

# THREATS to the Common Good

## BIOCHEMICAL WEAPONS AND HUMAN SUBJECTS RESEARCH

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The threat of biological and chemical terrorism highlights a growing tension in research ethics between respecting the interests of individuals and safeguarding and protecting the common good. But what it actually means to protect the common good is rarely scrutinized. There are two conceptions of the common good that provide very different accounts of the limits of permissible medical research. Decisions about the limits of acceptable medical research in defense of the common good should be carried out only within the latter framework.

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Chemical and biological weapons are rightly regarded with a special sense of horror. Their effects can be both devastating and indiscriminate, taking the harshest toll on the most vulnerable classes of noncombatants. A biological attack may not even be discovered until long after a disease has spread through a population. Moreover, chemical and biological weapons are especially attractive alternatives for groups that lack the ability to construct nuclear weapons. The 1995 release of sarin gas into the Tokyo subway by the Aum Shinri Kyo group suggested that effective delivery devices may be harder to procure than the chemical agents themselves, but the 2001 anthrax attack in the United States, which used the postal service as a delivery device, showed there

could also be surprisingly low-tech solutions to delivery and dispersal. All this makes chemical and biological weapons uniquely potent tools for insurgency and destabilization.<sup>1</sup>

Responding to the threat of chemical and biological weapons raises complex but important ethical questions. In a very real sense, the bulwark of last defense against such agents must be mounted, not atop a wall or in a distant trench, but within the very bodies of military and civilian personnel. Questions about the limits of what can be justified in the name of defense were raised during the first Gulf War.<sup>2</sup> The controversy surrounded a waiver that the Department of Defense sought from the Food and Drug Administration that would allow it to administer pyridostigmine and botulinum toxoid vaccine to U.S. military personnel without their consent. The consent waiver was granted, but the vaccine was made available only on a voluntary basis. As the possibility materializes that chemical and biological

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weapons could be used as instruments of terror in a domestic context, similar questions are being raised for civilian populations as well.<sup>3</sup>

Smallpox, for example, was eradicated from the world in 1980, and there has not been a case within the United States since 1949. The United States ended routine vaccinations against it in 1972. Since there is no accepted treatment for the disease once it has been acquired, the possibility that it might return to the world in a more virulent, weaponized form has prompted a new though limited vaccination program, with its own risks.<sup>4</sup> Yet as public health countermeasures are implemented, the logic of escalation naturally leads those seeking weaponized forms of the smallpox virus, or other agents, to enhance them to known countermeasures.<sup>5</sup> This raises the prospect that a protracted war on terror will require ongoing research to develop new countermeasures, or to assess the effectiveness of existing measures, against new variants.<sup>6</sup>

All this raises basic questions about how aggressive such programs may be, given that there are no disease populations in which treatments and vaccines that target chemical and biological weapons can be readily tested. These questions take on special urgency in light of the insistence of the current U. S. administration that we are engaged in what will be a long and far-reaching war against terrorism. To paraphrase Cicero, law is often muted by the exigencies of war. Indeed, some have openly speculated about the fate of such traditional bioethical principles as informed consent in a social climate that is increasingly preoccupied with “homeland defense” and social solidarity.<sup>7</sup> Perhaps a climate that privileges public well-being and the professionals and institutions that protect it will be more tolerant of exceptions to such principles.

These worries represent building tensions between the imperative to safeguard and protect the common good and the justification for accept-

ed safeguards for individual research participants. In times of peace, lingering tensions at this fault line do not generally pose a special challenge. However, in times of crisis, when group cohesion, patriotism, and themes of civic responsibility take on renewed meaning, appeals to the common good provide a natural way of expressing and justifying plans for collective action. In the face of what is perceived as a significant threat to the common good, this fault line is in danger of being destabilized.

Appeals to the common good are often thought to provide especially important reasons for action. At the same time, there is a tendency to view them with skepticism, as mere rhetorical flourish. In part, no doubt, this dual attitude is a result of the somewhat checkered way such arguments have been used in the past. We need now to think more carefully about the very notion of the common good.

