

## **Civil Liberties in a Lockdown: The Case of COVID-19**

In response to the spread of COVID-19, governments across the world have, with very few exceptions, enacted sweeping restrictive lockdown policies that impede citizens' freedom to move, work, and assemble. This paper critically responds to the central arguments for restrictive lockdown legislation. We build our critique on the following assumption: public policy that enjoys virtually unanimous support worldwide should be justified by uncontroversial moral principles.<sup>1</sup> We argue that that the virtually unanimous support in favor of restrictive lockdowns is not adequately justified by the arguments given in favor of them. Importantly, this is not to say that states ought not impose restrictive lockdown measures, but rather that the extent of the acceptance of these measures is not proportionate to the strength of the arguments for lockdowns.

We begin by exploring the case for restrictive lockdowns. We first argue that several of the principles that are used to justify the lockdowns yield unexpectedly revisionary implications for other political problems that many would be unwilling to accept. We then outline what we consider the strongest argument for a lockdown—namely, that its net welfare benefits are great enough to defeat the moral presumption against restricting citizens' civil liberties to move, work, and assemble.<sup>2</sup> However, we give a number of reasons for doubting that the lockdown's net welfare benefits are, in fact, sufficiently high to defeat the presumption against it.

### **§1: ARGUMENTS IN FAVOR OF THE LOCKDOWN**

#### **§1. i THE REVISIONARY IMPLICATIONS OF PRINCIPLES MOTIVATING A LOCKDOWN**

In this section, we argue that two candidate moral principles that have been invoked by policymakers in defense of a lockdown yield unexpectedly revisionary implications for other public policy problems that many would be unwilling to accept.

*Principle 1: Minimize Lives Lost*

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<sup>1</sup> Our thought here is that morally charged public policies that are widely accepted should be justified by moral principles that are themselves widely accepted.

<sup>2</sup> To clarify, we are discussing the word 'liberal' in the context of the liberal tradition in political philosophy, not in the sense it is used in politics today.

One argument for restrictive lockdowns is not likely to find favor among philosophers but nevertheless has widespread appeal, both among the public and lawmakers. It alleges that states ought to institutionalize the policy that minimizes expected lives (or perhaps life years) lost. For instance, Andrew Cuomo, Governor of New York, said:

My mother is not expendable, your mother is not expendable and our brothers and sisters are not expendable, and we're not going to accept the premise that human life is disposable, and we're not going to put a dollar figure on human life. The first order of business is to save lives, period. Whatever it costs (Klar 2020).

Later, Cuomo stated, "This is not a situation where you can go to the American people and say, 'How many lives are you willing to lose to reopen the economy?' We don't want to lose any lives. You start to hear these, to me, what are absurd arguments" (Higgins-Dunn and Kim 2020). The idea here is that no loss of economic welfare is great enough to justify a loss of life.

One objection to this view is that it would rule out too many unobjectionable public policies. The state could reduce the number of deaths due to car accidents by dramatically reducing speed limits. More creatively, it could take up economist Gordon Tullock's sarcastic suggestion to mandate the installation of a spike on all steering wheels to incentivize safe driving. Daylight savings time kills people by making them more accident prone (Varughese and Allen 2001). States could reroute all tax revenue away from non-essentials like museums, parks, research grants for philosophers, and so on to foreign aid to fight malaria. It could abolish all taxation on income earned from life-saving labor like medical work, thereby increasing its supply (Freiman 2013, 262).

We suspect that few would be willing to accept the preceding policy proposals. It is rational to trade off some risk of death for other sorts of goods. We see this tradeoff reflected not only at the level of institutional decision making, but at the level of individual decision making as well. People take relaxing Sunday drives that place them at a risk of a deadly accident because they deem the relaxation worth the risk. They take planes to arrive at vacation destinations. They eat sugar. They go BASE jumping. Even if you're risk averse, it's unlikely you'll argue that these choices are *necessarily* irrational.

