Private Rights and Public Health: The Perennial Trade-Off Revealed by COVID-19

By Daniel J. Bressler, MD, FACP

IN FREEWAY-CRISS-CROSSED Southern California, we might adapt this old adage thus: "Your right to drive recklessly ends at my bumper." Trade-offs around driving are useful public health analogies because they are so familiar. Speed limits, seat belts, air bags, driver's licenses, vision criteria, hot-dogging, drunk driving, and age-limits all have been negotiated over time by society. A universal 15 mile-per-hour speed limit would undoubtedly reduce the 38,000 American and 1.4 million worldwide yearly death toll from motor vehicle accidents. And yet, we've come to a mediated agreement that allows individuals to drive three to five times that speed and to take on the accompanying risk for themselves (and to inflict that risk on others) because of the competing right for people to get where they're going. The decision about how fast to allow people to drive (along with what kind of cars they're allowed to drive, whether they must wear a seat belt, how much smog their car is allowed to produce) ends up being an iterated trade-off between private rights and public health.

There are some uniquely thorny parts to the public health aspects of the Covid-19 pandemic: asymptomatic spread, very different death rates among different age and racial groups, politicization of science-reporting, and the possibility of intentional disinformation campaigns in this era of social media bots. One might pointedly ask in the COVID era: is not wearing a mask around other people the moral equivalent of driving 65 miles per hour on a residential street? The answer you get will depend on your political orientation (i.e., how much does a government have the power to control your personal behavior), how you read the epidemiologic data (the degree to which masks truly reduce spread), the group to which you belong, your anecdotal experience, and on your personal risk tolerance.

The importance of risk tolerance comes up frequently in a primary care medical practice such as mine. Patients accept or reject recommended screening tests (colonoscopy, mammography or blood tests) or therapies for asymptomatic hypertension or elevated cholesterol based on both their risk tolerance and their personal experience. I do my best to make recommendations based on the latest scientific evidence base but patients have their own evidence base. Sometimes what they choose based on their own experience, beliefs and values disagrees with what I recommend. This "conflict" is relatively tame because I explicitly respect their right to self-determination and because these are adults making decisions that typically affect only their own health. Going back to the driving analogy, at worst they are high-speed driving alone on an isolated track, such that the risk they are taking is a purely personal one.

Risk-taking in a pandemic is altogether different. It is more like managing a fire than a colonic polyp. If you don't get a colonoscopy, you increase your chances of getting colon cancer. But if you don't tend to a fire smoldering in your backyard, you're risking burning not just your own house, but the entire neighborhood. It underlines the connection between who we are as individuals and as social beings. Even the most isolated among us live to some extent in a community. As we've discovered in this era of social distancing, we still need to go to the grocery store or the pharmacy, educate our children, and tend to the sick. And with every social interaction, this damned virus has a chance to spread and persist.

It seems that the U.S. has a harder time with the imposition of public health restrictions on individual behavior than most other countries based on our powerful and cherished tradition of liberty. This tradition traces back to Thomas Jefferson's notion of the independent, self-sufficient, isolated small farmer serving as the backbone of a democratic society. This ideal continues to influence how Americans see themselves and behave centuries since we have stopped being a country of small independent farmers. Many of the freedoms we still cherish — religion, association, travel, speech — first found their expression in a very different country. This ideal has helped spark American creativity, entrepreneurship, and independence of thought. That said, some of the societal conflicts we face in the COVID era (including importantly, the urban-rural one) derive from the gaps between the Jeffersonian ideal and the reality of a population that is mostly urban and highly interdependent.

There eventually will be a "technical fix" for this pandemic — some combination of vaccines, medications, herd immunity, and viral evolution. As a society, we have an opportunity to look beyond this fix to engage the larger political challenges that face us in light of the fact that this will not be our last pandemic. Explicitly, how can we more skillfully mediate this most American tension between individual freedom (including the freedom to take risks) and public safety? Moreover, how do we do this in a world where the end of your fist may be disguised as a respiratory virus one-thousandth the diameter of a human hair and the end of my nose isn't just a sensitive facial structure, but an entryway for a pathogen capable of infecting and killing its owner? SDP

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