

Pandemic Bioethics

A Case Study

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Commentaries are brief opinion pieces that are intended to introduce an idea or identify connections between works which beg for deeper investigation and analysis. Explicitly not an account of a research project or a comprehensive investigative endeavor, a Commentary in Confluence is a snapshot, a single moment from the initial encounter with an idea or connection that suggests possibilities for interrogation toward new understanding. The Commentary is an appeal to think about an idea, to consider a question, and to take up in earnest the possible conversation toward which the Commentary points.

“From a moral perspective...I did what I believe was expected.”

—Dr. Hasan Gokal

At the beginning of the COVID-19 vaccine rollout, Houston experienced such high demand that its vaccination call center’s phone lines crashed.¹ Healthcare workers were on the front lines administering vaccines to eligible patients, and it was nearly impossible to obtain a first-dose appointment. Supply was low and state health officials admonished local healthcare workers to avoid vaccine wastage, encouraging them

¹ Harvard Law Review. “Recent Case: State v. Gokal.” Harvard Law Review RSS, February 14, 2021. <https://blog.harvardlawreview.org/recent-case-state-v-gokal/>.

to “Just put it in people’s arms. We don’t want any doses to go to waste. Period.”² Dr. Hasan Gokal took this advice to heart, administering ten soon-to-expire doses of the Moderna vaccine outside of clinic hours to eligible patients—including his wife. The events that followed are “a study in the learn-as-you-go bioethics of the country’s stumbling vaccine rollout.”³ The present paper will consider Dr. Gokal’s case through the lens of deontological, teleological, and situational ethics criteria including Kant’s Categorical Imperative, legalistic perspectives, utilitarianism, transcultural ethics, B.J. Diggs’ Situational Perspective, and Joseph Fletcher’s Christian Situation Ethics.

Dr. Hasan Gokal, the medical director for Harris County’s COVID-19 response, made international headlines in December 2020 when he administered vaccines to eligible patients outside of a vaccination site. At the end of Harris County’s first public vaccination event, Dr. Gokal was left with ten unused COVID-19 vaccine doses after opening a new vial for a patient who arrived late in the evening.⁴ When a vial is punctured, the vaccine must be administered within six hours to be effective.⁵ Rather than throw the vial away or return it to a likely-empty medical office, Dr. Gokal decided to find eligible patients to inoculate. He called a Harris County public health official to inform them of his plans, and after receiving approval he began using his personal contacts to identify prospective patients.⁶ Dr. Gokal spent the night making house calls and directing relative strangers to his home so that he could administer doses to patients with qualifying underlying health conditions.

Twenty minutes before the vaccine was set to expire, the final patient cancelled and Dr. Gokal made the decision to inoculate his wife with the tenth dose. He told her, “I didn’t intend to give this to you, but in a half-hour I’m going to have to dump this down the

² Barry, Dan. “The Vaccine Had to Be Used. He Used It. He Was Fired.” *The New York Times*. *The New York Times*, February 10, 2021. <https://www.nytimes.com/2021/02/10/us/houston-doctor-fired-covid-vaccine.html>.

³ *Ibid.*

⁴ *Ibid.*

⁵ Wong, Wilson. “Texas Doctor Accused of Stealing Vial of Covid-19 Vaccine.” *NBCNews.com*. *NBCUniversal News Group*, January 22, 2021. <https://www.nbcnews.com/news/us-news/texas-doctor-accused-stealing-vial-covid-19-vaccines-n1255281>.