It's worth noting that while many people profess to hold certain values sacred—possessing infinite weight—it turns out that they often misunderstand their own assessment of these values. Experimental results show that people are willing to trade off an allegedly infinitely valuable “protected value” if, e.g., it conflicts with another protected value, the odds of harm resulting from violations of the value are sufficiently low, or the magnitude of the harm is sufficiently low (Baron and Leshner 2000). And this is exactly what we observe in everyday practice—we say that we place infinite value on human life, but we put that life at risk every time we drive our car on the road. As the experimenters themselves note, “The results suggest that expressions of infinite trade-offs need not be accepted at face value” (Baron and Leshner 2000, 193).

Crucially, one need not be a consequentialist to find the preceding objections plausible. Rather we may simply accept tradeoffs that we would be fine applying in our own case. That is, we accept that people will die with a 65mph speed limit, even if we should be the ones who die. In that manner, these tradeoffs are different than the familiar “save 5 by killing 1” variety because we do not know *ex ante* whether we will be the 1 or in the group of 5.

### *Principle 2: Defer to Experts*

A second principle would have us simply defer to expert opinion. If a majority of epidemiologists or social scientists favor lockdowns, we should trust their judgment. Of particular interest is a survey of economists that found widespread support for tolerating the economic costs of severe lockdowns (IGM Forum 2020).

There are at least three objections to the “defer to experts” principle. First, our perception of expertise is distorted by partisan bias (Kahan et al. 2011). In short, we are more likely to judge someone an expert when their opinion aligns with our political priors. Thus, an appeal to experts might be unproductive, because it may function as a way of reasserting our preexisting political commitments. By analogy, an appeal to experts about the employment effects of the minimum wage will be of little value if those on the right reflexively defer to anti-minimum wage economists, while those on the left do the same with pro-minimum wage economists.

Second, there are different sorts of expertise—epidemiological, economic, political, moral and so on. Medical expertise isn't the same as expertise in knowing what is best for people all things considered (Flanigan 2017). For instance, your surgeon probably knows more than you do about knee replacement surgery, but you probably know better than she does whether the surgery is the right call for you. Experts in moral philosophy may very well reach a different opinion about lockdowns than experts in epidemiology.<sup>3</sup>

Lastly, people inside and outside of the academy seem to reject the “defer to experts” principle in a surprising number of cases. This point becomes clear when we consider the consensus views of the majority of economists compared to the views of average Americans. If we were to really follow the “defer to experts” principle, we would have much more sympathetic views toward open borders, free trade, markets in human biological materials, a drastic reduction in professional licensing policies, the abolition of foreign aid, and much more.<sup>4</sup> Yet these are unpopular policies—we take it that many people who defend the lockdown would not endorse most of them. If the principles that undergird the lockdown argument yield implications that lockdown advocates are unwilling to accept, then advocates either ought to reject them or craft explanations of why such implications can be tolerated.

### **§1. ii THE PRESUMPTION AGAINST THE LOCKDOWN**

Having argued against two likely justifications for the lockdown, we will now turn to what we consider a stronger argument in favor of restrictive lockdowns. This argument contends that there is a moral presumption against lockdown measures that violate civil liberties, yet alleges that the welfare benefits of these measures are sufficiently high to defeat the presumption. So, the structure of an argument for a lockdown could be roughly as follows: states have a presumptive duty not to interfere coercively with freedom of occupational choice, assembly, and movement. But when the welfare costs of honoring this duty are excessively high, an emergency clause kicks in and overrides it.

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<sup>3</sup> For morally motivated concerns about the lockdown, see Singer and Plant 2020.

<sup>4</sup> For expert economists' opinion on kidney markets and immigration in particular, see IGM Forum 2014.

To begin, notice that certain measures designed to save lives during a pandemic will require violating basic civil liberties such as the freedom of occupational choice, movement, assembly. Quarantine restrictions may compel citizens to not come to work, to not travel, and to not gather with other people. Some jurisdictions even criminalized exiting the home for any reason other than something essential (i.e. to buy food, visit doctors, and so on).

