I. INTRODUCTION

This document guides users through an ethical assessment of COVID-19 reopening policies. When and how to reopen our society is not merely a matter of epidemiology and economics. It also raises questions about many shared values in our society, values like promoting well-being, liberty, and justice. These values are the subject of ethics. The framework developed here can be used to ethically assess both maintaining and relaxing social distancing policies such as when to reopen shops or schools. It can also be used to assess the ethics of public health measures to boost the public health response and contain the virus by, for example, increased testing. The framework is especially designed to aid government decision-makers at the state and local levels. The framework may also be used by private institutions such as retailers, workplaces, and universities to ethically assess their own reopening policies.

How to Use this Framework

This document provides an ethics framework for ethical assessment of policy options. The framework has five steps. The first step is to identify a policy or set of policies under consideration and to consider their feasibility. Steps 2-4 focus on three broad moral values—well-being, liberty, and justice—and how the policies under consideration promote or undermine these moral values. Step 5 asks whether any of the identified negative effects could be mitigated or remedied. Finally, Step 6 provides guidance on how to make an all-things-considered judgment about whether the policy or set of policies under consideration is ethically justified.

Why ethics?

When, and how, should social distancing measures be lifted, and what sorts of policies should replace them? Answering these questions requires making ethical judgments—judgments about values and “shoulds.” Making such ethical judgments requires taking into account the potential benefits of various policies as well as the costs, noticing how these costs are distributed unequally across population groups, recognizing that there are brutal trade-offs involved, and making these trade-offs thoughtfully in light of our underlying values and moral commitments.

Ethical analysis of potential policies is not about finding the perfect course of action. In the case of this pandemic, there is no perfect course of action. We must accept that any policy we adopt will have morally significant costs that can neither be ignored nor fully justified. Ethical analysis is about identifying the trade-offs inherent in alternative policies and making decisions about trade-offs that are informed by ethical values and commitments. Such analysis also helps identify ways to modify policies to make them more ethically acceptable.
There is no guarantee that all people will be satisfied with the conclusions reached through even the most careful ethical analysis. **But even when there is not consensus, or perhaps especially when there is not consensus, ethical analysis is useful for three reasons:**

- Successfully engaging in ethical analysis can clarify the source and nature of the disagreement between different stakeholders.
- Ethical analysis helps a decision-maker to publicly defend or explain their decision to others who disagree.
- If others are not persuaded by the reasoning in ethical analysis and raise objections to it, the clarity afforded by ethical analysis can help in discovering alternative policies that are more likely to be acceptable to those who objected to the initial policy.

**Guidelines for policymakers**

Policymakers face the daunting tasks of figuring out when and how to reopen, what additional public health measures to put in place, and what kinds of programs, structures, and investments will be needed to rebuild a society that has been unnaturally halted. They also must explain and justify their decisions to the public. As they do this, it is important to:

- **Empower the public to critically and fruitfully engage with the policies under consideration.** The effectiveness and legitimacy of policy choices require public understanding and acceptance of these choices. Unilateral action, or action that is perceived as partisan or benefiting only a narrow special interest, may provoke misunderstanding and backlash that could ultimately undermine the effectiveness of the proposed solution. Instead, policymakers must foster the kind of deliberation and input that generates public willingness to accept whatever solutions emerge. High levels of mistrust in government and extreme partisanship on many issues exacerbate the challenge of creating a process that is perceived as legitimate. To be authentic, these participatory processes must give people opportunities to engage on an equal playing field with decision-makers, something that often requires institutions to channel public input. Thus, decision-makers must consider both the supply and the demand side of participatory efforts—i.e., policymakers have a responsibility not only to create authentic opportunities for engagement but also to generate public desire to contribute to a collective decision-making process. Importantly, this work can happen in part by building partnerships with trusted community institutions.

- **Be transparent and honest with the public.** The effectiveness and legitimacy of policy choices also require that policymakers are, and are perceived to be, credible and trustworthy. Public engagement helps to build credibility and trust, but so too does transparency and honesty. Policymakers must communicate clearly with the public about any data that is being used to guide decisions and the level of uncertainty involved. It also includes being transparent with the public about the costs and benefits of the policies that are likely to be adopted, the justification

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1 Consider, for example, the Community Reinvestment Act (CRA), which operated in tandem with the Home Mortgage Data Act (HMDA) to not only create avenues for public input (CRA) but also to make public the data that community leaders needed (HMDA) to enter into deliberative processes with the information needed to hold leaders accountable. The juxtaposition of a supply of participatory pathways with data to reduce information asymmetries made CRA/HMDA a genuine pathway for public accountability.
for their adoption, and a candid acknowledgment of the trade-offs embedded in arriving at this course of action.

