

JUSTICE, IMPARTIALITY, AND EQUALITY IN THE ALLOCATION OF SCARCE VACCINES: A REPLY TO SAUNDERS

Hugh V. Mclachlan

Volume 17, Number 1-2, Fall 2022

URI: <https://id.erudit.org/iderudit/1097013ar>

DOI: <https://doi.org/10.7202/1097013ar>

[See table of contents](#)

Publisher(s)

Centre de recherche en éthique (CRÉ)

ISSN

1718-9977 (digital)

[Explore this journal](#)

Cite this article

Mclachlan, H. V. (2022). JUSTICE, IMPARTIALITY, AND EQUALITY IN THE ALLOCATION OF SCARCE VACCINES: A REPLY TO SAUNDERS. *Les ateliers de l'éthique / The Ethics Forum*, 17(1-2), 46–71. <https://doi.org/10.7202/1097013ar>

Article abstract

This paper is a reply to Saunders's criticism of my previously published nonconsequentialist policy proposal regarding the use of a lottery for the distribution of scarce vaccine by the state in the face of an influenza pandemic. I argued there that, on the grounds of justice, the state should distribute some of the scarce vaccine it might hold to some of its healthcare employees and the rest to citizens randomly and equally on the principle of a lottery. Central to Saunders's criticism is the claim that I mistakenly failed to take into account morally relevant differences in need and productive capacity between potential recipients of the vaccine. Central to my response here is that whether or not need and productive capacity are morally relevant factors depends on who or what is distributing the vaccine, to whom they are distributing it, and why they are doing so. For instance, discrimination between people in the distribution of publicly owned vaccine that is distributed as a prophylactic on the basis of their age is unjust whether or not it might be morally justifiable on other grounds.

© Centre de recherche en éthique (CRÉ), 2023



This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>

JUSTICE, IMPARTIALITY, AND EQUALITY IN THE ALLOCATION OF SCARCE VACCINES: A REPLY TO SAUNDERS

HUGH V. MCLACHLAN
GLASGOW CALEDONIAN UNIVERSITY

ABSTRACT:

This paper is a reply to Saunders's criticism of my previously published nonconsequentialist policy proposal regarding the use of a lottery for the distribution of scarce vaccine by the state in the face of an influenza pandemic. I argued there that, on the grounds of justice, the state should distribute some of the scarce vaccine it might hold to some of its healthcare employees and the rest to citizens randomly and equally on the principle of a lottery. Central to Saunders's criticism is the claim that I mistakenly failed to take into account morally relevant differences in need and productive capacity between potential recipients of the vaccine. Central to my response here is that whether or not need and productive capacity are morally relevant factors depends on who or what is distributing the vaccine, to whom they are distributing it, and why they are doing so. For instance, discrimination between people in the distribution of publicly owned vaccine that is distributed as a prophylactic on the basis of their age is unjust whether or not it might be morally justifiable on other grounds.

RÉSUMÉ :

Cet article est une réponse à la critique de Saunders de ma proposition de politique non conséquentialiste publiée précédemment concernant l'utilisation d'une loterie pour la distribution de vaccins rares par l'État face à une pandémie de grippe. J'y ai soutenu que, pour des raisons de justice, l'État devrait distribuer une partie du vaccin rare qu'il pourrait détenir à certains de ses employés de la santé et le reste aux citoyens de manière aléatoire et égale sur le principe d'une loterie. Au cœur de la critique de Saunders se trouve l'affirmation selon laquelle j'ai omis à tort de prendre en compte les différences moralement pertinentes dans les besoins et la capacité de production entre les receveurs potentiels du vaccin. Le point central de ma réponse ici est que le fait que le besoin et la capacité de production soient ou non des facteurs moralement pertinents dépend de qui ou de quoi distribue le vaccin, à qui ils le distribuent et pourquoi ils le font. Par exemple, la discrimination entre les personnes dans la distribution de vaccins publics distribués à titre prophylactique sur la base de leur âge est injuste, qu'elle soit ou non moralement justifiable pour d'autres motifs.

INTRODUCTION

In a recent article in this journal, Saunders has criticized my proposed nonconsequentialist policy regarding the use of a lottery for the distribution of scarce vaccine by the state in the face of an influenza pandemic (Saunders, 2018). I argued that, in some circumstances, on the grounds of justice, the state should distribute the scarce vaccine it holds to citizens randomly and equally on the principle of a lottery (McLachlan, 2012, 2015). Saunders writes:

The proposal to give “equal chances” to everyone is not as simple or as appealing as it first appears. Any policy will have to be sensitive to differences, in need and productive capacity, between people... Thus, while I believe that policymakers should show equal concern for all citizens, I suggest that this may permit, or even require, departures from equality in the distribution of (chances of getting) vaccine. (Saunders, 2018, p. 80)

As we shall see, Saunders’s claim about the need to be sensitive to differences in need and productive capacity is not as simple or as appealing as it might first appear.

I shall answer the specific questions that he addresses to me and thereby restate, amplify, and develop my position. Saunders’s criticism contains some very strong points about the ethical allocation of scarce vaccine in general. Recognition and accommodation of them serves to strengthen and develop rather than discredit my initial policy proposal.

A NONCONSEQUENTIALIST ETHICAL JUSTIFICATION OF THE DISTRIBUTION OF SCARCE VACCINE IN A PANDEMIC

My argument was, at root, a response to the tacit consequentialist rationale of the official UK governmental policy on vaccinations in influenza pandemics as expressed in the UK Contingency Pandemic Plan of 2005. It stated: “The priority in an influenza pandemic is to reduce the impact on public health (i.e. reduce illness and save lives). Interventions will therefore be applied where they will achieve maximum health benefit.”¹ The recommended policy involved dividing the population into priority groups including groups of high medical risk and age groups, as well as certain healthcare workers and providers of essential services. I argued that, in certain assumed conditions, if there were an influenza pandemic or an impending one and the state held a scarce supply of vaccine, it should, in fulfilment of its duty of care towards its employees, distribute it firstly to the front-line care providers who might be at risk of catching influenza in their work at the state’s behest of providing healthcare. Thereafter,

if there is not sufficient vaccine to give all other citizens equally an effective dose, the state should give them all an equal chance of receiving an effective dose.... This would be the just thing to do because the

state has a duty to treat each and all of its citizens impartially and they have a corresponding right to such impartial treatment. (McLachlan, 2012, p. 318)

In my view, it matters ethically not only what consequences ensue from our actions, but also how and why we do what we do (Emanuel and Wertheimer, 2006; Jansen and Wall, 2021; Williams and Dawson, 2020; Colgrove, 2019). It matters, too, who does what is done and in what roles they perform their actions. If particular envisaged circumstances—such as, for instance, the outcome of the effects of the taking of doses of vaccine by particular groups of people—happen to be particularly morally good, it does not follow that, by a sort of imaginative reverse engineering, we can deduce that all or any of us must have a moral duty to bring or to try to bring these circumstances about. What distribution of vaccine would produce the morally best outcome? This is a different question from, How ought we to distribute it? This latter question will have different correct answers depending upon whether “we” are, for instance, rich philanthropic private citizens or, for instance, officials or agents of the state.