Liberals tend to assign the protection of civil liberties lexical priority over competing concerns, including saving lives and improving public health.<sup>5</sup> (We'll say more about lexical priority below.) Freedom of religious practice protects the right of a Jehovah's Witness to decline a lifesaving blood transfusion. A right of bodily autonomy protects citizens from coerced-but-life-saving blood and bone marrow draws.<sup>6</sup> An irreplaceable heart surgeon is at liberty to retire early even though this exercise of occupational choice means that some patients will die who otherwise would have lived.<sup>7</sup> Liberal states do not mandate quarantines during flu season even though the flu kills tens of thousands of people every year. To be clear, we agree that the public health risk of COVID-19 far outstrips that of the flu. Our point is that liberals already accept the priority of some rights over minimizing lives lost.<sup>8</sup>

At first blush, then, a basic commitment of liberalism rules out the central rationale for a lockdown—namely, that violations of civil liberties enjoy unconditional priority over public health concerns. But, this move is too quick. Many theorists argue that a moral code ought to include a disaster avoidance clause.<sup>9</sup> By way of example, consider that even unflinching deontologists like Robert Nozick are open to the idea that we may violate ordinary deontic constraints to avoid massive costs (Nozick 1974, 30). Similarly, in an underappreciated passage, John Rawls admits there aren't *really* any principles that enjoy lexical priority over all competing moral considerations: “While it seems clear that, in general, a lexical order cannot be

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<sup>5</sup> The most prominent example of this view is, of course, John Rawls. See Rawls 1999, 38. However, most liberals are unwilling to compromise citizens' civil liberties for the sake of other values.

<sup>6</sup> For a relevant legal case see *McFall v. Shimp* 10 Pa. D. & C. 3d 90 (1978).

<sup>7</sup> Rawls writes that “What kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives society offers” (2001, 64).

<sup>8</sup> CDC, “Burden of Influenza.”

<sup>9</sup> For a similar account of the presumption against lockdown measures and the considerations that would defeat it, see Winsberg, Brennan, and Surprenant (2020).

strictly correct, it may be an illuminating approximation under certain special though significant conditions” (Rawls 1999, 40). Rule consequentialists are also happy to endorse a moral rule that suspends other moral rules in the event of a disaster.<sup>10</sup> A pluralistic moral theory that assigns moral weight to both welfare considerations and deontic considerations is committed to the appropriateness of violating deontic constraints should the welfare effects be great enough. Some deontologists endorse a “threshold” view, according to which deontic constraints may be overridden should the welfare costs of respecting them exceed some point.<sup>11</sup>

This style of argument accords with the Siracusa Principles, which articulate international standards for the derogation and limitation of human rights in cases of emergencies (Siracusa 1985). These principles, which were originally formulated in 1984 by the International Commission of Jurists, accept that “public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population” (Siracusa 1985). Moreover, *Human Rights Watch* explicitly states,

The scale and severity of the COVID-19 pandemic clearly rises to the level of a public health threat that could justify restrictions on certain rights, such as those that result from the imposition of quarantine or isolation limiting freedom of movement. (Human Rights Watch 2020)

In contrast, we take seriously the idea that there ought to be a disaster avoidance clause but argue that defenses of restrictive lockdowns have failed to successfully make their case.

Proponents of lockdowns generally accept four conditions of good disaster avoidance policy. We will spend the remainder of this section outlining those conditions before explaining why there are good reasons for doubting that these conditions have in fact been met in the case of COVID-19-related restrictions. First, the duration of the rights restrictions must be limited. The Siracusa Principles specify that the duration “of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent” (Siracusa 1985, 11). As a group of UN experts said with respect to the emergency measures introduced in response to the COVID-19

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<sup>10</sup> See, e.g., Brandt 1992, 151; Hooker 2000, 98-9.

<sup>11</sup> See Moore 1997.

pandemic, “To prevent such excessive powers to become hardwired into legal and political systems, restrictions should be narrowly tailored and should be the least intrusive means to protect public health” (UNHR 2020). Given that restrictions on civil liberties are justified strictly as a short-term emergency measure, it’s critical that they not become permanent features of our legal institutions.