- **Recognize that there is reasonable moral disagreement about various policy proposals, and there are genuinely held moral beliefs on all sides of the debate.** Our views about social distancing and reopening policies draw from underlying moral views about the preciousness of each life, and the moral conviction that we must do our best to minimize COVID-19 deaths. They draw as well from our conceptions of what it means for American society to flourish, and what it means to provide the American dream to all members of society. Policies adopted in response to COVID-19 will profoundly shape our society for decades, and decision-makers must respect the public’s reasonable disagreement about visions for our shared future.

- **Acknowledge the high level of uncertainty about policies’ effects.** Important public policy decisions often have to be made in the context of considerable uncertainty about the effects of alternative courses of action. Decisions about when and how to stage the reopening of society during this pandemic are no exception. For example, social distancing policies will reduce mortality from COVID-19, but there is significant uncertainty about how many lives will be saved by different social distancing policies, and over what period of time. There is also considerable uncertainty about the effectiveness of public health policies to contain the virus as reopening occurs, such as utilizing mobile phone apps to conduct digital contact tracing, using surveillance data to better enforce self-isolation orders for newly infected patients, or ‘drafting’ individuals with immunity to perform various essential tasks. Although accumulating data and continuously revised models provide some parameters around the unknowns, uncertainty continues to abound about these effects, as well as the negative consequences of social distancing and public health interventions.

- **Seek the recommendations of a diverse set of experts.** Ethically assessing social distancing and public health policies requires having diverse experts in the room to recognize the complexity of the questions policymakers face. Experts in public health and economics are obviously important, but so too are experts in education, social work, transportation, employment, religion, and community engagement, to name a few.

- **Reassess policies as the situation changes and evidence improves.** The ethical acceptability of social distancing or reopening policies may change over time. As we learn more about COVID-19 and learn about the effectiveness and unintended consequences of different policies, our assessment of policies will change. The framework is a tool that will need to be used and reused as the crisis and our response to it evolve over time.
ETHICS FRAMEWORK

Step 1: Select Policies and Consider Feasibility

a. Select Policies

The first step in the framework is to clearly identify the policies (or set of policies) that are under consideration to be implemented. This step may seem obvious but given the rapidly changing conditions of COVID-19, it will often prove challenging to distinguish specific policy proposals. The nation is months into the pandemic, and many policy choices have already been made; choosing to leave those policies in place is itself a policy choice. Policy proposals sometimes include elements that are not actually feasible, or that cannot in practice be implemented in tandem. This framework is designed to evaluate a range of proposals, including those to continue or suspend specific social distancing policies, as well as policies designed to support and boost the public health response, particularly in light of the increase in infections that reopening will occasion.

The clear identification of policies requires not only an articulation of the suite of policies that are being considered to be taken in tandem but also the proposed timing, duration, and sequencing of different measures. For example, reopening businesses in three weeks or in six weeks would produce different results.

Some policies are synergistic, and considering them in tandem will capture this. For instance, reopening businesses and having new workplace safety measures to reduce the risk of COVID-19 infection will produce different effects than reopening without those safety measures in place.

b. Consider Feasibility Issues

Consider the technological, economic, administrative, and political feasibility of the policy or set of policies.

For example, one proposed plan requires dramatically increasing testing capacity to test up to 35 million tests per day. Given current testing capacity, some have questioned the technological feasibility of this proposal—even though many believe it would be quite efficacious from an epidemiological perspective.

Other policies may raise feasibility questions from a political perspective. For instance, one policy option provides return-to-work privileges for people who can demonstrate immunity to the virus. Political leaders may have real incentives to oppose such policies if they are unpopular with employers or out of work members of the public.

Step 2: Well-Being

Assess how those policies or sets of policies still in the running impact the well-being of all affected by them.

Well-being, in the sense we have in mind, concerns the kinds of conditions that are needed for people to lead a decent life. Health, economic well-being, and social connection are all central to well-being, for individuals and communities. For many people, spiritual experience and fellowship, meaningful work, or learning are central to their well-being.

Debate about reopening has often been framed as a trade-off between protecting public health (by maintaining distancing policies) and protecting economic well-being (by reopening). However, both public health and economic well-being are in peril no matter which course of action we choose. Social distancing has economic costs but also has negative effects on public health, such as increased rates of food insecurity and domestic violence. Reopening the economy not only risks an uncontrolled resurgence of COVID-19 cases, it also risks economic harm if an exacerbation of the pandemic results and necessitates the reinstatement of strict social distancing measures. Assessing these trade-offs, and making them thoughtfully, is all the harder given the very high level of uncertainty.