I argue, first, that the *structure* of appeals to the common good, though it rarely receives critical scrutiny, sets important parameters on what reasons are relevant to moral decision-making. Second, although appeals to the common good are familiar, it is rarely clear just what “the common good” actually refers to. I argue that there are two conceptions of the common good that may overlap substantially in times of relative peace and security, but which provide very different accounts of the limits of permissible medical research in times of crisis. I call these the “corporate conception” and the “generic interests view.” Because they are rarely distinguished, it is easy to equivocate between them. This confusion also allows public debate to uncritically link such important concepts as patriotism, civic responsibility, and respect for community to a view of the common good that has serious flaws. I defend the generic interests view and argue that decisions about the limits of acceptable medical research in defense of the common good should be carried out within it.

## The Structure of Appeals to the Common Good

Appeals to the common good have several important features that need clarification. First, they do not necessarily require prior agreement on more comprehensive moral or political theories. It may be that they have a kind of pre-theoretical intuitive force which different theories try to capture and formulate more precisely. Or perhaps they have normative force because it is possible to express or to formulate many of them within a wide variety of different comprehensive moral or political theories. In either case, the appearance, at least, that such arguments can function independently of more comprehensive theories gives them special practical appeal as a way of offering reasons within a context of moral and political pluralism.

A second important feature of appeals to the common good is that they set very specific parameters on the kind of information that is relevant to moral decisionmaking. In order to see this, we need a more explicit representation of some structural features of such appeals.

To begin with, appeals to the common good involve a normative claim that sometimes the interests of individuals are superseded by the common good. Second, we require some specification of when this is the case. The least permissive and therefore least controversial specification simply asserts that if the normative claim is true it will most likely be when there is a clear and present threat to the common good. Finally, these two claims entail that efforts to promote the common good must remain within certain boundaries: those efforts should not themselves undermine the common good.

We can represent these three claims as follows:

**Normative claim:** There are circumstances in which the interests of individuals may permissibly be subordinated to the common good.

**Triggering condition:** The presence of a clear and present danger to the common good constitutes a circumstance in which subordinating the interests of individuals to the common good may be permissible.

**Practical constraint:** The means that are used to pursue or secure the common good may not themselves conflict with or subvert the common good.

Although this is only a schematic representation, it lets us emphasize two points. First, appeals to individual civil liberties may not be an appropriate response to arguments about the common good because *such arguments do not deny that civil liberties are important*. It claims only that we may sometimes acceptably limit or otherwise subordinate those interests to something of equal, or perhaps greater, importance. Unless one is

individuals and the common good. There are two ways of drawing this contrast, and they yield importantly different conceptions of the common good.

One fairly natural way to contrast the interests of individuals and the common good is to identify the common good with the good of the *community*, conceived of as an entity that exists in its own right, with interests that are distinct from those of its individual members. On this view, the normative claim draws a fairly blunt distinction between the good of two different parties. One party is monadic—the individual agent—and the other is corporate—the collective agent or the body politic.

This conception of the common good plays an important role in one of the classic defenses of the value of informed consent in medical research, Hans Jonas's "Philosophical Reflections on Experimenting with

freely take up this optional goal as one that they themselves endorse. Thus only when individuals freely take up this end as their own can it be acceptable to use them as a means to medical progress.

Given a corporate conception of the common good, something poses a threat to the common good—meets the triggering condition—only if it jeopardizes the continued existence or proper functioning of society as a whole. Jonas's strategy is to argue that under "ordinary" circumstances, this triggering condition is not easily met—at least most common diseases and ills do not meet it. Notice, however, that once something *is* deemed to threaten the common good, the corporate conception yields only the weakest possible practical constraint on what can be done in response. If the common good is identified with the continued existence of the community as a whole, then the practical

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prepared to argue that individual civil liberties are absolute and inviolable, this case seems to become easier to make as the perceived threat becomes more severe, and therefore more likely to trigger the normative claim.

The second point, therefore, is that without a substantive account of what the common good is, one cannot specify exactly what kind of license is provided by the normative claim, nor what sorts of concrete threats meet the triggering condition, nor what the specific practical constraints are. Moreover, in order to avoid equivocation, one must insure that each of these claims is explicated in terms of the same substantive account of the common good. Thus we need to know much more about the very idea of the common good.

### The Corporate Conception

The normative claim draws a contrast between the interests of in-

dividuals and the common good. There are two ways of drawing this contrast, and they yield importantly different conceptions of the common good.