When people perform particular roles, they are morally constrained as well as morally authorized by rights and duties that are intrinsic to these roles and by the nature of these (McLachlan and Swales, 1999). They do not have the moral freedom of action that they have as normal private citizens. For instance, it is not the business of the members of a jury to decide what, overall, would be the morally best outcome of declaring particular defendants to be innocent or guilty when they produce their verdicts. It is not the business of lecturers to allow a consideration of the moral desirability or undesirability of the overall consequences of passing or failing particular students to influence the marks they choose to give to the particular essays of these students that they are responsible for marking. Similarly, those who perform roles in the government and other such agencies of the state are constrained as well as legitimated by their occupancy of such roles. The primary end of their action is not the morally best outcome, and even when what they do does happen to produce the morally best outcome, that in itself is no automatic vindication of their policy making.

For instance, incumbents of such roles have a moral duty to act justly. Members of governments, like other public officials, agents, and other members of agencies, have a moral duty to treat citizens impartially as individuals in the distribution of benefits and burdens that are individually experienced. Citizens have a corresponding moral right to be treated impartially by them. Each citizen should be treated the same unless there is a morally relevant difference pertaining to them that justifies the different treatment of them. This is the nature of distributive justice.

Justice demands impartial treatment of individual people as individual people. It pertains to differences in their treatment that are related to and proportionate to morally relevant differences in their personal features, conditions, and circumstances. This is different from discriminating among particular people on

the basis of average differences among features and factors that pertain to the different categories or groups that the particular individuals belong to. Hence, I consider the priority given to age categories in the distribution of vaccine that is proposed in the UK Contingency plan for influenza pandemics and that is practiced currently in the UK in the distribution of vaccine against COVID-19 to be unjust (Savulescu and Cameron, 2020; Hughes, 2020; Peterson, 2008).

Consider, for instance, the role of lecturers with regard to the treatment of their students in, say, the marking of their essays. As a matter of justice, they are required to treat them the same and to give them the same mark unless there are morally relevant reasons for treating them differently, in which case discrimination is not only justifiable, but morally obligatory. Acting justly does not merely mean treating one's students the same unless there is a moral justification of some sort for treating them differently. There must be a morally relevant justification. That means treating them differently only when the difference in treatment is morally justified by a corresponding and proportionate difference pertaining to the merits of the essays that are submitted by them. Notice that the allocation of different treatment, of, say, benefits and burdens, is just or unjust regardless of the consequences of that particular allocation. The virtue of distributive justice does not lie in the consequences of any particular distribution of burdens and benefits, but in its appropriateness. With regard to distributive justice, one might say that the proof of the pudding is in the recipe rather than in the eating.

Among the assumptions I made were that anyone might die from the influenza and that all might want to live. The chance of a vaccine that might prevent them dying from the influenza was of value to each and every one of them. That people who are, for instance, older or who belong to a particular sex or racial or ethnic origin might be, on average, more prone to infection or more likely to die if infected is an irrelevance. The presumptions that the state should make are that all people need to live in order to do what they want to do and to enjoy what they want to enjoy, and that they all want to live. A dose of the scarce vaccine might prevent influenza from killing any particular one of them, as far as any one of them can know. They each have valid claims to receive one, between which it is not proper for the state to discriminate.

If we knew in advance what particular people would die or suffer from serious illness if they were to catch, say, influenza or COVID-19, there might be a good case for saying that, on the grounds of justice, they, regardless of their age, should be given priority in the allocation of an appropriate vaccine. However, we do not have and cannot have that information. Most of those who have died from COVID-19 so far or who have suffered serious illness have been old, but, with regard to justice, this is irrelevant. Not all old people who caught it have died or suffered serious illness. Not all who have died or suffered from serious illness have been old. Moreover, the pattern of the pandemic might change from what it has been in the past. The virus might change. Available effective remedial treatment might change. Any of us might catch COVID-19. If we do, for all that

we know, we might die or have serious long-term or short-term consequences to our health or our life expectancy. Whether or not any of us needs a vaccine, we might all want to have one and equally have a legitimate interest in getting one or, at least, the chance of getting one. Younger people who catch COVID-19 might show slight symptoms now, but, for all we know, might die in years to come much younger than they would have done had they not caught it. They might suffer later in life from appalling illnesses and disabilities. We do not have the sort of knowledge available to us that would morally justify discrimination between the younger and the older in the distribution of vaccine.

To give priority in a pandemic in the allocation of vaccine against influenza or COVID-19 on the basis of membership of age groups is unjust. It might be expedient to allocate vaccines in such a way. It might even, in some circumstances, have consequences that morally permit or even morally compel the adoption of such a policy, but it would remain, nonetheless, an unjust one. It is like giving awards to particular school children on the basis of the school they attended or the socioeconomic class of their parents. If one age group has, per capita, a higher rate of deaths or serious illness among those who catch COVID-19 or influenza than a younger age group, it does not mean that all those who are in each group share the same chances of dying or of becoming seriously ill if they catch the disease as their fellow age-group members. Within each age group, there might well be much variation in the chances of the particular members dying or suffering from a serious illness if they catch the disease. Some or many people in the younger group might well have a far greater chance of dying or suffering from a serious illness if they catch it than some or many people in the older group.

What counts as impartiality in the distribution of publicly financed and provided goods or services such as, say, medical surgery, higher education, or vaccines and what counts as morally relevant reasons for discrimination are contentious issues. It depends partly on what we consider to be the proper function of the goods or services in question, to whom the benefit should be bestowed, and for what purpose (Wardrope, 2012). For instance, the need of the recipient is sometimes but not always thought to be a morally relevant reason for discrimination in, say, the distribution of medical surgery, but not in, say, the distribution of places in higher education. Some people—very many, perhaps—think that places in universities should be allocated to those people who can benefit society most from taking them up and that higher education is not primarily for the benefit of students but for the expansion of the economy. Most people, I am sure, would say that medical treatment should be allocated primarily for the benefit of the recipients. We would typically give, say, a heart transplant to someone who needed a new heart and who was certain or very likely to die or be seriously ill without such treatment rather than to someone who did not. However, we would hardly consider it to be just to give heart transplants to, say, everyone in a particular age group before giving one to any to those people in a younger group on the grounds that, in the past, a higher proportion of older people than younger ones needed a heart transplant or, to say a different thing, that a higher

proportion of those who needed a heart transplant in the past were in the older age group. Similarly, we do not and would not give heart transplants to all smokers before giving one to any nonsmoker on the grounds that, on average, smokers are more likely than nonsmokers to need one. To act justly, we should give, for instance, heart transplants to those particular people who need one rather than to those who do not, whatever age they are and whether or not they are nonsmokers. We should allocate, when need is the relevant factor, on the basis of the needs of individual potential recipients regardless of the social or natural categories to which they belong.

When vaccines are allocated primarily as a prophylactic, to people who are not in ill, in order to try to ensure that they do not become ill, primarily for their benefit, the notion of “need” is not readily applicable. Healthy people do not need a vaccine against, say, COVID-19, in the way in which some people who currently suffer from a particular illness need, for instance, a heart transplant and those who do not suffer from it do not. However, anyone might catch and die from or suffer severely in the long or short term from catching COVID-19. All of us might want a vaccination as soon as possible against catching it. We each have a legitimate interest in receiving the vaccine. Any request we might explicitly or implicitly put forward deserves consideration. Not all such requests can be immediately acceded to but the grounds for their rejection or the deferral of compliance to them should be providable by any government that wants to act justly and to be seen to do so.