To get a handle on the effects of policies on well-being, consider: policies’ effects on the spread of COVID-19, other public health effects, economic effects, and a range of other personal and social effects. Both negative and positive effects, in the short- and long-term, should be considered.

a. Effects on the spread and health burdens of COVID-19

First, consider the effects of policies on the COVID-19 infection rate, hospitalization rate, and mortality. Shelter-in-place orders, for instance, are meant to greatly reduce the spread of COVID-19. Reopening will likely cause an increase in COVID-19 cases, depending on the pace and pattern of reopening, and what safeguards are put in place (e.g., the continued use of face masks in public). The impact of reopening on the spread of COVID-19 will also depend on the availability of additional public health measures such as widespread testing and follow-up contact tracing.

b. Economic effects

Social distancing policies have severe economic costs. In the short term, unemployment claims have spiked. For workers already struggling to live paycheck to paycheck, the sudden loss of income means they struggle to pay their rent and feed their families. In terms of longer-term costs, the economic slowdown will (or already has) triggered a recession, with comparisons to 2008, or even to 1929, already being taken seriously.3

Proponents of reopening measures, such as loosening some social distancing restrictions (especially unshuttering businesses) while also maintaining others, claim that their policies yield significant

economic benefits over the current suite of social distancing policies in place. At the same time, there are economic costs associated with lifting social distancing policies and having a resurgence of COVID-19 infections. A key question, then, is whether lifting social distancing policies “too soon” will cause more economic harm than good. One historical analysis suggests that, during the pandemic flu of 1918, areas of the country that enacted more aggressive social distancing policies actually recovered more quickly economically than areas that did not. But, as the authors of that study have acknowledged, there are important differences between the 1918 economy and our economy, and the new coronavirus has different characteristics, too.

The costs of public health measures, such as widespread testing or an increased public health workforce, should also be considered.

c. Other public health effects

Relaxing social distancing policies will increase the burden of disease and death from COVID-19—especially if such relaxing occurs without also introducing safeguards, such as significantly increased testing and contact tracing. This negative effect on public health may exacerbate the physical and emotional health toll on first responders and front-line medical staff, who are already working under extraordinarily stressful conditions. But leaving social distancing measures in place will also result in a range of negative public health effects, and thus not implementing reopening measures poses some public health risks. For example, in the short-term, there have been dramatic increases in demand at food banks and worries that more families are experiencing food insecurity—especially families that depended on schools for meals. To give another example, there is significant concern that aggressive social distancing will exacerbate the already-catastrophic drug overdose epidemic. Although the DEA has relaxed strict requirements for in-person treatment and support groups have moved online, there is no question that imposed social distance is the sort of disruption that can prevent or overturn the often-delicate nature of recovery.

The impacts of social distancing on health may be far-reaching. Unemployment, poverty, inadequate education, and lack of access to healthy foods all cause disease, including diseases that cause death. As a result, there’s a real worry that social distancing may increase the rate of what have been called “deaths of despair”—those from drugs, alcohol, and suicide. Other potential health costs may arise more directly from the lack of contact—social isolation can increase the risk of various diseases and

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9 https://www.deadiversion.usdoj.gov/coronavirus.html
death generally, and so it is worth considering whether it does so in the current context. Finally, the incidence of domestic violence has increased significantly since the implementation of various social distancing policies, while experts worry that the same stress and isolation will increase the risk of child abuse.

d. Harms to human development

From an ethics perspective, childhood is a singularly important stage of life. Children are completely dependent on others for their well-being, and setbacks to well-being in childhood can have lifelong, often irreversible, negative effects. Schools are foundational to the welfare of all children. They are the primary vehicle through which children acquire the knowledge and cognitive skills necessary for a decent life, as well as many social skills. For many children, schools are also critical to their health (through the provision of meals and direct medical, counseling, and special education services) and their physical safety.

School closures undoubtedly threaten the well-being of children. For instance, one study found that children lacking ‘steady instruction’ during school shutdowns might retain as little as 70% of their annual reading gains compared to a normal year. Moreover, some families lack the requisite human and technological resources to assist their children in distance learning. School closures may also negatively affect the long-term development of many children; we need more work to determine the nature and extent of these effects. Reopening schools, holding summer school, and allowing summer camps to be held would offer obvious benefits to children—and some policymakers have endorsed some of these proposals.

e. Other effects on well-being

Social distancing and reopening policies should also be evaluated in terms of their impact on other ethically relevant dimensions of well-being. These include the value we place on self and social respect, family and friendship, and the ability to make our own important life choices.