Against the backdrop of this assumption, Jonas argues that most common illnesses—"cancer, heart disease, and other organic, noncontagious ills"—do not pose a threat to the common good because the normal death rate from such conditions does not prevent society from "flourishing in every way."<sup>9</sup> As he puts it, "a permanent death rate from heart failure or cancer does not threaten society." These are threats not to the common good, but merely to the lives of individuals, and from the standpoint of society, the goal of finding treatments to ameliorate them is optional. Fully informed and voluntary consent is a necessary condition for ethically acceptable research, therefore, because it is the only means by which individuals can

constraint states that the means used to pursue or secure the common good may not themselves conflict with or subvert the continued existence of the community *as a whole*. This is a surprisingly broad permission, as Jonas seems to recognize. Something that threatens "the whole condition, present and future, of the community" may create a state of emergency, "thereby suspending certain otherwise inviolable prohibitions and taboos."<sup>10</sup> And harms to individuals and violations of their civil liberties would have to be broad and profound before they would themselves threaten to undermine the common good—on this view of the common good. It is worth noting, too, that concern for the common good may itself provide a justification for concealing or covering up the individual harms and violations: if they are not exposed to public scrutiny, they are less likely to destabilize the community.

Notice, too, how this framework shapes the debate. Because the corporate conception of the common good yields such a weak practical constraint, the central point of contention is whether the triggering conditions have been met. As a result, the corporate conception makes it difficult to locate a middle ground between two extremes. Jonas endorses what we might call the “strict position.” On this view, common and pervasive threats to the welfare of individuals—including diseases and illnesses, the trafficking and use of illegal drugs, most criminal activities, and even fairly steep social and economic inequalities—do not pose a threat to the common good. Something poses a threat to the common good, only if it jeopardize the persistence or proper functioning of the community as a whole. On the strict position, then, community responses to common social problems cannot be justified by an appeal to the common good if they require concessions from individual agents.

Because the triggering condition is so difficult to meet on this view, the strict position is easily associated with a liberal, individualist orientation to social obligations. At the other extreme is what we might call the “lenient position,” which is easily associated with communitarian or socialist positions. The lenient position is more willing to view common conditions as threats to the corporate good, and therefore more willing to authorize society to infringe on individual liberty and well-being in responding to them. For example, in 1997, then Secretary of Health and Human Services Donna Shalala testified before Congress that the traditional requirement of patient consent for disclosure of medical information must give way to “our public responsibility to support national priorities—public health, research, quality care, and our fight against health care fraud and abuse.” Critics of the proposal saw it as a subordination of human subject protections to the “interests of science and society,” pointing to

what they saw as “Shalala’s willingness to use bureaucratically designated ‘national priorities’ as a rationale for overriding a traditional patient right and, potentially, patients’ civil rights as well.”<sup>11</sup>

Because the corporate conception of the common good yields a very weak practical constraint on how we respond to social threats, the lenient position allows for much more frequent and perhaps more significant intrusions on the rights and liberties of individuals. From this standpoint, the willingness to exact even the most profound sacrifices from a minority group in order to secure the good of the majority may be viewed, not as a moral failing, but as a civic virtue.

During times of relative peace or security, debate will flourish between proponents of strict and lenient positions.<sup>12</sup> These divisions will tend to collapse during times of war, however, as it becomes more difficult to deny that the triggering condition has been met. Proponents of the strict and the lenient positions, and of the different comprehensive moral and political theories associated with them, may suddenly find themselves in agreement. Both may be willing to tolerate fairly high demands on some individuals, so long as those demands do not violate the same, fairly weak practical constraint.

A failure to understand the logic here can incline one to overestimate the significance of the agreement. If proponents of different comprehensive views find themselves converging on a common position, they may perceive that position as what John Rawls called an “overlapping consensus,” with the special epistemic, or at least political, credence that an overlapping consensus commands. If the role of embracing a corporate conception of the good in forging this consensus is not recognized, it may become increasingly difficult to see dissenters as rational or reasonable. Without seeing that an alternative conception of the common good is possible, the only way to interpret continued dissent (within this frame-

work) is to see it as a claim that the triggering condition has not been met. The less plausible such a claim becomes, the harder it will be to tolerate dissent and to maintain inhibitions against more coercive means of facilitating group cohesion.