⁶ Barry.

toilet.”⁷ Although Mrs. Gokal was eligible for the vaccination because of her pulmonary sarcoidosis, she hesitated and asked, “Is this the right thing to do?” Dr. Gokal responded, echoing the guidance of state health officials: “It makes perfect sense. We don’t want any doses wasted, period.”⁸ The next morning, Dr. Gokal went to his office and submitted the required paperwork for all the administered Moderna doses. He discussed what had occurred with his colleagues, one of whom reported his actions to human resources. On questioning, Dr. Gokal confirmed to human resources that he had vaccinated his wife and several others—and he was promptly fired.⁹ Following his firing, Dr. Gokal was criminally charged with theft by a public servant by the Harris County District Attorney’s Office. “It was my world coming down,” Dr. Gokal said in a telephone interview. “To have everything collapse on you. God, it was the lowest moment in my life.”¹⁰

In defense of Dr. Gokal’s firing and the ensuing criminal charges, authorities assert that he violated professional procedures and pocketed the doses for personal use. Officials argue that Dr. Gokal “disregarded county protocols in place to ensure vaccine is not wasted but administered to vulnerable populations and front-line workers on a waiting list.”¹¹ The charging documents in Gokal’s case cite the director of Harris County Public Health, who reported that any vial that had been punctured and still contained viable doses was supposed to be returned to their main office.¹² The affidavit also describes County procedures as forbidding “personal use” of the vaccine.¹³

⁷ Ibid.

⁸ The View, ABC. “Dr. Hasan Gokal on Being Fired Over Vaccines.” YouTube. YouTube, February 24, 2021. <https://www.youtube.com/watch?v=E3UAw0RJnxU>.

⁹ Jones, Kay, Dakin Andone, and Melissa Alonso. “Texas Doctor Charged with Stealing a Vial of Covid-19 Vaccine Was Trying to Use Leftover Doses, Attorney Says.” CNN. Cable News Network, January 22, 2021. <https://www.cnn.com/2021/01/21/us/texas-covid-vaccine-theft-charges/index.html>.

¹⁰ Barry.

¹¹ Jones.

¹² Ibid.

¹³ Keller, Aaron, and Elura Nanos. “Texas Doctor, Wrongly Charged for Giving Extra Vaccine to Sick and Elderly, May Have a Case for Malicious Prosecution.” Law & Crime. Law & Crime, February 11, 2021. <https://lawandcrime.com/legal-analysis/texas-doctor-wrongly-charged-for-giving-extra-vaccine-to-sick-and-elderly-may-have-a-case-for-malicious-prosecution/>.

Harris County District Attorney Kim Ogg contends that “[Gokal] abused his position to place his friends and family in line in front of people who had gone through the lawful process to be there.”¹⁴ Ogg’s office charged Gokal with theft by a public servant under Texas Penal Code 31.03, which applies when a person “unlawfully appropriates property with intent to deprive the owner of property” and is classified as a Class A Misdemeanor “carrying a penalty of a year of jail and a \$4,000 fine.”¹⁵

However, there are many who regard Dr. Gokal’s actions as an ethical necessity rather than a criminal offense. Dr. Gokal’s attorney, Paul Doyle, emphasizes that there was scant internal guidance about what to do with leftover doses and contends that “[Gokal] did everything he could, and used the best judgment he could, to make sure these vaccines were not wasted.”¹⁶ He also argues that “The allegation that he put his family in the front of the line and his friends in front of the line is absolutely false,” underlining the fact that nine of the ten patients inoculated were relative strangers to Dr. Gokal and that he had not originally intended to inoculate his wife.¹⁷ The Texas Medical Association and the Harris County Medical Society issued statements of support for Gokal, saying that “It is difficult to understand any justification for charging any well-intentioned physician in this situation with a criminal offense.”¹⁸ Pop culture icons have weighed in on the scandal as well. Whoopi Goldberg personally thanked Dr. Gokal, asserting that “It is more important to save the lives of people than throw stuff away when it can help, and you do no harm.”¹⁹ Most importantly, criminal court judge Franklin Bynum dismissed the initial *State v. Gokal* case for lack of probable cause, stating that “The Court emphatically rejects this attempted imposition of the criminal law on the professional decisions of a physician.”²⁰

¹⁴ Jones.

¹⁵ Harvard Law Review.

¹⁶ Steele, Tom. “Judge Tosses Theft Charge against Texas Doctor Accused of Stealing Coronavirus Vaccine.” Dallas News, January 25, 2021. <https://www.dallasnews.com/news/crime/2021/01/25/judge-tosses-theft-charge-against-texas-doctor-who-was-accused-of-stealing-coronavirus-vaccine/>.

