risk
- risk of transmission

based on available data

- solidarity
- Reciprocity

- fairness/ Equity

+ Maximisation of benefits, limitation of harm

based on Ethics Guidelines and literature (WHO Sage Framework,…)

Scarcity in the context of pandemic

Values to support group prioritization

- **Solidarity :** between all population categories and esp. with categories particularly at risk from the virus
- **Reciprocity** : applies to individuals who take extraordinary risks to safeguard the basic functioning of life in the community.
- **Equity:** seeks, through priority access to vaccination, to offset inequalities that structurally weigh on specific categories of the population with regards to health needs and access to medical care: detainees, migrants in reception centers.

Scarcity in the context of pandemic

Justice & Equity - verbatim

« **We should have the lucidity to note that certain contexts are particularly detrimental to maintaining a satisfactory state of health, specifically among persons in precarious** (…) **situations and/or affected by conditions that prevent them from adequately protecting themselves (…) If this reality is not offset by some prioritization in the allocation of vaccines, the same factors could cause the same effects:** the most vulnerable target groups (detainees, migrants in reception centres...) may not be able to access the important public health intervention that anti-COVID-19 vaccination represents.

It may be tempting for some to adopt an approach based on the distinction between "good" and "bad" vulnerable people, between "good" and "bad" sick people. The Committee wishes to recall that such an approach is both incompatible with the principles of solidarity and equality and counterproductive at the public health level, as it leads to the persistence of actively spreading clusters of the virus in society.

Scarcity in the context of pandemic

Values to support group prioritization

- The **maximisation of benefits and limitation of harm (**consequentialist ethics): « (…) within the specific context of health policy, **risk reduction policies** (distribution of condoms to sex workers, needle exchange programme, (…))have for a long time proven their public health efficiency, **without having to wait for a hypothetical consensus within our pluralistic society, of what constitutes "good" behaviour or a "good" citizen**. »

Focus on Some Interesting Results

Stratification in 4 Groups (more subgroups)

- Elderly persons living in Residential care BEFORE Healthcare personal (GR1) *(At that time PPE were available)*
- Healthcare personal includes also healthcare staff in prisons (GR2)
- Persons living, working or temporarily staying in collective reception structures (psychiatric hospitals, prisons, asylum centres) (confined space and precarious health conditions /unable to follow and maintain sanitary safety measures against Covid). (GR3)
- Employees in contact with the public who maintain the basic *safe* operation of living in a community (GR4)

B. Scarcity as the result of the pandemic response

Prioritization for access to ICU beds
& hospital care

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Scarcity as the result of the response to the pandemic

The ethical legitimacy of prioritisation in healthcare (Op. N° 78, June 2021 & N° 85, Avril 2023)

- Flagged during the first wave: limited access to Hospital care for elderly persons living in Nursing Home (source DWB)

By Matina Stevis-Gridneff, Matt Apuzzo and Monika Pronczuk
Photographs by Mauricio Lima
Published Aug. 8, 2020
Updated Dec. 30, 2020

https://www.nytimes.com/2020/08/08/world/europe/coronavirus-nursing-homes-elderly.html?searchResultPosition=3

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Opinion n° 78, 9 June 2021

"**The DWB report shows a clear drop in the number of serious cases referred to hospitals, from 86% (in normal circumstances) to 57% (during the first wave).**(…)"

The fear of hospital services becoming saturated has influenced decisions on transfers. In addition, the crisis has revealed structural deficiencies in the healthcare system that existed well before it began: these structural weaknesses have amplified cyclical problems, making crisis management all the more difficult. This crisis should prompt us to rethink the overall organization of the healthcare system in the light of the essential values on which it should be based, particularly as regards care for the elderly."

→ 14 very practical recommendations have been made

Opinion n° 85, 17 April 2023

- Each hospital was required to set aside a certain percentage of its intensive care resources in order to care for the Covid-19 patients. (request from the Hospital and Transport Surge Capacity Committee -a consultative body that depends on the Ministry of Public Health).

→ Understood as a priority given to COVID-19 patients even on persons with a equal need of urgent care.

<u>BBAC Opinion:</u>

- the competent public authorities have the responsibility to guarantee the population health ;
- Public policies must be aimed at a social organisation that provides the necessary care staff/ equipment/medication/necessary procedures

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Opinion n° 85, 17 April 2023

« **It is not ethically permissible for the government to impose rules on healthcare providers to address shortages for which the government itself is responsible, especially when applying these rules results in certain patients not being treated or being treated less well**. By introducing such rules, the government could shift its responsibility to healthcare providers by leaving health policy choices to them even though it is not their responsibility. **The government must ensure that healthcare providers can make decisions based on their knowledge and based on the latest state of science »**

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Conclusions

- different sources of scarcity : global injustice and economic choices, structural deficiencies of Healthcare systems, pandemic disruption, pandemic response,…
- Prioritization may harm human rights and increase inequity in certain circumstances (be careful!)
- Analyse of both structural sources and concrete situations linked to scarcity is required to define an ethical prioritization that foster justice and equity not only as principles but also as realities
- the question of responsibilities should also be raised.