Second, the UN experts insist that “emergency declarations based on the COVID-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals . . . Restrictions taken to respond to the virus must be motivated by legitimate public health goals” (UNHR 2020). The rationale for this principle is straightforward: using public health concerns as a pretext to target specific individuals or groups is incompatible with a liberal commitment to equality under the law and government transparency.

Third, the welfare losses prevented by the rights violations must be great enough to outweigh the welfare losses *caused* by the rights violations to a sufficient extent. For instance, COVID-19 poses serious risks to public health, and thus, social welfare. However, the lockdown itself may result in serious economic, physical, and psychological costs. If the *net* welfare effect of the policy is only trivially beneficial, or even harmful, then welfare considerations wouldn’t suffice to override the strong presumption against civil liberty violations. According to the argument sketched above, the net costs of failing to restrict civil liberties must be sufficiently grave to justify the restriction.

The presumption against liberty restrictions also supports the fourth condition: as the Siracusa Principles state, “In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation” (Siracusa 1985, 6). Because there is a presumption against restriction, states ought to favor less restrictive measures to more restrictive measures, all else equal.

In summary, there are four questions, formed according to authoritative sources accepted by most proponents of lockdown, that must be answered in the affirmative if the lockdowns are to defeat the liberal presumption:

- (1) Can we expect the rights restrictions to last a sufficiently short amount of time?
- (2) Can we expect the rights restrictions to be confined to the aims of public health or will they “be used as a basis to target particular groups”?

- (3) What are the net welfare effects of the lockdowns?
- (4) Are there means less restrictive than a lockdown that can achieve comparable public health outcomes?

We argue that the answers to all of these questions are uncertain, which weakens the case for a lockdown.

In the next section, we consider each question in turn.

## **§2: REASONS TO DOUBT THAT THE PRESUMPTION AGAINST THE LOCKDOWN IS DEFEATED**

Thus far, we have argued that two initial principles that might justify the lockdown are more controversial than they first appear. Moreover, liberals ought to oppose lockdowns unless specific conditions are satisfied. In this section, we argue that there is considerable doubt as to whether these conditions are, in fact, satisfied in the case of COVID-19 restrictions. In what follows, we will survey each condition and explain the grounds for doubting that it is met by the COVID-19 crisis.

### **§2.i. CAN WE EXPECT THE RIGHTS RESTRICTIONS TO LAST A SUFFICIENTLY SHORT AMOUNT OF TIME?**

To begin, there is simply no guarantee that all of the violations will be temporary. As the UN experts observed, there is a tendency for “excessive powers to become hardwired into legal and political systems” (UNHR 2020). The lockdowns may lead to power grabs from corrupt leaders. For example, Viktor Orban has already used the virus as a way to expand his emergency powers in Hungary (Brands 2020). Similar patterns have been observed in Poland, Slovenia, and Serbia (Hodal).

Even stable liberal democracies are at risk of long-term civil rights erosions. For one, crises tend to change people’s attitudes toward government, making them more receptive toward state power. For instance, in the aftermath of the 9/11 attacks, people’s trust in government and demand for government action increased (Newport 2020). This might explain why Trump’s approval rating initially rose in the wake of the COVID-19 outbreak (Trump 2020). A friendlier attitude toward the state and political leaders may make citizens less resistant to inappropriate expansions of government power.

Historically, expansions of state power initiated during crises endure long after the crisis has subsided. For instance, the Espionage Act of 1917—passed to address spying during World War 1—has been used by both the Obama and Trump administrations to prosecute suspected leakers (Myre 2020). The 2001 Authorization for Use of Military Force passed in the wake of the September 11<sup>th</sup> terrorist attacks, has been used by subsequent administrations to conduct military operations that are wholly unrelated to its original purpose (Davis 2018). Another institutional response to the 9/11 attacks—the USA Patriot Act—expanded the government’s surveillance powers and has been abused to erode Americans’ privacy rights (Kravets 2013).