## Problems

Yet the corporate conception of the common good has several peculiar features that should induce us to think about the alternatives. To begin with, it appears to be overly broad in what it recognizes as potential threats. It would regard as threats social changes that threaten the persistence of a community but not the moral rights or welfare of any of its individual members. Such changes might include the dissolution of the community through mass emigration, peaceful succession, or pervasive civil reforms in which central social and cultural structures are dissolved and replaced by alternatives. Moreover, when these activities are viewed as threats to the common good, they provide a powerful incentive to view with similar suspicion the underlying rights and liberties that make such activities possible.

Simultaneously, the corporate conception also appears to be overly narrow in what it recognizes as potential threats. It can accept, and may even require, significant compromises to the moral rights or welfare of sizable portions of the population so long as those compromises do not threaten the persistence of the community as a whole. If the community is an entity whose perfection or proper function can diverge from the perfection or proper function of its members, then why the former should take precedence over the latter is not clear.<sup>13</sup> Such worries are exacerbated when we realize that the good of the community, so conceived, often seems to require significant personal sacrifice from the most vulnerable classes. Too often, there is a convenient congruence between the needs that are attributed to the

greater community, and the protection, enrichment, entertainment, and general aggrandizement of a powerful, prosperous few.

For these reasons, the corporate conception of the common good provides a poor framework within which to evaluate important normative questions. Within this framework, debate will focus on the triggering condition—on whether a terrorist attack employing infectious biological agents represents a clear and present danger to the common good. Establishing that it does allows us to treat the traditional principles of research ethics as peacetime luxuries that can be abrogated in a time of crisis. What this framework does not provide is any sense of a principled way to make specific decisions about when or to what extent traditional protections may be modified. It simply enunciates the permissibility of setting them aside. Ironically, the potential for abuse that is latent in this position

mon good with a subset of interests that are sufficiently basic or fundamental to individuals that they are common to each of the members of the community. Agents may differ widely in their particular tastes, preferences, career choices, and personal ideals—their individual conception of the good—but they share interests in being able to develop their intellectual and affective capacities in order to pursue activities that they find meaningful, and to engage in meaningful relationships with others. Here, the normative claim does not draw a distinction between the interests of two different entities, one monadic and the other corporate. Instead, it draws a distinction between two categories of interests that individuals share with every other member of the community, and the particular goals, ends, and projects adopted by those individuals as a result of their particular preferences, desires, and the exer-

dividual or the community must come at the expense of the other. In contrast, in the generic interests conception, the distinction between the individual good and the common good makes it possible to frame conflicts over the common good in a way that tries to accommodate the legitimate basic interests of all parties. When the individual good of agents comes into conflict with the common good, the goal is to resolve the conflict in a way that is maximally responsive to the common good, that is, to the *shared basic interests of each in being able to develop and exercise their basic intellectual and affective capacities and to pursue significant relationships with each other*. The goal is to resolve conflicts at the level of the individual good by searching for integrative solutions—modifications in individual goals and ends that enable each party to pursue and exercise their shared basic capacities for agency and welfare.<sup>14</sup>

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could lead reasonable people to avoid acknowledging a potential biochemical attack as a threat to the common good, even when the threat is credible and imminent. This fosters zero-sum thinking, according to which the common good and the interests of individuals can be secured only at the expense of each other. This can exacerbate conflicts over controversial cases by obscuring the extent to which solutions responsive to the legitimate claims of each side are feasible and attainable.

**The Generic Interests  
Conception of the Common  
Good**

**I**t is crucially important, therefore, to consider another way of distinguishing individual interests from the common good. The “generic interests” conception identifies the com-

mon good with a subset of interests that are sufficiently basic or fundamental to individuals that they are common to each of the members of the community.

On this view, to say that the interests of individuals may permissibly be subordinated to the common good is to say that an individual’s pursuit of his or her individual good must sometimes be modified in order to accommodate the legitimate interest of others in being able to develop and exercise the very intellectual and emotional capacities presupposed in the individual’s pursuit of his or her particular ends.