Social distancing policies can undermine respect by undermining our ability to provide for our families and ourselves and by denying us the dignity that work affords. Unemployment payments and food banks, while welcome when the need arises, are for many visible assaults on their self-respect.

Distancing policies also make it more difficult to maintain connections with, and care for, family and friends. They make it hard to mark important communal life events like holiday celebrations, life cycle ceremonies, and the mourning of loved ones. These events can be central to traditions that define family connectedness and the ties of friendship.

Policies to socially distance, especially when legally or normatively enforced, constrain choice. They narrow the range of effective options available to us so that we may not be able to act in accord with our own assessments of risk, benefits, and obligations. Put another way, we are constrained in deciding for ourselves what risks we are willing to assume, and for what reasons.

Relaxing social distancing can ease many of these negative effects, but, importantly, many of the measures implemented elsewhere would not fully avoid them. For instance, in Sydney, only permitted two guests are allowed into the home, and in Hong Kong, public gatherings are limited to four or fewer people. Indeed, some policies may even exacerbate some of these costs. For example, the official opening of businesses and factories may constrain the choices of employees who believe that it is in their health interests or the interests of those they live with to continue to socially isolate. These employees may now risk continued receipt of unemployment insurance payments or face the prospect of losing their jobs altogether.

**Key Takeaways about Well-being**

1. Some policies will be good at promoting some dimensions of well-being but will have unclear or negligible effects on other dimensions.

   For example, requiring the use of face masks while in public will have significant effects on the spread of COVID-19. It is less apparent whether or how it will affect other dimensions of public health.

2. **For a given policy, it will have a variety of effects on different dimensions of well-being—some good and some bad.**

   For example, lifting shelter-in-place orders coupled with widespread testing would surely lead to increased religious gatherings. This would provide many people with the opportunity for fulfillment, and thereby promote well-being in one sense. Yet such policies would also inevitably lead to an increase in COVID-19 cases and the accompanying harms to well-being—including death.

3. **For a given policy, it will have a variety of effects on the same dimension of well-being.**

   For example, reopening businesses coupled with widespread testing could very well both promote and undermine health for the same people. It would promote health to the extent that the beneficial economic impact will prevent illnesses and death caused by unemployment or poverty. It would undermine the health to the extent that returning to the workplace exposes them to increased risk of infection and COVID-19 disease.

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In case it’s useful, we have included a grid for you to insert different policies and assess how the policy affects well-being along different dimensions. For each policy under consideration, indicate in the grid how the policy affects different dimensions of well-being.

**Effects on Well-Being**

<table>
<thead>
<tr>
<th>Policy</th>
<th>Effects of COVID-19 disease, including infections, hospitalizations and deaths</th>
<th>Economic effects</th>
<th>Other public health effects</th>
<th>Effects on human development/children</th>
<th>Other effects on well-being</th>
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<td>Policy A, implemented at time 1</td>
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**Step 3: Liberty**

Four kinds of fundamental liberties are particularly relevant to decisions about continuing, relaxing, or reinstituting social distancing, and the public health measures under consideration:

- **freedom of movement and association**—individuals have a fundamental interest in being free to travel and to gather with others in public and private spaces;

- **freedom of religion**—individuals have a fundamental interest in gathering for religious worship;

- **privacy**—individuals have a fundamental interest in choosing whether others can have access to their personal information; and

- **political participation**—individuals have a fundamental interest in participating in democratic processes, such as voting and census reporting.

From an ethics perspective—indeed of questions of constitutionality and legality—there must be a good reason to restrict these freedoms or violate privacy. This moral presumption in favor of liberty has been a source of contention in public health, more generally. Consider, for example, controversies about helmet laws, restrictions on smoking, and taxes on sugar-sweetened beverages.
Some have raised similar concerns about social distancing policies or even appealed to the value of liberty to justify civil disobedience.20

The basic idea is that just as it is morally valuable to promote health and other core elements of well-being, it is also morally valuable to respect people’s privacy, their freedom of association, their freedom of movement, and their political rights—among other liberties. So, how do these liberties relate to policies under discussion?