¹⁷ Jones.

¹⁸ Barry.

¹⁹ The View.

²⁰ Harvard Law Review.

To rigorously evaluate complex situations like Dr. Gokal's COVID-19 vaccination dilemma, several meaningful ethical guidelines are required. Philosopher Stephen Toulmin observes that "moral reasoning is so complex, and has to cover such a variety of situations, that no one logical test...can be expected to meet every case."²¹ In this case, the most applicable ethics criteria are Kant's Categorical Imperative, legalistic perspectives, utilitarianism, transcultural ethics, and situational perspectives including Digg's Situational Perspective and Fletcher's Christian Situation Ethics. Some of these ethics frameworks support the position of the District Attorney's Office; others validate Dr. Gokal's actions. In the context of this case, significant ideological tension exists between deontological frameworks (including Kant's Categorical Imperative and legalistic perspectives) and teleological approaches (including utilitarianism and transcultural ethics). Ultimately, situational perspectives offer the most nuanced insight into Dr. Gokal's case because of the exceptional context of a global pandemic.

According to Kant's Categorical Imperative, moral imperatives are categorical in nature—"without conditions, exceptions, or extenuating circumstances."²² The first form of this Categorical Imperative is to "act only on that maxim which you can at the same time will to become a universal law."²³ Applied to Dr. Gokal's case, one might ask whether it is universally ethical for every doctor to remove expiring medications from clinic sites and give them to their family members and strangers. This kind of widespread personal use would circumvent the medical system and encourage corruption and theft. Through this lens, Dr. Gokal's actions are unethical because they cannot be effectively universalized. According to Kant, "moral imperatives are right in themselves, not because of their consequences."²⁴ Kant's Categorical Imperative therefore supports the position of the District Attorney's Office that Dr. Gokal's actions were unethical. However, it is worth noting that this deontological perspective may be limited by its failure to account for extraordinary circumstances like the current public health crisis.

In the context of the ongoing legal battle between the State and Dr. Gokal, a legalistic perspective may be useful in determining

²¹ Johannesen, Richard L. *Ethics in Human Communication* (Long Grove, IL: Waveland Press, 2008), 15.

²² *Ibid.*, 39.

²³ *Ibid.*

²⁴ *Ibid.*

whether Dr. Gokal's actions were ethical. From a legalistic approach, "legality and ethicality are made synonymous."²⁵ If a behavior is illegal, it is also considered unethical—and if a behavior is not explicitly illegal, then it is deemed ethical. The District Attorney asserts that Dr. Gokal's "personal use" of the extra Moderna doses offsite and outside of clinic hours was unlawful. Ogg stated in a recent press release that "What he did was illegal, and he'll be held accountable under the law."²⁶ Although Judge Bynum dismissed the initial case and denied that Dr. Gokal's actions amounted to theft from the county, Ogg plans to bring the case in front of a grand jury.²⁷ If the grand jury finds Dr. Gokal guilty, then his actions were illegal and therefore—from a legalistic perspective—unethical. This deontological perspective is criticized for being overly simplistic and failing to account for the fact that "morality is broader than legality."²⁸

Unlike the deontological perspectives outlined above, utilitarianism emphasizes that "the morality or immorality of an action is a function—not of anything inherent in the action itself—but of the good and bad outcomes (or consequences) of the action."²⁹ Utilitarianism asserts that "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."³⁰ Thus, utilitarianism is a teleological approach that depends on the "ability to predict the outcomes of actions and to weigh anticipated costs and benefits."³¹ When the vial was punctured and the countdown to expiration began, Dr. Gokal was forced to assess potential outcomes of the situation. He could: (1) discard the vial, rendering it unusable and bringing no one happiness; (2) return the vial to a medical office, where it would most likely be unused and bring no one happiness; or (3) spend his night identifying and inoculating eligible patients, bringing ten people and their families the happiness associated with having protection from a deadly virus. Dr. Gokal chose the action that was most likely to maximize the happiness of others by providing eligible patients with potentially life-saving doses of the Moderna vaccine. He also maximized the happiness of the community as a whole, because every vaccination is a step towards

²⁵ *Ibid.*, 92.