This way of distinguishing the individual good from the common good helps to avoid the kind of zero-sum thinking fostered by the corporate conception. The latter view distinguishes all of an individual’s interests from the distinct interests of the community. Conflicts over the common good are therefore framed in such a way that gains to either the in-

dividual or the community must come at the expense of the other. In contrast, in the generic interests view can also be formulated within a variety of theoretical frameworks that are separated by some of the most commonly disputed issues in moral and political philosophy. The generic interests conception is not necessarily a purely individualistic conception of the good. Indeed, it seems to be endorsed by Charles Taylor, who is widely regarded as a communitarian because he maintains that community membership and social obligation often have priority over individual rights. Taylor has argued that individualist or atomistic political theories that postulate pre-societal or pre-political rights rest on a mistaken view of the basic capacities of agents.<sup>15</sup> But what makes some social arrangements preferable to others, on Taylor’s view, is the extent to which they create the conditions in which

individuals can develop the deliberative and social capacities necessary to entertain alternative forms of living, to engage in vigorous public debate, and to ensure participation in the ongoing development and improvement of the community itself. This is a generic interests conception: the perfection of the community is defined by its responsiveness to the generic interests that its members share in being able to develop and exercise their basic deliberative and social capabilities. The social obligations that have priority over individual rights are obligations to respect in others the same set of generic interests that one presupposes in pursuing one's particular projects and relationships. For Taylor, this means that some particular ends (accumulating a vast personal fortune, for example) may have to be modified. One's particular ends most accommodate a commitment to sustain the social institutions that ensure that people enjoy the freedom to develop and exercise the capacities that make the pursuit of these particular ends possible.

For Taylor, the generic interests conception of the common good is philosophical, in that it is presented as capturing a philosophical truth about the importance of a set of interests that are seen as basic within a fairly robust view about human life and human agency. Within a liberal, contractarian framework such as Rawls's "justice as fairness," by contrast, the generic interests conception of the common good is presented as a purely *political* notion, in the sense that it represents a conception of human capacities for agency and community that is acceptable to citizens who accept different comprehensive moral and political theories. In this case, the generic interests conception of the common good represents an understanding of the constraints on constitutional essentials that can be supported in a liberal democratic society by, as Rawls puts it, an overlapping consensus of reasonable comprehensive theories—those basic features of a constitution that all reason-

able comprehensive moral and political theories would support. On such a view, members of society may differ in their comprehensive theories of the good, but they can agree that all members of society have generic interests in being able to develop and exercise what Rawls refers to as their two moral powers: their capacity to form a substantive conception of the good and their capacity to regulate their conduct by principles of right.<sup>16</sup>

In sum, for liberal egalitarians like Rawls, the generic interests—the interests that all reasonable members of a pluralistic modern society can see themselves as sharing in being able to develop and exercise their basic moral powers—generate a set of constraints that members of a liberal democratic community can accept for determining the constitutional essentials of society.<sup>17</sup> Within justice as fairness, securing this political conception of the common good for all citizens is given priority over the pursuit of other goals, such as the production of greater wealth. In other words, the basic interests of some individuals cannot be compromised or traded in order to achieve greater personal good for other members of the community.<sup>18</sup>

The general interests model of the common good can be configured within a variety of theoretical frameworks, and so it is crucially important to explore the normative implications of appealing to it. To begin with, many more things pose a threat to the common good on this view than on the corporate conception. Common forms of injury and disease may affect only individual citizens, but they threaten interests that citizens share in being able to convert resources into what they view as meaningful activities and projects.<sup>19</sup> The same is true for social exclusion, persecution, and biases in the laws or their execution. Such social inequalities may adversely impact only some individuals, but they impact interests that all members of the community have an interest in safeguarding and securing.

Because many more things threaten the common good on this interpretation, society has an interest in trying to ameliorate or address a much wider range of social and biological conditions. But while this conception of the common good yields a triggering condition that is easier to meet, it also provides a much more significant and substantive practical constraint on how society may address these conditions. Just as the effects of disease, for example, do not need to be profound and widespread to pose a threat to the common good (so conceived), neither does an abrogation of traditional bioethical principles or civil liberties. The willingness to exempt individuals from requirements such as informed consent—especially in cases where the proposed research poses significant risks to the generic interests of participants—itself constitutes a significant threat to the common good, on this conception. Just as all citizens have an interest in being free from or protected against the possible ravages of crime and disease, so too do they have a generic interest in knowing that their control over their person will be safeguarded and respected, even as the community strives to protect them from crime and disease.