With respect to the COVID-19 outbreak in particular, as states increase citizen surveillance to track and control COVID-19, they have the potential to retain these powers over the long term (Hamilton 2020). As Albert Fox Cahn of the *Surveillance Technology Oversight Project* argues, “We could so easily end up in a situation where we empower local, state or federal government to take measures in response to this pandemic that fundamentally change the scope of American civil rights” (Chandler 2020). In sum, it is hard to be confident that all lockdown-related rights restrictions will not endure after the public health crisis has passed.

**§2.ii. CAN WE EXPECT THE RIGHTS RESTRICTIONS TO BE CONFINED TO THE AIMS OF PUBLIC HEALTH, OR WILL THEY BE USED TO TARGET PARTICULAR GROUPS?**

There is also reason to doubt that all lockdown-related rights restrictions are motivated purely by public health considerations. Evidence suggests that some rights restrictions have not been motivated by legitimate health goals and do indeed target particular groups. Consider specifically the case of immigrants. In response to the COVID-19 outbreak, Donald Trump signed a “proclamation suspending entry of immigrants who present risk to the US labor market during the economic recovery following the COVID-19 outbreak” (Trump 2020). White House advisor Stephen Miller told supporters that such restrictions are strategic measures aimed to long term immigration reduction (Bernal 2020). Indeed, restricting immigration has been a central part of Trump’s platform from the beginning of his presidential campaign.

COVID-related restrictions have targeted particular groups in other cases as well. For instance, in the months following the initial lockdowns, it has been shown that governments unequally enforced these laws on minority groups. In the United States, patterns of social distancing enforcement display racial bias (Ross 2020). And “in Uganda, we saw LGBT people targeted under the pretext of Covid-19” (Hodal).

### **§2.iii. WHAT ARE THE *NET* WELFARE EFFECTS?**

Here, we address condition 3. To assess the net welfare effects of restrictive lockdowns, we naturally need an assessment of the public health risk posed by COVID-19. As stated, a major justification for overriding civil liberties in favor of COVID-19 restrictions is that these restrictions support the general welfare of society. This section argues that this justificatory story is based on uncertain assumptions. Even though COVID-19 does pose a grave risk to public welfare, there are welfare risks to a lockdown as well. The *net* social benefit of a lockdown is highly uncertain for a number of reasons.

The public health costs of COVID-19 are straightforward enough. Take the case of the US. As of May 2021, there have been over 587,000 recorded deaths attributed to COVID-19 (CDC Data Tracker). Moreover, COVID-19 adversely affects *quality* of life by causing long-term health problems in patients. Estimates suggest that lockdowns significantly reduce the spread of COVID-19 and that stricter measures in the US would have prevented millions of cases.<sup>12</sup>

However, lockdowns come with costs as well as benefits. First, the lockdown policy will have drastic and far reaching economic effects. Economic downturn obviously involves fewer people with the means to provide for themselves and their families. The United Nations suggests that “hundreds of thousands of children could die this year due to the global economic downturn sparked by the coronavirus pandemic and tens of millions more could fall into extreme poverty as a result of the crisis” (Nichols 2020). The director of the United Nations World Food Program, David Beasley, warns of “multiple famines of biblical proportions” (McNamara 2020). Some estimate that the resulting economic crisis will kill more

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<sup>12</sup> Cooper et al (2020).

people than COVID-19 itself (Matamala 2020). In a recent working paper on the effect of the COVID recession, authors from Duke, Harvard, and Johns Hopkins estimate that, due to the effects of economic unemployment, “for the overall population, the increase in the death rate following the COVID-19 pandemic implies a staggering 0.84 and 1.22 million excess deaths over the next 15 and 20 years, respectively (Biannchi et al. 26). Although the time horizons of these figures differ, they still reflect that the cost in total lives lost of the restrictive lockdowns in the US is potentially higher than the number of lives lost to the virus. Economic recessions are also correlated with increases in suicide, spousal abuse, and more (Haw et al. 2015; Schneider et al. 2016).