²⁶ Jones.

²⁷ Steele.

²⁸ Johannesen, 92.

²⁹ *Ibid.*, 87.

³⁰ *Ibid.*

³¹ *Ibid.*, 88.

slowing the spread of COVID-19. By this egalitarian ethical standard, “everyone’s interests count equally, and no individual ought to be treated as having more moral significance than any other”—including Dr. Gokal’s wife. Dr. Gokal’s words to his hesitant wife that “there’s no one more eligible right now”³² reflect this framework, implying that he was treating her the same way he would treat any other patient who was eligible for the vaccine.

International coverage of Dr. Gokal’s trial has generally leaned towards supporting the physician’s actions, and this trend may be attributable to universal transcultural ethics. Some academics “advocate development of an overarching, transcendent, transcultural ethic to guide communication between people of different national cultures or of different cocultures within a nation.”³³ Closely aligning with the principles of utilitarianism but offering additional nuance, the Dalai Lama’s transcultural ethics virtues are based in “a basic assumption about human nature—that all humans desire to be happy and avoid suffering.”³⁴ This framework “rejects the Kantian idea that some behaviors are right and wrong in themselves” and evaluates an act’s “promotion of happiness or suffering, the context of the act, the motivation and intent of the act, and the person’s degree of freedom in choosing the act.”³⁵ Dr. Gokal’s act promoted happiness rather than suffering because he was able to immediately provide needed vaccines to eligible patients. The context of the act was a global pandemic, in which vaccination supply was scarce and waste was actively discouraged. The motivation of the act was—according to Dr. Gokal—a selfless desire to help community members and a professional desire to prevent vaccine wastage. Dr. Gokal had full freedom in choosing the act—it would have been far easier for him to throw the vial away or return it to the medical office. Within the Dalai Lama’s transcultural framework, Dr. Gokal’s actions would be considered ethical on all counts.

Dr. Gokal’s case merits the application of situational perspectives—which focus on “the elements of the specific communication situation at hand”³⁶—because it took place during a national health crisis. It is likely that consideration of the situational context and the accused’s role is part of what encouraged Judge

³² The View.

³³ Johannesen, 222.

³⁴ *Ibid*, 223.

³⁵ *Ibid*.

³⁶ *Ibid*, 71.

Bynum to toss the charges against Dr. Gokal. Bynum objected to the fact that “In the number of words usually taken to describe an allegation of retail shoplifting, the State attempts, for the first time, to criminalize a doctor’s documented administration of vaccine doses during a public health emergency.”³⁷ Bynum’s defense of Dr. Gokal’s actions is highly contextualized and predicated on the fact that the accused was a physician making decisions at the beginning of a vaccine rollout during a global pandemic. As a result, the court questioned the charge of theft on a fundamental level, questioning “whether the vaccination site director ‘had a greater right to possession of the vaccine than the defendant.’”³⁸

B.J. Digg’s Situational Perspective, which highlights the “contextual character of the ethical standards”³⁹ in relation to persuasion, is one lens through which to view the communication between Dr. Gokal and his patients on the night in question. In this context, Dr. Gokal was the persuader and his role was that of a physician and medical director for Harris County’s COVID-19 response team. Dr. Gokal persuaded ten patients to agree to be vaccinated offsite and outside of clinic hours because of his professional role. Diggs’ guidelines encourage assessment of (1) right to communicate, (2) obligation to communicate, (3) morally right communicative means, (4) urging “the wise and right course,” and (5) demonstrating “good reasons for adopting the view advocated.”⁴⁰ In this case, Dr. Gokal in his role as a physician and medical director had (1) the right to communicate because he is licensed to practice medicine, (2) the obligation to communicate because he has been charged with combating the pandemic, (3) communicated morally by being honest with everyone he communicated with that night about what he was doing and why, only vaccinating eligible parties, and not coercing anyone into getting immunized, (4) urged the right course by encouraging people who needed the vaccine to get it, thus slowing the spread of the virus and protecting the community, and (5) demonstrated sound reasoning for his actions: namely, that his superiors instructed him not to waste any doses. This last point is echoed in Dr. Gokal’s assertion that “this wasn’t just my own idea of what the right thing was, this was the guidance from Texas Department of State Health Services... ‘don’t waste any vaccines, give

³⁷ Barry.