Because the generic interests conception of the common good has a relatively weak triggering condition, the central point of contention for those who accept it tends to center on delineating appropriate practical constraints. And because this conception of the common good is defined by the intersection of interests that are common to members of the community in question, it also provides more significant guidance for formulating these constraints. The debate need not (though it may) draw upon other values in order to justify even fairly strict practical constraints.

In times of relative peace and security, debate may flourish over whether certain conditions meet the triggering condition, and, as with the corporate conception, lines may form over strict and lenient interpretations. However,

because major diseases and social ills are more likely to meet this triggering condition, these disagreements will tend to be less salient than disagreements over how permissive the practical constraints should be on attempts to ameliorate or respond to them. That is, the most salient distinction between strict or lenient positions will occur within the debate over the substantive practical constraints afforded by this conception of the common good.

In times of peace, for example, one might argue that injury and disease pose a threat to the common good because they limit the ability of individuals to pursue reasonable life plans and often can be ameliorated only through collective effort. One might then support taxation to fund the effort, as long as the taxation does not prevent people from pursuing a reasonable life plan. There might also be

met *does not* diminish the justification for substantive constraints on the pursuit of the common good. Rather, it requires that, as far as possible, a war in defense of the common good be prosecuted in a way that is consistent with respect for, and protection of, the very generic interests that the community fights to protect.

### **Generic Interests and Biomedical Research**

The failure to distinguish between these two conceptions of the common good diminishes our public life and impoverishes the quality of civil discourse by allowing important concepts such as patriotism, civic responsibility, public service, and community obligation to be tacitly ceded to, or associated with, the corporate conception of the common good. This can breed social apathy by asso-

tions pose a threat not to society, but to the interests of individuals. The generic interests conception of the common good embraces the latter point and requires that meaningful efforts to safeguard the common good through improving the quality of future medical care be carried out under terms that are equally responsive to the generic interests of current trial participants. The goal is to permit clinical trials only if they resolve the potential conflict between the interests of future patients and the interests of current trial participants in a way that tries to safeguard and advance the generic interests of both.

On the generic interests conception, the traditional values of human subjects research play a fundamental role in ensuring that clinical trials reflect such integrative solutions.<sup>20</sup> They do so because they provide substantive content to the practical con-

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## **The presumption should be that individuals decide for themselves whether to accept heightened risks.**

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disagreement about the limits and extent of permissible taxation, with each side debating the threat of injury and disease to the common good and the impact of proposed plans of action on agents' control over their economic resources. Within the United States, for example, there appears to be widespread support for the use of tax dollars to fund medical research on a wide array of medical conditions, but not to ensure universal access to the system in which those treatments are administered. This represents a preference for equity in the health care system's capacity to treat the diverse health care needs of a diverse population over equity in access to that system. Just as those who support equity in capacity can do so by appeal to the common good, so can those who support equity in access as well.

During times of war, establishing that the triggering condition has been

violating service to the public good with either foolish altruism and self-sacrifice, or with the perception that a willingness to inflict injustices on some in the community so that others may prosper or prevail is a civic virtue. The corporate conception also stacks the deck against civil liberties; it represents them as purely instrumental mechanisms for ensuring a greater good that is distinct from, and may therefore conflict with, the basic interests of community members.

The corporate conception of the common good may exert special influence in research ethics. After all, what makes Jonas's defense of informed consent so striking is that it subverts the very common view that, in medical research, risks to participants are justified if they promise important benefits to society. For Jonas, the reason that informed consent and other protections are necessary is precisely because most medical condi-

straints on the pursuit of the common good. Agents share a basic interest in being able to control their person and the choices that will impact their welfare and their basic capacities. Informed consent and respect for autonomy ensure that trials are carried out in a way that engages and facilitates this interest.