a. **Freedom of Movement and Freedom of Association**

Shelter-in-place orders impose severe restrictions on freedom of movement and freedom of association. Other forms of interference associated with social distancing include preventing individuals from associating in public and private spaces and shuttering businesses. In some cases, people who violate shelter-in-place orders are being charged with crimes and issued fines.21 Were it not for the pandemic or some other severe crisis, such policies would not be ethically justified.

b. **Freedom of Religion**

Places of worship are deemed “nonessential” by most state governors who have issued social distancing and shelter-in-place orders. While restricting large gatherings clearly helps to slow the spread of COVID-19, the inability to gather in worship is a serious restriction on religious practice for many religious groups. An assessment of social distancing and reopening policies must account for this significant infringement on liberty. For example, as reopening policies begin to be implemented, places of worship should be given opportunities to design effective strategies for reopening while also limiting the risk of further spread.

c. **Privacy**

Some proposed public health measures to control COVID-19 raise distinct liberty concerns. As noted, some recent proposals call for mandatory testing for all citizens, including one calling for up to 35 million people tested per day.22 While far less disruptive to daily life than shelter-in-place orders, such widespread testing of otherwise healthy people is at least inconvenient, and it may require an intrusive invasion of privacy.

Other proposals recommend using mobile phone apps and user data to conduct instantaneous contact tracing.23 If these measures are designed to give public health authorities access to the data collected, they involve significant expansions of government surveillance and raise questions about

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invasions of personal privacy. An additional concern is whether technology companies that design these apps will control them, who will own and be able to use the data collected, and whether this will amount to a broad and problematic expansion of their influence.

An important factor in evaluating any such plan is whether there are adequate institutional safeguards to protect us from potential violations of privacy and abuses of these greatly expanded surveillance powers. In evaluating the impact of a proposed plan on civil liberties, it is not sufficient to assume that best practices will be followed.

d. Political Participation

The COVID-19 pandemic and social distancing policies have also created serious concerns about procedures for holding free and fair elections, conducting an accurate census, and providing for ongoing public input on administrative and other procedures within government. For example, sixteen states had to postpone scheduled elections because of concerns about the spread of COVID-19.24 It is unclear when and how voters in these states will be able to reconvene to contribute their voice to democratic decision-making. On the other hand, Wisconsin held its election as scheduled, on April 7, despite controversy and serious concerns about COVID-19 spread.25 It is unclear at this point what impact COVID-19 will have on the looming federal election in November. Subnational governments at the local and state level also face challenges, not only in terms of elections, but also other processes designed to allow for community input in governance. But social distancing and reopening plans must be evaluated in light of their impact on elections.

When are limitations on liberty ethically justifiable?

When assessing whether a public health benefit justifies an infringement on liberty, it is often argued that the infringement must be genuinely necessary to achieve the public health benefit, and the public health gains must be proportionate to the infringement.26 In other words, severe restrictions of freedom of association or movement (such as those in mandatory social distancing) or significant invasions of our privacy (such as tracking our movements) are justified only if they yield significant public health gains—gains proportionate to the significant loss of liberty or privacy, and if there is no other less restrictive or voluntary means to secure desired public health outcome.27

Finally, a distinct set of issues arises because these policies may reshape what we expect and tolerate with regard to liberty from government at all levels. The social distancing measures being enacted are such a significant exercise of government authority that they might have long-lasting effects on our norms and expectations of government and thus long-lasting effects on our political system. A similar point applies to alternatives, such as “immunity passport.” Each of these proposals involves a dramatic departure from pre-pandemic norms; it’s natural to wonder how far the government will go to beat COVID-19.

Such worries about changes in norms do not merely concern government. Perhaps most obviously, these concerns also arise for proposals that involve large private corporations that access user data for the purpose of digital contact tracing. Ethical worries about such companies having undue access to our data are not new, but the proposals raise these issues, nonetheless. Or, to return to another example, if employers are permitted or required to only hire those who can demonstrate immunity, then it is natural to worry about the erosion of rights on the parts of workers, or whether various kinds of health-based discrimination will become more acceptable.

Thus, when we ethically assess social distancing and reopening policies, we should keep those potential downstream effects in mind. These potential downstream effects should also motivate looking for institutional safeguards to maintain checks and balances between competing interests and entities in society—both public and private. Whatever plans emerge, we should ensure there are appropriate institutional safeguards to maintain checks and balances between competing interests and entities in society, including things like limits on the authority of any one agency or body, watchdog agencies, public access to data to allow for public oversight and monitoring, trusted regulatory bodies, judicial protections of privacy, and so forth.