With some vaccines, in some sorts of pandemics, we might all have a very strong interest in the provision of vaccines to each and every person. My argument was, like the official policy to which I was responding, based on the assumption that the vaccine against influenza would be distributed as a prophylactic, for the benefit of its recipients. Where the benefits of particular treatments and services are not intended to be enjoyed solely or primarily by those who receive them, the question of whether and how they can be distributed impartially is more complex (Wardrope, 2012; McLachlan, 2015). Some vaccines can protect those who receive them from becoming ill from catching a particular viral infection without preventing them from becoming asymptotically infected and infectious. Some vaccines can prevent the recipient from becoming infected and being infectious. Thus, we might benefit significantly from the vaccination of other people if and when their lack of infectiousness can reduce our chances of becoming ill or dying from catching a particular infection.

We might all equally have a very strong interest in the vaccination of all people with whom we might directly or indirectly socially interact. To try to give everyone, citizen and noncitizen alike, who is living within the geographical boundaries of the state an efficacious dose of vaccine as promptly as possible—regardless of the ordering of the distribution to particular people or to particular categories of them—might in some circumstances be a very good policy. It might be a policy that could be considered sufficiently impartial in the circumstances. It might be the morally optimal vaccination policy for a government to

adopt at least with some sorts of vaccines in some or other stages of some sorts of pandemics. It might form part of an optimal package of policies that a government could try to implement.

The state is morally obliged to refrain from wantonly killing each and every one of us but is not similarly morally obliged to do all that is required to try to postpone the deaths of each and every one of us (McLachlan, 2010). To let us die is, normally, morally permissible for the state whether or not there is a pandemic. Whether or not there is a pandemic, particular deaths can be delayed, and particular lives lengthened, very often, only at the expense or risk of hastening other deaths and shortening other lives. Hence, the notion that, in a pandemic or in any other times, the government has a paramount duty to save lives or, indeed, that it has any sort of paramount duty is not plausible. To protect the National Health Service (NHS), for instance, is not inherently ethically more important than, say, to protect the education system or, say, the systems of civil or criminal justice. The postponement of particular deaths does not matter more than or less than, say, the education of children or the livelihoods of adults or the freedom of adults to, for instance, hug, kiss, and enjoy other forms of intimate contact with other consenting adults. Such things matter ethically but they matter differently. They are different morally good things. There is a host of things that are morally permissible for governments to do, a host of things that are morally desirable for them to do, a host of things that are obligatory for them to do, and a host of things that are obligatory for them to refrain from doing. Hence, it is appropriate for governments to try to produce an optimal blend of policies rather than to try to maximize the specified output of any particular prioritized policy or policies, whether or not they are in a pandemic.

Notice that, in some instances, unjust actions and policies might be morally justifiable on grounds other than justice.² For instance, governments might be confronted by a severe emergency to which they do not have, say, the time or imagination to devise a policy that is both a just and an effective solution. Perhaps, in some such cases, there is none. However, they should acknowledge the injustice of such actions and policies. The state, its agents, and its agencies should not lightly violate the moral right to justice, even when the benefits that are unjustly denied or the burdens that are unjustly bestowed are comparatively slight. We, as citizens, should often be prepared to waive our moral right to just treatment in particular circumstances. We should, however, beware that governments do not get into the habit of overriding it.

IMPARTIAL TREATMENT AND DIFFERENT LEVELS OF NEED

(A) Equal Chances and Unequal Need

Saunders writes: “McLachlan argues that the state has a special duty of care towards public healthcare providers, who undertake risks at its behest, which justifies giving them priority. But, with this exception, he suggests that other citizens should be given equal chances of receiving an effective dose of

vaccine....However, it is not obvious that impartiality always requires equal chances, particularly when individuals are differently situated” (Saunders, 2018, p. 67).

To illustrate his point, he asks us to

consider a small-scale example that may illustrate this point. Suppose that Alpha is very sick and needs 100 mL of vaccine, while Beta and Gamma have been exposed to the virus but are not yet sick and only need 50 mL of vaccine each as a prophylactic. Suppose further that, as it happens, there is exactly 100 mL of vaccine available. This would be enough to cure either Alpha alone or both of Beta and Gamma. Assume that giving 50 mL to Alpha will produce no benefit whatsoever; it is simply not an effective dose for her. How should one distribute the vaccine in such circumstances? (Saunders, 2018, p. 68)

How, indeed, should one distribute the vaccine in such circumstances? I think that the question that Saunders poses will have different correct answers depending on who the “one” is and in what capacity and with what authority that one is distributing the vaccine. It will matter, too, what we interpret the proper purpose of the distribution of the vaccine to be. It will matter, too, to whom the vaccine is being distributed. Hence, my response to the question is not quite as straightforward as he seems to suggest.

Initially, Saunders puts forward three options. None of them, it appears to him, comfortably fits my position. He writes:

Though he does not discuss such cases, McLachlan (2012, p. 318) proposes “the random selection of names.” That is, we could put the three names into a hat and draw one out to decide who gets vaccine, thereby giving everyone a one-in-three chance of getting an effective dose. However, note that if either Beta or Gamma is drawn, there is still enough vaccine left to treat the other. Thus, it would be possible to treat both Beta and Gamma, should either one’s name be drawn, but this means that they each effectively have twice the chance of Alpha. (Saunders, 2018, p. 68)

That is his Option 1 and, according to Saunders, “if the aim is to give all citizens an equal chance of getting vaccine, in the name of impartiality, then this policy is no good” (Saunders, 2018, p. 68). This leads to Option 2, in which “any leftover vaccine should be wasted. If Beta is selected by the lottery, then Beta—and Beta alone—should be vaccinated. Though there is also enough vaccine leftover for Gamma, it would be unfair to vaccinate her too, for she was in the lottery and lost” (Saunders, 2018, p. 68).

However, although this gives each an equal chance of getting vaccine, it has the clear objection of wastefulness. This leads to Option 3. Saunders writes: “Once it is realized that Beta and Gamma can be treated together, they could be given a single lottery ticket. Thus, we can increase everyone’s chance of getting vaccinated (from 33 percent to 50 percent) and avoid waste at the same time. This proposal gives everyone the greatest equal chance of vaccination” (Saunders, 2018, p. 69). He continues:

Thus, it seems likely that he would favour Option 3 over either Option 1 (which gives some better chances than others) or Option 2 (which, by being wasteful, is worse for everyone).

If this is McLachlan’s position, this is interesting, since this has not been a popular solution to the analogous “numbers problem” posed by John Taurek (1977), in which a rescuer must choose between saving one person or two others. While consequentialists take the solution to be obvious (save the greater number), most nonconsequentialists who have considered this problem also think that numbers matter in some way.... Hence, if this is McLachlan’s position, it is not a popular one, even among nonconsequentialists. (Saunders, 2018, p. 70)

Option 1

| Name drawn | Probability | Outcome |
|------------|-------------|--|
| Alpha | 1/3 | Alpha is treated. No vaccine left over. |
| Beta | 1/3 | Beta is treated. Leftover vaccine used to treat Gamma too. |
| Gamma | 1/3 | Gamma is treated. Leftover vaccine used to treat Beta too. |

Option 2

| Name drawn | Probability | Outcome |
|------------|-------------|---|
| Alpha | 1/3 | Alpha is treated. No vaccine left over. |
| Beta | 1/3 | Beta is treated. Leftover vaccine is wasted. |
| Gamma | 1/3 | Gamma is treated. Leftover vaccine is wasted. |

Option 3

| Name(s) drawn | Probability | Outcome |
|----------------|-------------|---|
| Alpha | 1/2 | Alpha is treated. No vaccine left over. |
| Beta and Gamma | 1/2 | Beta and Gamma are treated. No vaccine left over. |

I think that my position can accommodate such objections to it as Saunders's examples here and elsewhere might seem to raise. He concludes that "the requirements of impartiality are hotly contested. Moreover, one cannot simply assume that impartial treatment will result in people getting equal chances of vaccine (as McLachlan does)... We might arrive at unequal chances, without showing any partiality for particular individuals" (Saunders, 2018, p. 71).