Similarly, agents share a basic interest in having their lives go well—in avoiding suffering and harm—and respect for the welfare of participants in research is necessary in order to ensure that trials protect these interests. Additionally, the resources necessary to safeguard the common good are limited, so that concern for the common good itself requires that potential research initiatives are a wise use of resources. So, too, recognition of the generic interests that constitute the common good and their fundamental impact on the lives of individuals underwrites the concern for jus-

tice in medical research. In fact, the generic interests conception of the common good provides a particularly attractive foundation for claims of justice. On this view, claims of justice are claims to equal treatment that derive their special normative force from the generic interests all people equally have in cultivating and exercising their basic intellectual, affective, and social capacities.<sup>21</sup>

The world would be better if chemical and biological weapons simply did not exist. In light of the increasingly real threat they pose, however, each member of the community has an interest in developing countermeasures—antibiotics, antidotes, vaccines, gas masks, protective clothing, and the like. This shared interest can justify undertaking research initiatives in a timely manner.

This framework also ensures that the debate over which research initiatives to pursue is responsive to community members' other overlapping interests. For example, enhancing the public health infrastructure across the country can enhance our ability to detect and respond to chemical and biological attacks, as well as to non-terrorist diseases whose impact is far from hypothetical. Such efforts impose relatively minor burdens on the population and yield widespread and significant benefits. Similarly, disseminating accurate information and putting in place plans of civilian response empower citizens by preparing them to respond intelligently to threats and can help to contain the effects of biochemical attacks.

The Food and Drug Administration recently announced that it will relax the usual standards of proof for trials of interventions that target the effects of biochemical weapons.<sup>22</sup> It will permit approval of such interventions if their efficacy can be established in animal models and their safety can be demonstrated in human populations. The decision represents an attempt to obtain evidence of effectiveness without the knowing compromise of the health or welfare of human participants—a stance that

seems to be supported by the generic interests conception of the common good.

The generic interests conception may also justify limited testing of defensive medical interventions in human subjects. Unlike the corporate conception of the common good, however, it does not do so simply by granting a broad permission. Rather, it requires that we determine whether it is possible to design a trial that fully informed members of the community could see as a reasonable means of contributing to the common good without requiring them to sacrifice the rest of their projects and relationships.

To justify research within this framework, the research must be shown to address a clinically relevant question in a way that will generate generalizable and reliable information. Because such research would likely involve exposing healthy persons to dangerous and potentially lethal substances, the intervention in question must be likely to confer a clinically significant benefit or protection to recipients. Furthermore, additional measures would have to be taken to safeguard the welfare of participants and to limit the risks to which they are exposed. The exceptional nature of the threat posed by some chemical and biological agents might make it permissible to let participants accept very considerable risk, as long as they do so knowingly and voluntarily, but there must still be an upper limit to that risk. Perhaps such a standard could be found by requiring that the potential risks never exceed those that are encountered on a regular basis by members of professions that are dedicated to ensuring public safety, such as police officers or fire fighters.

To ensure that these conditions are met, two types of review seem necessary. First, the trials should be reviewed by at least one independent institutional review board, or equivalent oversight body, with the appropriate scientific, social, ethical, and community representation. Such a

body would verify that procedures were in place to ensure that only fully informed and voluntary participants would be enrolled in such studies. A second review would be represented by the process of informed consent, when potential participants were educated about the purpose of the trial, the nature of its design, the anticipated risks, and the steps that had been taken to reduce the risks to an acceptable level.

If the research is conducted, then we must also decide whether to keep it and its results secret. Secrecy could be justified only if it is absolutely necessary to safeguard the efficacy of countermeasures. Since governments can always claim a strategic interest in casting a blanket of secrecy as widely as possible, such claims must therefore be carefully scrutinized. We should preserve a presumption in favor of the transparency and public accountability that are necessary for full democratic participation of the citizenry in the political life of the community and that help ensure both accountability and responsiveness to the interests of community members. Public accountability and transparency are especially important in the context of chemical and biological weapons research since, for all practical purposes, the very creation of effective countermeasures suggests ways of creating more effective chemical and biological agents.<sup>23</sup> The research also requires stockpiling dangerous microbes or chemical agents for use in testing and research, and the stockpiles may themselves pose significant risks to the environment and to the public health.

