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## 27. What Do I Need to Know About Rationing in the ICU?

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Bedside rationing in the ICU is a controversial topic, but it is unrealistic to deny it. To avoid discussion of this topic may allow for the more insidious aspects of this practice to be, at best, unexamined and, at worst, unjustly applied. This chapter discusses rationing, with an emphasis on ethical principles and practice. *Rationing* refers to the distribution of resources, and the application of justice to this practice implies that resources are distributed fairly. Most people would say that it is only fair to invoke the principle of justice (as opposed to the principles of autonomy, nonmaleficence, and beneficence) before you approach the patient's bedside. Ideally, justice decisions should be mandated (and advertised) as policy by institutions and society prior to the individual clinician-patient interaction. Although this approach to rationing is both admirable and fair, it is also naive to assume that perfection can be achieved.

Every ICU physician makes daily triage decisions, and it is a reality that all patients do not get the same level of care at all times. This differential in care does not have to be as egregious as denying someone a therapy, but it may be as subtle as deciding which patient is seen first and which patient is seen last on morning rounds.

### Philosophical Principles of Rationing

Two philosophical constructs are uniquely helpful in laying down the arguments for and against bedside rationing: deontology and consequentialism. In deontology, the “means justify the ends,” and in consequentialism, the “ends justify the means.” If you are more concerned with the process, then you likely lean toward deontology; if you are more concerned with outcomes,

then you likely lean toward consequentialism. Obviously, circumstances may act as a force and push you in one direction rather than another.

The philosopher John Rawls leaned more toward deontology and wrote about the concept of creating a “veil of ignorance” when trying to create a just society. Imagine that you know everything about society except your place within it. This means that you would make a decision as though you did not know which side of the issue you were on, and so you would be able to make an unbiased and fair decision. John Rawls helped us to realize that it is impossible to make a completely just decision if we know our role in society. This is a concept that should come as no surprise to clinicians who are used to evaluating studies for bias. Obviously, if you know your position in society, it will be impossible to know with certainty whether your conclusions on a particular rule would be the same as if you did not know your position in that society. In describing this concept, Rawls was referring to a goal that is not obtainable but should nevertheless be sought.

Most of the time, intensivists are able to adequately care for all patients under their charge, and experienced intensivists can buffer rationing so that it is nearly unnoticed. In fact, arguably, much of this buffering comes in the form of good communications with the patient and the patient’s family so they do not raise the specter of rationing and unfair and unjust treatment.

## Applying Principles of Rationing

It is probably best to understand rationing by looking at two extreme examples that shed light on this topic. Focusing on routine daily practice actually puts more heat than light on the topic. These extreme examples are decision making under the circumstances of ICU research and decision making during a pandemic.

The first example is the issue of research consent in the ICU. Most US states do not have a guiding regulation that clearly explains how research consent can and cannot be obtained from healthcare proxies in the ICU. The current status of vulnerable populations includes both pediatric subjects and subjects with permanent incapacity, but it does not speak clearly to subjects who are temporarily incapacitated. This makes research

consent in the ICU problematic. In the ICU, it is probably best to take a deontological approach to research consent, that is, the means justify the ends. When dealing with human subjects in research, especially when they cannot give their own consent, it is of paramount importance that we care more about the consent process than about our success in enrolling subjects in the research endeavor. It is better not to conduct the research than to put subjects at undue risk when there is no proven benefit.

The deontological decision-making construct invoked during ICU research is opposed to the philosophical construct that must be invoked when dealing with a pandemic. For instance, if there were an outbreak of avian influenza, clearly there would not be enough ventilators or surge capacity to care for all the patients who would experience acute respiratory distress syndrome. In these situations, we would need to move from a deontological approach to a consequentialist approach, wherein the ends justify the means. In these situations, it would be reasonable to offer ventilators to those patients who are most likely to survive. The reality is that the ethics of the day have to be movable based on the current situation. Lawyers often talk about necessity and duress as important circumstances to consider when evaluating a potential crime. The more necessity and duress, the more the balance is tipped toward consequentialism. The less necessity and duress, the more we can make certain the process is fair and focus less on the outcomes.

Once it is accepted that rationing must occur in the face of a pandemic, the next question is how this rationing is to occur. Many people have worked on this question, and most of them would confess that we have approximations of a good answer but no fundamental best way of facing this difficult problem. It would not be, and probably never should be, easy to make rationing decisions that would require us to choose one life over another.

## SUGGESTED READING

Beauchamp TJ, Childress JF. *Principles of Biomedical Ethics*. 7th ed. New York, NY: Oxford University Press; 2012. *The chapter on justice is thorough and complete.*

Katz L. *Bad Acts and Guilty Minds: Conundrums of the Criminal Law*. Chicago, IL: University of Chicago Press; 1987. *A wonderful and thought-provoking look at the meaning behind criminal law that is a great background for anyone interested in justice, at the bedside and beyond.*

Lo B, ed. *Resolving Ethical Dilemmas: A Guide for Clinicians*. 5th ed. Philadelphia, PA: Lippincott Williams & Wilkins; 2013. *A thoughtful and provoking approach to many ethical dilemmas, with a good review of rationing.*

Rawls J. *A Theory of Justice*. Rev ed. Cambridge, MA: The Belknap Press of Harvard University Press; 1999. *The classic book written by the leader in this field.*