I certainly do not think that impartial treatment will always lead to equal chances of getting vaccine. Only under some particular assumed circumstances do I propose that, on the grounds of impartiality, citizens should be given equal chances of getting (a vaguely specified quantity of) vaccine (Wardrope, 2012; McLachlan, 2015). I agree very strongly that what counts as impartial treatment is a matter of interpretation and thereby of potential, reasonable contention. One such crucial point of contention between Saunders and me pertains to what we should suppose that the state would be responsible for distributing in an envisaged vaccine lottery. I think it would be responsible for distributing the chances of receiving an effective dose of vaccine. Saunders thinks that it would be responsible for distributing the chances of survival.

I did not make clear what I meant by an "effective dose of vaccine." I did not mean something sufficient to cure the recipient of illness if the person were ill and to prevent illness if the person were not yet ill from the infection in question. A standard dose of vaccine, rather than freedom from illness, was the prize in my supposed lottery. A scarce amount of vaccine might, in principle, be divided equally into tiny quantities and distributed equally to every citizen where that meagre dose would be totally ineffective for each recipient. By an adequate dose I meant a quantity that was likely to be effective for most, even if not all, people. I assumed that the vaccine would be distributed in standard doses and that it was not known or knowable in advance what particular amount any particular person might need in order for the vaccine to be an effective prophylactic for that particular person. For some people, the standard dose might be more than required; for some others, it might turn out to be less. Should the standard dose be such that the number of people who can receive what is likely to be an effective dose for them is maximized or should the standard dose be such that the number of people who receive a dose that is likely to be ineffective for them is minimized? An explicit or implicit political decision along such lines will, I imagine, be required. The proposed lottery gives citizens a chance of receiving such a standard dose.

Saunders is wrong to suppose that I would prefer Option 3 to either Option 2 or Option 1. He would be wrong, too, to suppose that I would prefer Option 2 to Option 1. Despite what Saunders asserts, it is not the case that, given my views, Option 1 is "no good."

How do I think one should distribute the vaccine in the circumstances that Saunders specifies? What are the salient features of the circumstances? To whom or to what does the vaccine belong? Who or what is the "one" who does the distri-

buting? In what capacity does the distributor distribute it? What is the vaccine being distributed as? For instance, is it distributed as a prophylactic, as a cure, or as that which might mitigate the symptoms of illness? In what capacity are Alpha, Beta, and Gamma potential recipients of the vaccine (McLachlan and Swales, 1999)?

Suppose that the vaccine is the property of a rich philanthropist who, as a private citizen, has financed the research, testing, and manufacture of the vaccine. Suppose that the philanthropist wants to distribute the vaccine as a gift, as an act of charity. Such a person is not under the moral constraint of a moral duty to treat the three people impartially or fairly. Whether and how the vaccine is distributed among these three people is his own business. They do not have a moral right to impartial treatment from him with regard to its distribution. Suppose that he, Beta, and Gamma are devout Christian fundamentalists. Suppose that Alpha is an atheist. He might think that it would be better if Beta and Gamma were to die of the virus rather than Alpha. He might choose to give Alpha the vaccine in order to extend her time to seek and accept salvation. There again, he might choose to refuse to give the vaccine to Alpha because he sincerely believes and has reason to think but no evidence to prove that Alpha is a child molester. This might be very unfair to Alpha. Nonetheless, the philanthropist is, in my view, morally entitled to make that choice.

If the vaccine is to be distributed by an agent of the state as the property of the state, and if Alpha, Beta, and Gamma are all citizens of that state, the distributor is under moral constraints that are dictated by that role and of which the rich philanthropist, as a private citizen, is free. For instance, discrimination on the basis of the religious beliefs of potential recipients or on the basis of the expected fate of their eternal souls would be unjust. It is not the business of an agent of the state to know or speculate about the religious beliefs of citizens or the fate of their eternal souls and far less, to discriminate between them on the basis of such speculation or knowledge. Even were such discrimination to be considered to be impartial, it would not be a difference in treatment that was grounded on a morally relevant difference, a difference that was appropriate for the agent to act upon. Nonetheless, there could be various policies and procedures that would be proper, impartial, and just. What agency or agent of the state is assumed to be in action in Saunders's envisaged situation? If the agency or agent has sufficient discretion and authority, my favoured response is to say that, unlike Beta and Gamma, Alpha is ill and needs medical treatment. She should be admitted as a patient, if she is not one already, and treated as such. She should be given the 100 mL of vaccine that she needs. This is clearly in accordance with impartial treatment since, if either Beta or Gamma were similarly ill as she now is and if she were similarly well as they now are, either Beta or Gamma would be given the medication. A vaccine as a prophylactic is not given as a medical treatment of patients as patients but as treatment of citizens as citizens in order to try to prevent their becoming patients. As things stand in the example, Beta and Gamma are not ill. Beta and Gamma might or might not become ill, but they are not ill. Alpha is ill. She should get the vaccine as medical treatment.

However, suppose that the role of the agency or agent is specifically restricted in the circumstances to the distribution of vaccine as a prophylactic. Not all needs of potential recipients should, if known, be taken into account by the state-authorized distributor of the vaccine. They are not necessarily a relevant consideration. For instance, it might be the case that Beta needs £5000 to pay off a loan shark who has threatened to kill her if she does not provide the money by the end of the week. It might be the case the Gamma will commit suicide if his estranged lover does not return to him soon. These needs, if unmet, might render the administering of the vaccine to them useless. It does not follow that the distributor of the vaccine should take these needs into account when allocating it, nor that he should try to meet them. However, a private rich philanthropist might properly and laudably choose to do so.

Option 1 is not, as Saunders describes it, “no good.” It is a viable, impartial policy. What is distributed by the lottery is not bespoke amounts of vaccine that are sufficient to provide each winner with what he or she happens to need to survive the pandemic or to avoid dying from influenza. What is distributed is specific doses of vaccine. If 100 mL were the standard dose, to draw a name out of the hat and give the vaccine to whomever bore that name would be an appropriate impartial way of distributing the vaccine. If 50 mL were the standard dose, it would be appropriate impartial treatment to draw a name out of the hat and give a dose of vaccine to everyone except the person with that name.

There are two variants of Option 1, 1a and 1b, where, respectively, the doses are 100 mL and 50 mL.