### Key Takeaways about Liberty

1. Social distancing measures often limit liberties—especially freedom of movement and freedom of association.

2. Surveillance and testing policies may raise privacy concerns and related concerns about the expanding scope of government power. To the extent that surveillance or testing gets facilitated by powerful private companies, similar privacy concerns arise.

3. Policymakers should assess whether the restriction of liberty is necessary to achieve its goals, and the public health benefits are proportionate to the infringement on liberty. If the policy is necessary and proportionate, policymakers should look for ways to ensure institutional safeguards.
In case it's useful, we have included a grid for you to insert different policies and assess how the policy affects the relevant liberties. If you find that a given policy limits one or more of the relevant liberties, then it is worth noting as much in the grid.

### Effects of Policy on Liberty

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<th></th>
<th>Freedom of movement and association</th>
<th>Freedom of religion</th>
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<th>Political participation</th>
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### Step 4: Justice

The third broad moral value to consider is justice. **Justice**, in the sense we have in mind, *concerns whether the burdens and benefits of a policy are distributed fairly*. Justice, so understood, is often analyzed in terms of the differential impacts of policies on different, ethically relevant groups. The groups of particular moral concern in this pandemic include people who are in low income, people of color (racial and ethnic minorities and native peoples), people in different stages of life, and essential workers. Other groups of moral concern include rural communities, people living in congregate facilities such as incarcerated populations and some agricultural workers, and undocumented persons. We do not discuss all such groups, but we will discuss a few especially relevant categories.

#### a. Income

Social distancing policies are causing high rates of unemployment, furlough, and reduced wages. These burdens are falling disproportionately on lower-income families with less wealth and without a financial cushion. Also, lower-income families are more vulnerable to COVID-19 infection and disease, even under conditions of social distancing, for a variety of reasons: they are more likely to be essential workers, exposed to circulating virus in the workplace while others are sheltering in place; they’re less likely to have jobs that can be performed remotely and so are more likely to become furloughed and lose their income, less likely to have paid sick leave, and have a greater financial need to work, all of which increases exposure to COVID-19. Low-income individuals, especially those in urban areas, are more likely to have more people living together in smaller quarters, magnifying the burdens of social distancing and minimizing the benefits. They may have more exposure in their daily lives, such as on public transportation. These individuals also have

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higher rates of the chronic health conditions associated with higher risk of severe illness from COVID-19.\textsuperscript{29}

Similar issues arise for reopening policies. The benefits of reopening may be distributed unequally across different people, for example, if certain employment opportunities are open only for those who are able to demonstrate COVID immunity or if infection control practices are less stringent in workplaces that employ lower income people. These inequalities are especially unfair if they particularly affect lower-income workers who are unable to work from home.

b. Race and Ethnicity

African American, Latinx, and Native American communities appear to be disproportionately harmed both by the disease and by our aggressive social distancing policies intended to combat it.\textsuperscript{30} Many in these communities are also low income, and thus are subject to all the disadvantaging factors described above. In addition, historical and continuing structural factors that have compromised the life prospects of members of these groups continue to complicate and compromise the impact of this pandemic and our responses to it for people of color. The stark fact remains—in the United States, Latinx individuals, and, especially, African American individuals are disproportionately likely to be hospitalized and die from COVID-19.\textsuperscript{31}

At the same time, there is no guarantee that African American, Latinx, and Native American individuals will benefit fairly from re-opening policies. Preliminary evidence suggests that high poverty communities of color are less likely to have access to testing opportunities that are being expanded in conjunction with reopening policies, presumably for some of the same underlying reasons these communities benefit less from social distancing. It is also unclear whether, as workplaces re-open, those that employ disproportionately low-income people of color will introduce as effective infection control practices as workplaces whose employees are higher income.

c. Stages of Life

The benefits and burdens of social distancing also fall unequally across age groups. Current evidence suggests that severe COVID-19 illness is rare in healthy children, and the risk of severe illness and death for adults stratifies progressively by age, with significant risk of morbidity and mortality for adults over 70.\textsuperscript{32} Thus, the benefits of social distancing fall disproportionately to older adults whose very high risk is being mitigated by society-wide action. These benefits are not falling evenly across all older Americans, however. They appear to be experienced disproportionately by those living independently. Devastating clusters of infection continue in nursing homes and other elder congregate facilities, even under strict social distancing policies. These settings also appear not to be top priorities for testing or personal protective equipment. Elderly individuals in high poverty areas also appear to be benefiting less from social distancing.

