ETHICS
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Where Has All the Justice Gone? A Review of Societal Justice Versus Individual Justice

Justice itself is a very elusive ethical principle, let alone defining justice during a pandemic that has been extremely difficult to navigate for a multitude of reasons. The COVID-19 pandemic is still testing our very limits of what it means to be “just” clinicians, “just” individuals, and “just” members of society. We often find ourselves trying to balance what is just with what is right clinically for our patients while also respecting the staff at the facilities where we work. We must set aside our own cultural, religious, and individual beliefs of what justice is and look at each situation in its own context.

This can be a very challenging thing to do given the current climate in our society and in the health care system.

As we now move into the next phase of the pandemic, a review of the ethical principle of justice is warranted. Clinically, we understand the COVID-19 illness and have treatments (i.e., vaccines) that are very effective. We are now in the middle of the tremendous undertaking of attempting to vaccinate our entire health care workforce. In this next phase, we must learn to deal with the fallout of such an unprecedented pandemic. Topics such as vaccine mandates, re-examining how we care for frail and older adults, and coming to terms with how post-acute care frontline workers are compensated all have an underpinning of justice that needs to be wrestled with.

Societal Versus Individual Justice

Justice is the concept of fairness, either as it relates to a society and its institutions (societal justice) or to an individual person (individual justice). Fairness in health care, politics, education, and finances would all fall under societal justice, which relates to the fair and equal distribution of societal rights and opportunities. Just decisions may not necessarily be perceived as right, wrong, or the easy decision by all individuals, but they work to benefit (or harm) a society.

Individual justice includes how an individual then practices fairness within society and how that flows into his or her daily life. Individual justice should not be confused with individual rights, which is a distinct principle relating to an individual’s freedom within a society. Rather, individual justice sees the individual as an agent who acts within a particular society.

In other words, if societal justice is what a larger entity (society, facility, or organization) abides by; individual justice is the fairness of one person’s decision on a society, facility, or organization. For example, in the nursing home context, an individual staff member’s decision to lie about a bad outcome for a nursing home resident, even if staff member felt the lie was just, may have an adverse impact on the resident, the family, or the entire facility.

These two subtypes of justice can either work synergistically or create strife, which can in turn unravel how an institution functions. Unfortunately, many times during this horrible pandemic, these two types of justice have worked against one another, particularly in the United States. Large health systems, state and federal political bodies, and influential leaders have tried to make many decisions in the name of justice. However, I fear we have lost sight of what is truly just; each individual’s idea of justice is driving decisions rather than a sense of societal justice as defined by American society at large, both historically and through ongoing consensus.

The same can be said for institutions such as AMDA – The Society for Post-Acute and Long-Term Care Medicine, and also individual post-acute care facilities. As previously noted, sometimes the justice of a particular decision by an individual can impact or even override the justice of the larger facility. This can greatly impact the fairness that occurs within the facility and for the individuals within it. One could argue that this conflict is permissible, but the result may be a disruption to the facilities that were built to care for the patients we serve.

Finding an appropriate balance between individual justice and societal justice is necessary for these institutions to function. If the balance tips in one direction, the result could be a facility or organization that will not reach its full potential.

Justice Within Institutions

Justice is a very nuanced topic, and it has been rigorously discussed among ethicists for hundreds of years (David Miller, “Justice,” in The Stanford Encyclopedia of Philosophy, Aug. 6, 2021; https://plato.stanford.edu/entries/justice/). The complicating factor is how to determine whether an institution or individual is acting from a place of justice or one of pure self-interest. This is a very difficult distinction, but it needs to be recognized.

Modern ethicist John Rawls examines this concept in his work “Justice as Fairness” (Philos Rev 1958;67[2]:164–194). He describes justice as “the first virtue of social institutions,” which would include post-acute care facilities. Rawls implies that if justice is not deeply rooted within the facilities and organizations in which we work, then they are doomed to fail. Justice needs to occur across all levels of a particular institution as well for it to function at its highest level.

The individual employee plays an important role in the greater institution being just and functioning properly. Therefore, we as individuals in a larger particular institution must speak up if something is unjust and not fair for the greater good, which in this setting directly impacts the patients we care for and at times the staff who care for them. As individuals we should not follow an unjust decision when we recognize that the institution is likely to suffer, regardless of the initial emotions associated with such a stance.