Option 1a

| Name drawn | Probability | Outcome |
|------------|-------------|---|
| Alpha | 1/3 | Alpha is treated. No vaccine left over. |
| Beta | 1/3 | Beta is treated. No vaccine left over. |
| Gamma | 1/3 | Gamma is treated. No vaccine left over. |

Option 1b

| Name drawn | Probability | Outcome |
|------------|-------------|---|
| Alpha | 2/3 | Alpha is treated. No vaccine left over. |
| Beta | 2/3 | Beta is treated. No vaccine left over. |
| Gamma | 2/3 | Gamma is treated. No vaccine left over. |

Consider, firstly, Option 1a. One name is drawn from the hat and the vaccine, one hundred millilitres, are given to whomever bears that name. If Beta or Gamma receives the vaccine, he or she might still fail to survive if the debt is not paid

or the lover does not return. Secondly, consider Option 1b. One name is drawn from the hat—in this case, the name of the loser—and a dose of vaccine, 50 mL, is given to each of the other two people. In this instance, all might still perish since 50 mL is not sufficient to cure Alpha of the illness. However, in both situations, 1a and 1b, all three people have an equal chance of receiving a dose of vaccine. They all, obviously, have twice the chance of receiving a dose when there are two doses of 50 mL rather than one dose of 100 mL. But, whatever the dosage, they all have an equal change of receiving a dose. It is misleading to say that Beta and Gamma “each effectively have twice the chance of Alpha.”

It is not the business of the distributor of the vaccine to act upon the information pertaining to the personal health and medical features of the individual people concerned. Hence, it might well come about that Alpha is allocated 50 mL of the vaccine, which will not be of any use to her. Beta or Gamma might be given 50 mL more than they have any need for. So be it. Morally optimal rules and procedures can have what are—or would be, if considered in isolation—morally undesirable outcomes. It would not be the business of a member of a jury to take into consideration information not presented in the court about prior accusations made against and prior convictions of the defendant. Adherence to this good rule can have the outcome that guilty people can remain unpunished and free to reoffend.

The particular rights and duties of the role of agents of the state for the distribution of vaccine direct and constrain what counts as the proper and impartial exercise of that role. For instance, as a political rather than as a medical decision, it might be decreed that the vaccine in question should be distributed as a prophylactic in units of 50 mL only to those citizens who are not infected by the virus. How should one distribute the vaccine in such circumstances? Alpha has special needs that should be met. However, it is not the responsibility of the distributor of this vaccine to meet them or to consider them. Beta should be given one dose and Gamma the other one.

(B) Further Options

Saunders considers “Further Options” with regard to unequal needs. He asks us to

continue to assume that we have 100 mL of vaccine, which Alpha needs all of, but which is also enough to treat both Beta and Gamma. Since there is enough for Beta and Gamma, there is at least a *prima facie* case for treating this as two 50 mL doses of vaccine, though it happens that Alpha needs a double dose. It is not obvious that Alpha’s chances of getting a double dose should be equal to Beta’s chances of getting one dose. We might, instead, implement a two-stage procedure. (Saunders, 2018, p. 71)

He presents six options and indicates various variables for each of them: the chances of survival of the pandemic for each of the three people; whether or not these chances are equal; whether or not the policy is wasteful (i.e., whether all

the vaccine is used effectively); and the expected deaths. These options are as follows:

Option 4. Allocate the first dose by lottery, giving each person a 1/3 chance of receiving it. Then allocate the second dose by lottery, between those still in need. This means, if either Beta or Gamma won the first lottery, they would no longer be in need and the second lottery would be 50/50 between the remaining two. However, if Alpha won the first lottery, she would still be in need, so the second lottery would also give each of the three a 1/3 chance to receive the second dose....

Option 5. Allocate the first dose by lottery, giving each person a 1/3 chance of receiving it. If Alpha wins the first dose, then allocate the second dose by lottery, giving each person a 1/3 chance of receiving it. However, if Beta wins the first lottery, give the second dose to Gamma, since it is no use to Alpha. And, conversely, if Gamma wins the first lottery, give the second dose to Beta....

Option 6. Allocate the first dose by lottery, giving each person a 1/3 chance of receiving it. If Beta wins the first dose, then give the second to Gamma, and vice versa. So far, this is the same as Option 5 but, if Alpha wins the first dose, then give her the second dose too, in order to avoid waste. (This is Option 1 from the previous section.)...

Option 7. Since giving the first dose to Beta will mean giving the second to Gamma, and vice versa, they can effectively “share” chances....Thus, allocate both doses together, giving a 50 percent chance to Alpha and a 50 percent chance to Beta and Gamma. (This is Option 3 from the previous section.) (Saunders, 2018, p. 71–72)

To this he adds two other options, one which maximizes the number of lives saved by dispensing with a lottery and giving the vaccine directly to Beta and Gamma and another which gives an absolute priority to equality by refraining from treating anyone. These are, respectively, **Option 8** and **Option 9**.

He outlines and compares these policies schematically as follows: (Saunders, 2018, p. 73)

Comparison of Options 4–9

| Policy | A's chance | B's chance | C's chance | Inequality? | Wasteful? (Probability) | Expected deaths |
|----------|------------|------------|------------|-------------|-------------------------|-----------------|
| Option 4 | 2/18 | 11/18 | 11/18 | Y | Y (5/9) | 1.67 |
| Option 5 | 2/18 | 14/18 | 14/18 | Y | Y (2/9) | 1.33 |
| Option 6 | 6/18 | 12/18 | 12/18 | Y | N | 1.33 |
| Option 7 | 9/18 | 9/18 | 9/18 | N | N | 1.5 |
| Option 8 | 0/18 | 18/18 | 18/18 | Y | N | 1 |
| Option 9 | 0/18 | 0/18 | 0/18 | N | Y (1) | 3 |

Suppose, again, that a rich altruist acting in the capacity of a private citizen were the potential distributor of the vaccine. I think that any and all of the options would be morally permissible ones for such a person to choose. Such a person is not morally obliged to act impartially. Such a person might reasonably hold various opinions about what the morally best decision to make is. Such a person, in my view, is not morally obliged to choose to make what that person considers to be the morally very best decision is. A decision that is, morally, good enough will, morally, suffice. We are not morally obliged to act solely upon morally relevant reasons and impulses. Prejudices, subjective preferences, and nonrational and, even, irrational factors can have a morally permissible place in the decisions of private individuals.

A rich altruist might be interested to know what age Alpha, Beta, and Gamma were and whether or not they had dependent children and, if so, how many they had. A rich altruist might want to know whether or not they were single parents. Whether and, if so, how the rich altruist was influenced in making a decision about how to distribute his vaccine in the light of such information is the business of the rich altruist. The rich altruist is not answerable to us regarding how he chooses to direct his charity.

It would be morally permissible and even, I would argue, morally obligatory for a rich philanthropist to give preferential treatment to one of the potential recipients if the potential recipients happened to be the biological offspring of the philanthropist. It would not be morally permissible for the distributor of state-owned vaccine to discriminate on such a basis. Similarly, it would be morally permissible even if not morally obligatory for the rich philanthropist to choose to give vaccine to none of the three people, but to give it, instead, to people who lived in a different, poorer country. That might be the morally best outcome of the allocation and administration of the vaccine, but it is not an option that is morally permissible for agents or agencies of the state of which Alpha, Beta, and Gamma are citizens are free to adopt. They are morally obliged to give the trio and all their other citizens priority over noncitizens. Again, the morality of actions does not pertain solely to their consequences. It matters how and why particular consequences are brought about and it matters who brings them about.

Suppose that Alpha's death would be postponed by one year by the vaccine and that the lives of Beta and Gamma would each be postponed by three years were they to share it. Suppose, too, that Alpha were twenty and that Beta and Gamma were both eighty years of age. A rich philanthropist might think that it would be far fairer to give the vaccine to Alpha rather than to Beta and Gamma on the grounds that she has only lived a short life so far while the other two have lived comparatively long ones (Parfit, 1997; Hughes, 2020). The outcome that Alpha is treated might well be morally preferable to the outcome that Beta and Gamma are treated. The rich philanthropist might, not improperly, act upon that preference. However, it does not follow that it would be morally permissible for the state, its agents, and its agencies to do so.