\textsuperscript{29} https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html
\textsuperscript{30} https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2009.166082
\textsuperscript{31} https://www.americanprogress.org/issues/race/news/2020/03/19/481962/coronavirus-pandemic-racial-wealth-gap/
\textsuperscript{33} https://www.thelancet.com/action/showPdf?pii=S1473-3099%2820%2930243-7
That said, the burdens of social distancing accrue significantly on the younger people. We have already noted the significant risk and harms to children that school closures impose. Here, too, the burdens are not evenly distributed, with poor children and children of color suffering the most serious and long-lasting setbacks.

People of working age also suffer more from the closure of nonessential businesses, and the attendant loss of income and employment, than people who are already retired. One analysis concludes that the poverty rate is likely to increase significantly, and that “working-age adults and children will face particularly large increases in poverty.” People who depend on employer-sponsored health insurance are also more at risk of losing health care than those over 65 who are on Medicare. Of course, people of retirement age are also disproportionately impacted by short-term effects on the returns on retirement funds, which can significantly reduce their income, whereas younger workers will be able to ride out the impact of an economic recession on their investments.

What all of this means is that, although everyone shares in some central benefits from “flattening the curve” (they and loved ones will be protected from morbidity and mortality, or, if they do become ill, they are less likely to find an overwhelmed healthcare system), the benefits and burdens are distributed unevenly by age. Conversely, the benefits and burdens of relaxing social distancing will also be distributed unevenly by age. Older Americans are likely to suffer disproportionately from the increases in COVID-19 illness and deaths expected as distancing measures are relaxed. They are also likely to be among the last to see social restrictions lifted, and, as their family members return to work, they may experience increased isolation and loneliness, with all of its concomitant emotional and physical harms.

Key Takeaways about Justice

1. Policies will have very different effects for different groups.

   For instance, reopening businesses will inevitably lead to a greater transmission of COVID-19 than keeping them shuttered. This, in turn, will lead to higher mortality among older people than younger people.

2. Already disadvantaged groups will be further disadvantaged by policies, in many cases.

   For instance, many low-income children rely on school for vital services. By keeping schools closed, children lose access losing these services.

https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5e9786f17c4b4c20ca02d16b/158698878821/Forecasting-Poverty-Estimates-COVID19-CPSP-2020.pdf
In case it’s useful, we have included a grid for you to include ethical concerns that arise for different policies in light of how they affect ethically relevant groups. If you find that a given policy is disproportionately burdensome to some groups but not others, this raises concerns of justice.

**Distribution of Benefits and Burdens by Group**

<table>
<thead>
<tr>
<th></th>
<th>Income</th>
<th>Race and Ethnicity</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>implemented at</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>time 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>implemented at</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>time 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set of Policies C</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Step 5: Mitigating or providing remedies for identified negative impacts on well-being, liberty, and justice**

Assess whether or to what extent it is feasible to blunt any of the negative impacts of policies still under consideration. To the extent this is possible, policies that are ethically problematic may become more ethically acceptable.

Any policy or set of policies adopted in response to COVID-19 will have significant negative effects. These negative effects are likely to include increased health risks for some, loss of income for many, and lost opportunities of all sorts. Moreover, these negative impacts are often distributed unequally in ways that are unfair or that exacerbate existing injustice. Even the best possible policy choices will result in significant negative effects of this sort.

At this stage, it is especially important to prioritize those who suffer acute harms, those who are members of disadvantaged groups, and ways in which the policy exacerbates background or existing injustices. Any additional resources, when they become available, must be directed to those who are most negatively impacted by the policy decision.

When considering how to mitigate or remedy the negative effects of social distancing policies and reopening policies, some key areas to consider include:

- Mitigate the negative effects of school closings on all children by providing the best possible distance learning interventions and supports and developing innovative ways to address significant losses in skills and readiness to learn when schools reopen. Pay particular attention to mitigating, in real-time, the disproportionate risks and harms of school closures on low-income children and their families. Consider prioritizing the reopening of schools serving disadvantaged communities and providing these students with additional resources.34

• Provide financial support to the newly unemployed or under-employed in the short-term, and in the longer-term, consider implementing job training programs targeted at communities and industries that have been most negatively impacted.

• Protect essential workers from workplace risks of exposure to COVID-19 and take steps to ensure their other needs are met so they can continue to work (e.g., healthcare, childcare, transportation, and nutrition needs). As we begin to end social distancing policies, some essential workers may become sick and get displaced by people who have recovered or are now immune. Consider providing such workers with additional sick-leave benefits, and a right to return to their prior jobs once they recover.