It follows that if a particular subset of individuals in an institution is being treated unjustly then the institution is at greater risk of failing. For example, with the long-standing topic of compensation for frontline workers in post-acute care, what is a fair wage for our frontline caregivers? What were these decisions based on? Are there unjust racial or cultural biases occurring in compensation decisions? If so, until the balance of justice is resolved within those individuals, the larger institution is likely to continue to be limited in its ability to serve its ultimate purpose. If solutions that are fair and just cannot be achieved, then the result will be much worse than what we are currently experiencing. And our patients will ultimately suffer because of it.

Centering Justice

We all need to think long and hard regarding the ethical principle of justice, or I worry things will get worse for all of health care. Frail and vulnerable older adults in post-acute care facilities also for frontline workers in post-acute care, a review of the ethical principle of justice.
Images of family caregivers looking through windows to see their loved ones in nursing homes have come to characterize a serious challenge of the COVID-19 pandemic: supporting families who are separated from their loved ones. Family and caregiver involvement has long been considered essential in transitions of care from short-term, skilled nursing facility (SNF) stays back to the community to ensure the patient’s safety and recovery at home. However, isolation and quarantine policies aimed at reducing the risk of infection have severely curtailed the efforts of family and informal caregivers who wish to be present and involved during transitions of care management. Many family members and caregivers approach health care with great initiative, seeking efficient and timely communication and embracing technology and the internet (Virtual Mentor 2014;16:380–384). The need to engage families and caregivers during transitions of care, coupled with SNF visitation restrictions during the pandemic, has created opportunities for SNFs looking to improve transitional care services.

**Family support curtailed by the pandemic**

At first glance, one might only perceive the downsides of remote family support necessitated by the pandemic. For example, a resident experiencing memory loss who is temporarily separated from loved ones may yearn for a familiar voice and touch and have no idea why their SNF is under lockdown. Even providing family visits by telephone or video conference may be hampered by a resident’s sensory deficits such as vision or hearing loss. Moreover, unfamiliar electronic platforms or unreliable internet connections often render remote connections impersonal and even a source of frustration. And, like so much else in nursing homes, making remote connections requires the assistance of staff who already have limited time and resources for new responsibilities.

Indeed, nursing home staff also are experiencing the disconnect created by distance. A physical therapist must rely on telephone calls with family members to teach transfer techniques without an in-person demonstration. A social worker must use phone-based rather than in-person visits with families, creating a barrier to developing the trust that is a key driver of the care planning process. Such challenges have been impediments to high-quality transitional care.

Before COVID-19, staff and family interactions centered around care planning meetings and chance encounters in hallways and patient rooms. Even a brief comment to a family member — “Yes, your mom ate much more today” — could build trust and advance the progress of care. Savvy family members could glean rich information not only from clinical staff but also from interactions with other staff such as dietary and custodial team members.

The restrictions on in-person visits have limited such spontaneous, live encounters to brief contacts in parking lots or to scheduled conferences with invited staff using phone or video. Thus, families wishing to prepare their loved ones for the transition from SNF to home have encountered barriers to much needed support — but unexpected innovations may potentially turn the barriers into advantages.

**Enhanced Remote Visitation Skills**

By necessity, family visits switched from in-person to predominantly remote contact during the pandemic, and telephone and video conference visits proliferated almost overnight. Tablets and laptops were supplied to nursing home staff along with their personal protective equipment, and staff members quickly learned to assist residents with remote visits. For many, this technology was entirely new, yet staff learned to help their residents connect to the internet, maneuver video cameras in the correct direction, adjust microphones, ensure adequate lighting, and disinfest devices between visits.

Subscriptions to video conference platforms, even if SNFs had not budgeted for them before, have become the norm. For short-stay residents, fear of infection and eagerness to return home have made remote connections with loved ones a lifeline. For long-term care residents, staff began using remote visits to facilitate meaningful reminiscences, virtual tours, and discussions of current events (Evan Plys, “Re-thinking Rituals Around the Holidays,” https://bit.ly/38MofM7; and “Planning a Meaningful Remote Visit During COVID-19,” https://bit.ly/3ib7wK1, Colorado Dementia Partnership, 2020). Although challenges remain, these efforts have created an unseen infrastructure for caregivers to continue supporting their loved ones even as visitation restrictions in SNFs are lifted.

SNFs have made weekly touch-base calls, check-in calls, and ambassador calls to keep families informed during visitation restrictions. A social worker described the touch-base calls as staff-initiated, weekly calls aimed to reach a wide group of families, not just the families who, before COVID, might have visited in person. The touch-base calls provide active clinical care/medical direction in both nursing homes and SNF ventilator units in Rochester, NY. He is the Vice Chair of the AMDA Ethics Committee and also is a member of the AMDA Public Policy Committee.