Second, various harms to human welfare are likely to follow from people being ordered to stay in their homes. For example, the CDC reports a significant increase in overdose deaths since March of 2020. (CDC Provisional Drug Overdose Death Counts). Additionally, for those individuals who live in abusive homes, being ordered to stay at home makes them more available to their abusers (Kluger). Evidence suggests that rates of domestic abuse have increased worldwide during the lockdowns. For example, in the UK, “calls from people experiencing domestic violence...jumped 200% in the spring of 2020 compared to call volume before the lockdowns” (Kluger).

School closures are costly as well. A shift away from in-person instruction is particularly harmful for children from low-income households who lack the resources to take full advantage of online schooling.<sup>13</sup> According to one recent estimate, “missed instruction during 2020 could be associated with an estimated 13.8 (95% CI 0.1-2.4) million years of life lost” (Christakis et al. 1). They go on: “This estimated loss in life expectancy was likely to be greater than would have been observed if leaving primary schools open had led to an expansion of the first wave of the pandemic” (Christakis et al. 1).

Furthermore, there is evidence that, “globally, a 3-month lockdown and a protracted 10-month restoration could lead to an additional 6.3 million cases of TB between 2020 and 2025, and an additional

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<sup>13</sup> For a discussion, see The Economist, 2020.

1.4 million TB deaths during this time” (Stop TB Partnership 2020). This means that the fight to eradicate TB could face “a setback of at least 5 to 8 years” (Stop Partnership 2020).

Third, consider the effects of policies accompanying lockdown. The lockdown policy is almost always paired with large-scale stimulus from the government. Such policies take out debts that someone, either future people or us in the future, will have to pay for. Moreover, there is reason to believe that large debt has an adverse effect on economic growth, a result that can have dramatic but underappreciated consequences for social welfare (Chudik et al. 2018).

Fourth, the lockdowns, although they are motivated in part by the goal of not overwhelming the medical system, will have the effect of decreasing the capabilities of the medical profession. There is reason to believe that the healthcare industry will be strained by the pandemic, which means that the lockdown ultimately has the effect of making medical care more expensive at the margins. In short, as people are told to not see the doctor for anything other than emergencies, hospital revenues decrease dramatically.<sup>14</sup> And, in the aftermath of the crisis, the economic downturn will cause people to put off medical procedures, leading to less revenue for the medical profession and ultimately more expensive services later on for the patient (Cutler 2020). As Cutler says, as of early April 2020, “some primary practices are reporting reductions in the use of health care services of up to 70%. Without major cash reserves, the salaries of clinical staff are being frozen or reduced...For the week ending on March 21, the second largest source of unemployment insurance claims in Michigan was from health care businesses” (Cutler 2020). And, as Bindman adds, “the combined volume of in-person and telehealth visits is about 40% of what it was before the pandemic” (Bindman 2020).

As some of the arguments above indicate, lockdowns not only carry their own costs in terms of the loss of life but also in terms of the loss of *quality* of life. Economist Bryan Caplan (writing in November 2020) notes that if we take each month of “COVID life” to be worth “only 5/6ths as much as normal time,” then the costs of the lockdowns almost certainly exceed the benefits. Here’s Caplan (2020):

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<sup>14</sup> For evidence of this, see American Hospital Association (2020).

We've now endured 8 months of COVID life. If that's worth only 5/6ths as much as normal time, the average American has now lost 4/3rds of a month. Multiplying that by the total American population of 330M, the total loss comes to about 37 million years of life. That's about *15 times* the reported estimate of the direct cost of COVID [...] You have to ask yourself: If normal life had continued unabated since March, how many additional life-years would have been lost? I can believe that the number would have been double what we observed, even though no country on Earth has done so poorly. With effort, I can imagine that the number would have been triple what we observed. There's a tiny chance it could have been five times worse. But fifteen times? No way.