• Address urgent public health and safety problems, including mental health, addiction, and domestic violence. Policies must be developed and rolled out in real-time to address these and other emerging public health side-effects of social distancing policies.

• Develop measures, such as a “right to be forgotten,” designed to protect the privacy of individuals whose names or personal data are collected as part of surveillance or contact-tracing programs.

In light of the different mitigation measures you’ve discussed, revise the well-being, liberty, and justice grids provided. For instance, if you determine that it’s feasible to add a measure like a “right to be forgotten” to mitigate concerns about privacy that arise with surveillance or contact-tracing, then note as much in that grid. If feasible, this addition aimed at mitigation will make the policy less worrisome from the perspective of privacy interests. Note as much in the liberty grid.

**Step 6: Which Policy Should Be Implemented?**

The next step is reflecting on the results from Steps 1-4 and determining which set of policies should be implemented. **Taking into account the full set of potential benefits and burdens, their distribution across groups, and liberty concerns, along with feasible remedies, which set of policies is most justifiable all things considered?**

Some ethics frameworks structure this “all things considered” question as a matter of balancing the three kinds of considerations we’ve been considering: well-being, liberty, and justice. A policy is ethically justifiable if it strikes a reasonable balance between well-being (how the policy promotes or undermines the well-being of individuals and groups), respect for liberty (how the policy limits various freedoms or violates privacy), and justice (whether the benefits of the policy are fairly distributed, and whether the policy exacerbates or remedies background injustice). If a policy burdens some groups more than others in an unfair way, this unfairness must be justifiable in light of the overall benefits achieved by the policy. Similarly, if a policy infringes on individuals’ liberty, this must also be justifiable in light of the overall benefits achieved by the policy.
When assessing a public health policy, the key question is often this: are the public health benefits of the policy (usually the only aspect of well-being under consideration) significant enough to justify any infringements on individual liberties and any respects in which the policy is unfair?

But in the context of this pandemic, the “all things considered” judgment is far more complicated than is typically the case in public health. At stake are multiple dimensions of well-being, not just health, engaging different liberty interests, affecting different groups of people differentially, with significant implications for how we function as a society, both now and in the future. The key issue is which sets of policies will protect and promote our collective well-being, understood broadly to be inclusive of all these complex interests and rights. For example: will maintaining social distancing policies for another six weeks increase the collective well-being in our state, given the significant harms associated with these policies and the significant uncertainty about the magnitude of the public health benefits? At what point does maintaining social distancing policies undermine our collective well-being, even if it reduces COVID-19 mortality? Some worry that maintaining social distancing policies could be so harmful as to undermine the flourishing of society—for example, by causing economic carnage that cannot be reversed or adequately mitigated by relief bills and future policy efforts. In this way, our ethical reactions to social distancing policies and reopening policies may draw on conceptions of what it means for American society to flourish and our conceptions of our common good.

In light of this, how should individuals—policymakers, especially—go about reaching an all-things-considered judgment about whether social distancing policies are justifiable? Using the information gained in Steps 1-5, we suggest that decision-makers consider the following set of questions about each plan or set of policies:

- Is it plausible that the policies under consideration would promote overall collective well-being as you understand it?
- Do the policies under consideration strike a reasonable balance between saving the most lives during the current pandemic and protecting the flourishing of society and promoting the common-good longer-term?
- Do the policies under consideration strike a reasonable balance between preventing deaths from COVID-19 and protecting economic opportunity?
- Is the set of policies unfair to certain groups, and is this reason enough to reject it? Or is even significant unfairness justifiable, given the potential magnitude of the benefits?
- If the policies under consideration restrict individual liberty or privacy, is this justifiable given the potential magnitude of the benefit? Social distancing measures severely restrict liberty; is this justifiable given the potential magnitude of the public health benefit achieved (i.e., the high number of lives that might be saved)? Using cell phone data to track people raises privacy concerns; is this justifiable because it will allow us to ease up on social distancing measures sooner and thereby have significant economic and other benefits?
- What might be the long-lasting effects of the policies on our norms and expectations of government, and the long-lasting effects on our political system? Are these effects acceptable?

At the end of this exercise, we suggest attempting to structure a sentence or paragraph of the following form, filling in the details about the plan you’re recommending: “Despite drawbacks a, b, and c, implementing Policy X at time T has the best chance of striking a reasonable balance of ethical considerations x, y, and z, because of its positive features 1, 2, and 3.” This kind of clear
articulation of the ethical justification for a policy can be useful when communicating with the public—and the public is owed this kind of justification.