Saunders writes:

If our *only* concern were fairness or equality, then we might choose Option 9, though it is highly suboptimal (everyone dies). Assuming that we wish to save lives, we should seek an option that saves as many lives as possible consistent with impartial treatment. McLachlan (2012, p. 318) agrees with this, though he thinks impartial treatment precludes Option 8. As we saw in the previous section, McLachlan might endorse what is here Option 7, since this gives each person the greatest chance of receiving an effective dose of vaccine compatible with everyone else receiving the same chance. (Saunders, 2018, p. 74)

I agree that, *ceteris paribus*, it is morally desirable for the state to try to save people's lives. However, it does not follow that I would agree that the government should always try to save "as many lives as possible consistent with impartial treatment" (Douglas, 2012). All of us will die sooner or later. It is more accurate to talk of the postponement of our deaths and the prevention of our deaths from particular causes at particular times than the saving of our lives. It is better that more rather than fewer deaths are postponed, *ceteris paribus*. However, we know that other things are not always equal. The deaths of some people are postponed for a long time. The deaths of some people are postponed for a very short time. *Ceteris paribus*, it is morally desirable for the state to try to save years of life. It is far from obvious that the state should try to save lives rather than years of life, *ceteris paribus*.

Suppose that a dose of vaccine given to Alpha would be expected to postpone her death by eleven years and that the same dose of vaccine divided between Beta and Gamma would be expected to postpone their deaths by five years each. What should the state prefer? Should it have a preference between the number of deaths that would be postponed and the number of years of life that would be saved by the postponement? Should the state strive to save lives—to minimize the number of deaths—rather than to maximize the number of years of life that are saved? It is not clear to me why it should or that it should.

I do not endorse Option 7, just as I do not endorse Option 3. However morally desirable the outcome of that policy might be in the particular scenario that Saunders depicts, it is not clear to me that it represents conformity to a rule that an agent or agency of the state could impartially apply in a lottery to distribute scarce vaccine in a pandemic. It is reliant upon knowledge of particular features of the potential recipients that such agents or agencies could not be expected to have, such as whether or not a particular person who had been in contact with another infected person would become ill in the absence of a dose of vaccine, whether or not that illness would be fatal, and precisely how much vaccine particular people would require to resist illness if they came into contact with the virus. Furthermore, even if they could have such information, it is not clear to me that they should act upon it. Different needs can be a relevant reason for giving different treatment, but not all different needs are a relevant reason for agents and agencies of the state to act upon. I suggest that it would be their responsibility to distribute doses of vaccine impartially and, if there were not enough vaccine in a particular time period, to distribute the chances of receiving a dose impartially.

Would I rule out Option 8—the allocation of the vaccine to Beta and Gamma directly without a lottery—on the grounds that it is not impartial? As I have previously indicated, I have a preference for the allocation of the vaccine to Alpha as curative medical treatment because she needs it rather than to any of them who are not ill as a prophylactic. Nonetheless, if a political decision were made that the scarce vaccine should be distributed solely as a prophylactic to those who were not yet infected—and, let us presume, that other treatment should be provided for those who were ill—Option 8 would seem to me to be a possibly impartial and acceptable policy.

IMPARTIALITY AND FECUNDITY

Saunders asks us to consider a particular situation where a benefit to one person can result, indirectly, in a benefit to other people (Wardrope, 2012; McLachlan, 2015). It is an assumption of the supposed scenario he depicts that the chances of survival from the pandemic are the same as the chances of receiving a dose of the distributed vaccine. He writes:

Suppose we have ten individuals, labelled Alpha through Kappa, and two doses of vaccine. With no relevant differences between individuals, it would seem reasonable to allocate the vaccine randomly, giving an equal chance (20 percent) to each individual. But what if Alpha works in the manufacture of vaccine? Let us suppose that if she receives one of the two initial doses, whether as a result of a lottery or not, then she can produce two further doses, which can be randomly allocated among the remaining individuals. Should this alter our distribution and, if so, how? (Saunders, 2018, p. 75)

To allocate the vaccines among all ten people on the basis of two random draws is Option 10. Saunders shows that if we weight the draw in favour of Alpha, increasing the probability that she will survive and produce the additional doses, we can increase everyone's chances of survival, which become equal at 25 percent. This is Option 11. However, Saunders shows that we can increase the chances of survival of everyone even more by the following policy, Option 12:

Give the first dose to Alpha, without a lottery. Allocate the other of the initial doses, and the two extra doses produced by Alpha, by lottery, giving each of the other nine individuals an equal chance. Allocating three doses between nine people means that each has a one in three (33.33 percent) chance of receiving a dose of vaccine. (Saunders, 2018, p. 77)

Saunders favours Option 12. He writes:

Alpha enjoys a larger share of the benefit than the other nine. The result is that we depart from the equality of Option 11. In this case, Alpha receives the vaccine for certain, which makes her much more likely to benefit than anyone else. The fact that Alpha's survival is instrumentally useful does not give her any greater claim to the vaccine though. Thus, while it may be rational for all involved to consent to Alpha receiving one of the initial doses, it is nonetheless unfair....It is an unfairness that we should almost certainly tolerate, since it increases everyone's chances of receiving vaccine....If we are prepared to compromise equality for the sake of efficiency by allocating the vaccine by lottery in the first place, rather than giving it to no one, then we ought also to prioritize efficiency here. (Saunders, 2018, p. 77)

Saunders suggests that his preference for Option 12 is not merely a subjective, personal one. He seems to think too that, specifically, both the distributors and potential recipients of the vaccine should prefer Option 12. He writes:

I would suggest that, if we find ourselves in these circumstances, we ought to favour Option 12. If we take the perspective of those involved, then what they care about is maximizing their own chances of survival. They ought not to care what chances others have, except insofar as those chances affect their own chances....To reduce everyone's chances for the sake of equality would be to make a fetish of equality, neglecting the fact that the only reason to care about equality is that we are distributing a good and hence that people should prefer inequality if it means more of that good for all. (Saunders, 2018, p. 78)

According to Saunders, my attitude to this policy is hard to predict. He writes:

On the one hand, McLachlan is clearly committed to the value of equality, even when it results in more deaths (McLachlan, 2015, p. 193).

On the other hand, his case for giving everyone equal chances is that the state ought to treat its citizens “the same in relevant respects unless there are relevant reasons for treating them differently” (McLachlan, 2012, p. 317, emphasis added). When he introduces priority for front-line healthcare workers, he refers to there being “at least one relevant reason for treating some citizens differently” (McLachlan, 2012, p. 318), viz. the fact that their occupation puts them in danger. This reason does not extend to those whose work involves production of vaccine who, I assume, are at no greater risk of infection than anyone else. (Saunders, 2018, p. 78)

I am not “committed to the value of equality” (McLachlan, 2000). Apart from anything else, treatment that is equal in some respects will be unequal in other respects. We cannot use the notion of equality to tell us what respects should matter. Moreover, equal treatment can produce outcomes that are unequal. In order to produce equal circumstances for particular people, we would often have to treat them unequally. I consider equality and inequality to be in themselves morally neutral terms.