³⁸ Harvard Law Review.

³⁹ Johannesen, 73.

⁴⁰ Ibid.

it to any eligible people you can.”⁴¹ By Diggs’ standards, Dr. Gokal’s persuasion of these patients was ethical because of his role and the specific situational context of the events.

A second situational perspective with which to evaluate this case is Joseph Fletcher’s Christian Situation Ethics, the view “that ethical judgments of human behavior, including communication, should be made in light of specific situational factors rather than according to prescriptive or absolute standards.”⁴² Those situational factors include (1) the end goal, (2) the methods used to achieve the end, (3) the motive behind the act, and (4) “the foreseeable immediate and remote consequences of the end and means.”⁴³ In Dr. Gokal’s case, (1) the end goal was to avoid vaccine wastage, (2) the method used was reaching out to personal contacts to identify eligible patients, (3) the motive was to slow the spread of the COVID-19 virus, and (4) the foreseeable consequences were that eligible patients would be vaccinated because of the actions taken. Another premise of Fletcher’s Christian Situation Ethics is that “there is one absolute ethical criterion to guide situational evaluations—namely, love for fellow humans in the form of genuine affection for them and concern for their welfare.”⁴⁴ In all his interviews, Dr. Gokal has expressed concern for his individual patients’ welfare as well as the welfare of society. Even after the extreme backlash he has faced, he insists that “throwing away the doses versus giving them away to the people who deserved them, I think I wouldn’t be a good physician if I said I regretted doing that.”⁴⁵

In conclusion, situational perspectives like B.J. Diggs’ and Joseph Fletcher’s frameworks offer the most appropriate, nuanced analysis of the ethicality of Dr. Gokal’s case owing to their consideration of roles and context. Deontological approaches like Kant’s Categorical Imperative and legalistic perspectives support the Defense Attorney’s case against him, but they are limited by their inability to incorporate the parameters of our current national public health crisis. Teleological frameworks like utilitarianism and transcultural ethics support Dr. Gokal’s actions but do not offer the same holistic analysis as situational perspectives.

⁴¹ The View.

⁴² Johannesen, 73.

⁴³ *Ibid*, 74.

⁴⁴ *Ibid*, 73.

⁴⁵ Barry.

From a public health standpoint, it is worth noting that Dr. Gokal's widely publicized firing and prosecution could have significant negative effects. Discouraged by this precedent, other healthcare workers may be encouraged to throw open vials away rather than seek out eligible patients—opting for vaccine wastage “rather than risk losing their job or being put on trial.”⁴⁶ There have been reports of such situations across the country. In Portland, Oregon, “dozens of doses were discarded when officials couldn't find enough health care workers to be vaccinated”; in New York, “threats of punishment for violating prioritization rules led to unused vaccines being tossed.”⁴⁷ The Texas Medical Association has documented that “The unique patient–physician relationship and the ability to use uninhibited medical judgment is foundational to effective health care and the ability to meet patients' needs.”⁴⁸ Regardless of whether his actions are ultimately condemned or sanctioned, Dr. Gokal's high-profile case could be perceived as having a chilling effect on his fellow physicians, which may inhibit their medical judgment and ability to effectively combat the COVID-19 pandemic.

⁴⁶ Surowiecki, James. “Let's Stop Punishing Doctors for Vaccinating People.” Medium. GEN, February 18, 2021. <https://gen.medium.com/punished-for-vaccinating-people-63a14d29c714>.

⁴⁷ *Ibid.*

⁴⁸ Texas Medical Association. “The Corporate Practice of Medicine.” Texas Medical Association, 2016. <https://www.texmed.org/CPMwhitepaper/>.