Using Caplan's heuristic, economist Douglas Allen estimated that (as of March 2021) Canada lost 6.3 million years of life due to the lockdown. As of March 2021, Canada has 22,716 COVID deaths (Allen 42). This equals 222,389 years of life lost (Allen 42). Compare this to how many lives may have been lost without a lockdown. Let's take an extreme assumption first. According to the Imperial College London model, without a lockdown Canada would have experienced an extra 177, 281 deaths (Allen 42). This amounts to roughly 1,735,580 life years lost, given relevant age and life expectancy assumptions (Allen 42). Therefore, the lockdown saved 1,735,580 life years at the cost of 6,300,000, for a cost-benefit ratio of 3.6 (Allen 43). As Allen notes, "nothing close to this rate of death happened anywhere in the world. However, even in this extreme case, lockdown is a failure as a policy by cost/benefit standards" (Allen 43).

Suppose we make a more modest assumption, namely that COVID deaths would be 10% higher without a lockdown. In this case, the lockdowns saved 22,333 life years at the cost of 6,300,000 life years lost, for a cost-benefit ratio of 282 (Allen 42-43). As Allen puts it, "it is possible that lockdown will go down as one of the greatest peacetime policy failures in Canada's history" (Allen 1).

These calculations are of course rough. However, our point is simply that it is far from clear if the net welfare effects of the lockdowns are such that they make them the obviously correct policy solution.

At this point, one might object that the aforementioned harms were not due to the lockdowns themselves but rather people's voluntary decisions to avoid COVID risks and stay home. For example, Gooldbee and Syverson argue that "individual choices were far more important [than legal shutdown orders] and seem tied to fears of infection" (1). If this is the case, worries about the welfare costs of the lockdown are lessened. However, at the same time, the argument for the lockdown is thereby weakened, because insofar as people voluntarily restricted their own activity, the suspension of civil liberties associated

with a lockdown was unnecessary. Of course, the lockdowns must have kept some people at home who would otherwise have gone about their lives as normal, an outcome that undoubtedly has public health benefits. But evidence that people voluntarily restrained themselves casts doubt on whether the net benefit of the lockdowns is great enough to render their restrictions on civil liberties justified, all things considered.

#### **§2. iv. ARE THERE COMPARABLE BUT LESS RESTRICTIVE MEASURES?**

The last question to ask is this: should lockdown proponents favor less restrictive alternatives than a lockdown for the whole population? Below we consider two possibilities.

First, governments might impose a lockdown for vulnerable populations and not for others. This policy has been proposed in a variety of different forms. At its core, it involves a mixed strategy that requires vulnerable groups (the elderly, the immunodeficient, etc.) to stay at home while allowing people who are in low risk categories to re-enter society as normal.<sup>15</sup> Critics object that such a policy is discriminatory (Nix), whereas proponents argue that it's better to preserve the liberty of some rather than none (Savulescu and Cameron). We take no stand on this proposal except to note that it is a less restrictive alternative that is worth considering.

Another option is to implement fewer, if any restrictions, that apply to the public at large. The most radical version of this approach would involve enforcing social distancing via the norms of civil society and restricting mandatory quarantines only for those individuals who have a confirmed diagnosis. A less radical alternative would retain some certain state-mandated restrictions such as mandatory masking in enclosed public spaces while removing other restrictions such as those on movement. Indeed, one estimate suggests that a mask mandate could have stopped up to 74% of the new infections associated with the scaling back of lockdown measures.<sup>16</sup> Thus, a mask mandate may yield much of the safety benefit of a lockdown without many of the costs mentioned above.

### **§3. CONCLUSION**

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<sup>15</sup> Early in the pandemic, several people proposed versions of this policy, including John Romer, Alan Garber, and Studdert. Savulescu and Cameron have given a recent defense of this view.

<sup>16</sup> Cooper et al (2020).

We have argued that the justification for lockdowns is surprisingly weak. Our claim is not that lockdowns are unjustified but rather that the extent of the acceptance of lockdowns is not nearly proportionate to the strength of the arguments for lockdowns.

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