Notice that I did not suggest that frontline healthcare workers should be given priority because of the danger of being infected pertaining to the nature of their work. I suggested that the state and its agencies have a particular duty of care towards those people that they employ as healthcare workers to do that which puts them in danger of being infected, a duty that it does not have towards other people—including, for instance, other frontline healthcare workers whom it does not employ and, for instance, sex workers and those who work in shops—who might be equally or even more at risk of infection (Symons, Matthews, and Tobin, 2021).

Saunders also writes:

Showing impartial (or equal) concern for everyone does not necessarily require giving them equal chances of anything. It may be that equal concern leads to unequal outcomes. We might read McLachlan’s proposal to prioritize healthcare workers as a tacit admission of this point, though it is not clear to me whether he takes this to be compatible with impartial treatment or a justifiable departure from impartiality. (Saunders, 2018, p. 74)

Prioritization of healthcare workers in the distribution of the vaccine as a prophylactic is, in my view, compatible with impartiality. The state has a duty of impartiality towards citizens as citizens among its various other duties, one of which is a duty of care towards those whom it employs to do particular jobs. Where the job of the provision of particular sorts of health care involves a particular risk of catching influenza, to give its employees preferential treatment in the allocation of scarce influenza vaccine is an appropriate way of trying to discharge that duty of care as an employer. It is compatible with fulfilling its duty to act impar-

tially towards citizens since there is a morally relevant difference between citizens as citizens and these particular providers of healthcare, some but not all of whom will also be citizens.

If Alpha works in the manufacture of vaccine and her being vaccinated would result in the availability of more vaccines than if she would not, “should this alter our distribution and, if so, how?” As usual, I would say that whether and how this should alter our distribution depends, among other possible things, on who “we” are, in what capacity “we” act, to whom the vaccine will be distributed, and for what intended purpose or purposes. If “we” are agents or an agency of the state, it might well be an appropriate and properly impartial policy to treat those who are indispensable to the production of the vaccine and who are not readily replaceable differently from other people and to give them priority in the distribution of scarce vaccine that is presently available. This is vaguely similar to the appropriate and properly impartial policies of treating patients differently in some respects from people who are merely at present potential patients and of treating university students differently from applicants and potential applicants to university. The state can treat citizens impartially as citizens, students impartially as students, and patients impartially as patients while treating students and patients differently from other citizens in some respects. Indeed, impartiality requires such different treatment in some respects. The state should treat, for instance, applicants to join the army impartially. It should treat also soldiers impartially but should not, generally, treat applicants as it treats soldiers. Similarly, the state might treat all citizens impartially as citizens and all essential workers in the production of vaccine impartially as essential workers in the production of vaccine while treating those workers differently from citizens who are not essential workers in the production of vaccine.

Hence, I have no reluctance to support the adoption of Option 12. Such support does not clash with my proposal to distribute vaccine to citizens on the basis of a blind lottery in other ones. With Saunders’s assertion that “equal consideration of everyone does not necessarily mean giving everyone equal chances” I agree completely. Only in some circumstances would an equiprobable lottery or a lottery of any sort be an appropriate way to distribute goods or services by the state, its agents, and agencies.

Saunders writes:

While...McLachlan may be right to reject a policy seeking to maximize the number of lives saved, on the grounds that this will be unfair to some, it does not follow that we should give everyone equal chances. Impartial consideration is compatible with taking efficiency into account, even if the results are contrary to strict equality. (Saunders, 2018, p. 67)

Notice that I did not mention fairness or unfairness in my discussion of this topic. I talked, rather, of justice and injustice (McLachlan, 2002; McLachlan, 2005; McLachlan, 2021; Rawls, 1985). However, I agree entirely that impartial treatment does not imply equal treatment.

SAUNDERS, IMPARTIALITY, AND RAWLS

One might, as I am, be favourably disposed towards Option 12 and its adoption by the state without accepting the Rawlsian basis that Saunders puts forward to support it (Rawls, 1999). Apart from anything else, there is a difference between thinking that, morally, the world would be a better place if Option 12 were to come about and thinking that any particular agent or agency is morally permitted, far less morally obliged, to try to promulgate or implement any policy that would bring that outcome about. Our moral duties might even lead us in a contrary direction.

Saunders writes:

This situation is similar to Rawls's famous original position....Here, Rawls assumes that parties are concerned only with their absolute position and not how they stand relative to others. Thus, he proposes that they would reject strict egalitarianism in favour of the difference principle, which permits inequalities that benefit all....My proposal is an application of similar reasoning to the problem at hand. That is, I suggest that vaccine ought to be distributed equally unless an unequal distribution benefits everyone. This policy satisfies the requirement to treat everyone impartially. It explains why we should prefer allocating effective doses of vaccine by lottery to giving everyone an equal but ineffective share of the vaccine. And it also tells us that, if prioritizing Alpha improves everyone's chances of survival, this is what we should do. (Saunders, 2018, p. 78)

It is not clear how, in practice, Saunders's principle "that vaccine ought to be distributed equally unless an unequal distribution benefits everyone" could apply or is meant to apply. We can, as an exercise of philosophy, suppose that Alpha and other hypothetical people will need such-and-such medication to survive and will react in particular specified ways to particular doses of vaccine when we formulate our abstract examples. However, actual distributors of vaccine can never have such knowledge. For instance, in practice, no matter how thoroughly a vaccine is tested before it is used, some people might have unfortunate, even fatal, reactions to it. It can never be known for certain that this will not happen. It is reasonable to suspect that with any vaccine against, for instance, COVID-19, if we give enough people a dose, at least someone or other will not only significantly fail to benefit from it but will, to some or other extent, suffer.³ How, if at all, should this consideration influence our distribution policy? Should we always distribute such vaccine equally? If the suggested justification of policies regarding such things as the distribution of vaccine is a sort of consequence that

could not be known prior to the implementation of the policies, it is not clear that the suggested justification is of practical usefulness to agents and agencies who have the responsibility of distributing vaccine.

Notice, too, the complication of a time gap in the implementation of Option 12. If we give a dose of vaccine to Alpha and allocate the remaining one by lottery rather than allocating two by lottery initially, there is a potential loser—someone who might have won the dose that was given to Alpha might catch the disease and die before Alpha gets round to producing the replacement and the additional dose. Furthermore, there is a risk that she will not actually produce the two doses. She might die in a road accident. She might resign from her job as, for instance, a consequence of the unexpected inheritance of a fortune. It cannot be known in advance that Saunders's principle will be satisfied by any particular application of Option 12.

Furthermore, when distributions are just and unequal, their justice is not dependent on whether or not they conform to Saunders's suggested principle. For instance, it is, I suggest, just that motor-car drivers are not all treated the same with regard to the possibility of parking without legal penalty in public places and that special treatment is given to those who have particular disabilities and impairments. They have a particular need which other drivers lack for available and convenient parking spots. This is a morally relevant difference. It is proportionate to the unequal treatment. Whether or not all people or all car drivers benefit from this arrangement as compared to one of strict equality is irrelevant to the justice or injustice of this particular arrangement.

CONCLUSION

Saunders writes: "My position is that the state owes citizens something like equal consideration or treatment as equals, but this need not require giving them equal amounts of anything, be it vaccine, chances of vaccine, etc." (Saunders, 2018, p. 81, note 5). He concludes his paper by, similarly, saying: "Thus, while I believe that policymakers should show equal concern for all citizens, I suggest that this may permit, or even require, departures from equality in the distribution of (chances of getting) vaccine" (Saunders, 2018, p. 80). With all this I totally agree. My proposed nonconsequentialist policy for the ethical distribution of scarce vaccine in the face of an influenza pandemic reflects this agreement and withstands Saunders's criticism of it.

I do not regard lotteries as such as moral ends in themselves but, in some circumstances, for some ends, as appropriate means. It is not my view, that, in the general run of things, medical treatment should be distributed by the NHS on the basis of a lottery system. For instance, I do not suggest that at the reception of accident and emergency departments, prospective patients should be given what functions as a lottery ticket on arrival. The combination of the rule of first come, first served and a triage system that takes account of the extent and

urgency of the medical needs of the relevant particular individuals serve to give, in the circumstances, a practical expression of the principle of impartiality.

At the start of this paper was highlighted Saunders’s claim that “the proposal to give ‘equal chances’ to everyone is not as simple or as appealing as it first appears. Any policy will have to be sensitive to differences, in need and productive capacity, between people” (Saunders, 2018, p. 80). As I have shown, we cannot say what people must be sensitive to or what sort of principles must guide their distribution of scarce goods or services without considering the nature and context of the particular roles in which these particular people act and the nature and function of that which they distribute. When people act not as private individual citizens but, rather, in the role of officials or agents of the state, they act within particular spheres of authority and acquire particular moral and legal rights and duties along with their occupancy of such roles. In order to fulfil their moral duty to treat citizens impartially, agents and agencies of the state are sometimes morally required to treat particular citizens differently from others. This can be—but will not necessarily be—on the grounds of differences pertaining to their particular needs or abilities. This is not the same as treating some citizens differently from others on the grounds of differences in the needs or abilities, on average, of the members of the particular categories they belong to. Additionally, the notion of “need” does not fit comfortably with the distribution of vaccine to healthy people as a prophylactic.

NOTES

- ¹ See UK Department of Health, *Influenza Pandemic Contingency Plan* (Department of Health Publications, 2005), p. 13. See also *Responding to Pandemic Influenza: The Ethical Framework for Policy and Planning* (Department of Health Publications, 2007) and UK Department of Health, *UK Influenza Pandemic Preparedness Strategy* (London: Department of Health, 2011).
- ² As I have written elsewhere: “there is more to politics than ethics and more to ethics than justice. Justice is a virtue but it is not the only one and one that can conflict with other ones. A public library system, for instance, which was completely just but where justice was its only virtue would be a poor one and one not always to be preferred to other systems which had more and better books, less justly – perhaps even unjustly – distributed.” (McLachlan, 2005, p. 13)
- ³ In *The Herald*, June 17, 2021, in an article entitled “Covid Vaccine: Four Dead Due to Adverse Effects in Scotland,” Sara Paciaroni writes: “A report from National Records of Scotland (NRS) said that by the end of May there had been four deaths where the ‘underlying cause of death was adverse effects of Covid-19 vaccines.’”

REFERENCES

- Colgrove, James, “Immunization and Ethics: Beneficence, Coercion, Public Health, and the State”, in Anna C. Mastroianni, Jeffrey P. Kahn and Nancy E. Kass (eds.), *The Oxford Handbook of Public Health Ethics*, Oxford, Oxford University Press, 2019, p. 435-447.
- Douglas, Thomas, “The Concise Argument”, *Journal of Medical Ethics*, vol. 38, no. 5, 2012, p. 257.
- Hughes, Jonathan A., “Lockdown and Levelling Down: Why Savulescu and Cameron Are Mistaken about Selective Isolation of the Elderly”, *Journal of Medical Ethics*, vol. 46, no. 11, 2020, p. 722-723.
- Jansen, Lynn A. and Steven Wall, “Weighted Lotteries and the Allocation of Scarce Medications for Covid-19”, *The Hastings Center Report*, vol. 51, no. 1, 2021, p. 39-46.
- Emanuel, Ezekiel J. and Alan Wertheimer, “Who Should Get Influenza Vaccine When Not All Can?”, *Science*, vol. 312, no. 5775, 2006, p. 854-855.
- McLachlan, Hugh V., “Scotland, Social Justice, Health and Inequality”, in Christopher Nottingham (ed.), *The N.H.S. in Scotland: The Legacy of the Past and the Prospect of the Future*, Farnham, Ashgate Press, 2000, p. 106-123.
- , “Tobacco, Taxation and Fairness”, *Journal of Medical Ethics*, vol. 28 no. 6, 2002, p. 381-383.
- , *Social Justice, Human Rights and Public Policy*, Glasgow, Humming Earth, 2005.
- , “Moral Rights to Life, both Natural and Non-natural: Reflections on James Griffin’s Account of Human Rights”, *Diametros*, vol. 26, 2010, p. 58-76.
- , “A Proposed Non-consequentialist Policy for the Ethical Distribution of Scarce Vaccination in the Face of an Influenza Pandemic”, *Journal of Medical Ethics*, vol. 38, no. 5, 2012, p. 317-318.
- , “On the Random Distribution of Scarce Doses of Vaccine in Response to the Threat of an Influenza Pandemic: A Response to Wardrope”, *Journal of Medical Ethics*, vol. 41, no. 2, 2015, p. 191-194.
- , “Exploitation, Criminalization, and Pecuniary Trade in the Organs of Living People”, *Bioethical Inquiry*, vol. 18, no. 2, 2021, p. 229-241.
- McLachlan, Hugh V. and John K. Swales, “A Drunk Driver, A Sober Pedestrian and the Allocation of Tragically Scarce and Indivisible Emergency Hospital Treatment”, *Health Care Analysis*, vol. 7, no. 1, 1999, p. 5-21.
- Parfit, Derek, “Equality and Priority”, *Ratio*, vol. 10, no. 3, 1997, p. 202-221.
- Peterson, Martin, “The Moral Importance of Selecting People Randomly”, *Bioethics*, vol. 22, no. 6, 2008, p. 321-327.
- Rawls, John, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs*, vol. 14, no. 3, 1985, p. 223-251.

Rawls, John, *A Theory of Justice*, revised edition, Oxford, Oxford University Press, 1999 [1971].

Saunders, Ben, “Equality in the Allocation of Scarce Vaccines”, *Les Ateliers de l'éthique/The Ethics Forum*, vol. 13, no. 3, 2018, p. 65-84.

Savulescu, Julian and James Cameron, “Why Lockdown of the Elderly is Not Ageist and Why Levelling Down Equality Is Wrong”, *Journal of Medical Ethics*, vol. 46, no. 11, 2020, p. 717-721.

Symons, Xavier, Steve Matthews and Bernadette Tobin, “Why Should HCWs Receive Priority Access to Vaccines in a Pandemic?”, *BMC Med Ethics*, vol. 22, no. 79, 2021, <https://doi.org/10.1186/s12910-021-00650-2>

Taurek, John M., “Should the Numbers Count?”, *Philosophy and Public Affairs*, vol. 6, no. 4, 1977, p. 293-316.

Wardrope, Alistair, “Scarce Vaccine Supplies in an Influenza Pandemic Should Not Be Distributed Randomly: A Reply to McLachlan”, *Journal of Medical Ethics*, vol. 38, no. 12, 2012, p. 765-767.

Williams, Jane H. and Angus Dawson, “Prioritising Access to Pandemic Influenza Vaccine: A Review of the Ethics Literature”, *BMC Med Ethics*, vol. 21, no. 40, 2020, <https://doi.org/10.1186/s12910-020-00477-3>