This thumbnail sketch is simply intended to illustrate how the generic interests conception of the common good provides a framework within which we can debate what substantive constraints are appropriate for biomedical civil-defense research. The generic interests conception allows us to evaluate the extent to which patriotism and concern for the common good can be incorporated into defensive medical research in a way that



prevents patriots from being martyrs as well. Sometimes the common good requires that we accept heightened risks. We may, for example, have to rely on vaccines and treatments that have not been rigorously tested in human populations because such trials could not be conducted without violating the very interests we are striving to protect. Or we may be able to design trials on humans within limits such as those sketched above. In either case, the presumption should be that individuals must decide for themselves whether such risks are ones that they are willing to accept.

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### References

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8. H. Jonas, "Philosophical Reflections on Experimenting with Human Subjects," *Daedalus* 98, no. 2 (1969): 219-47, at 221.
9. *Ibid.*, 228.
10. *Ibid.*, 229.
11. See B. Woodward, "Challenges to Human Subject Protections in U.S. Medical Research," *JAMA* 24 (1999): 1947-1952.
12. I suggested earlier that arguments about the common good are not determined by comprehensive moral and political theories. Here, I have been trying to show that while there can be disagreements over strict and lenient interpretations of the triggering condition and these positions can easily be associated with different comprehensive moral and political theories, both interpretations presume tacit acceptance of the corporate conception of the common good.
13. To his credit, Jonas raises this issue ("Philosophical Reflections on Experimenting with Human Subjects," 221) against what I am calling the corporate conception. It is therefore appropriate to read Jonas's argument as dialectical in nature. That is, he is claiming that even if we assume the corporate conception of the common good we can still provide a sturdy foundation for informed consent for most peace time circumstances.
14. When goals or ends conflict, an integrative solution is one that modifies those goals and ends so as to satisfy the underlying legitimate interests that provide the rationale or motivation behind those goals or ends. See J.Z. Rubin, D.G. Pruitt, S.H. Kim, *Social Conflict: Escalation, Stalemate, and Settlement*, second edition (New York: McGraw-Hill, 1994), 168-95.
15. C. Taylor, "Atomism," in *Powers, Possessions and Freedom*, ed. A. Kontos (Toronto: University of Toronto Press, 1979), 39-61.
16. J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 19, 504-510.
17. See S. Freeman, "Deliberative Democracy: A Sympathetic Comment," *Philosophy and Public Affairs* 29, no. 4 (2000): 371-418.
18. This conception of the common good may be overlooked or dismissed because its formulations are easily confused with the corporate conception. Classical utilitarianism resembles the corporate conception because it identifies the good with a subjective mental state, such as pleasure, and then evaluates states of affairs in terms of the social aggregate of that good. A basic objection to classical utilitarianism is that its focus on aggregate utility makes it insensitive to questions concerning distribution of welfare between individuals. In principle, if persecuting a minority yields a higher aggregate utility than equal treatment, then the persecution is justifiable. As Rawls puts it, classical utilitarianism treats the political community as a single entity, thereby focusing moral and political deliberation on how best to maximize the overall well-being of this corporate individual (Rawls, *A Theory of Justice*, 22-33.). Thus it appears to target the corporate conception of the common good.
- Some versions of utilitarianism attempt to avoid this pitfall. David Brink's "objective utilitarianism" is intended to provide a contrast with subjective theories that reduce human welfare to mental states such as pleasure. Brink proposes a non-reductive, naturalistic account of human welfare whose primary components include the reflective pursuit and realization by agents of reasonable life projects and the development of personal and social relationships of mutual concern and commitment (D.O. Brink, *Moral Realism and the Foundations of Ethics* (New York: Cambridge University Press, 1989), 230-45, 262-90). Brink argues that his account is distribution-sensitive because basic goods such as health, nutrition, and education, are either necessary conditions for the existence of value, or they are all-purpose means that enable individuals to pursue a wide range of individual life plans (272), and, claims Brink, this definition of welfare does not permit trade offs between access to basic goods for increases in social utility (D.O. Brink, "Mill's Deliberative Utilitarianism," *Philosophy and Public Affairs* 21, no. 1 (1992): 67-103). This is a generic interests conception of the common good, in the sense that it defines the common good in terms of a set of interests that members of the community share and have reason to promote both in their own case and with respect to every other member of the community as well.
19. A. Sen, *Development as Freedom* (New York: Anchor Books, 1999); M.C. Nussbaum, *Women and Human Development* (New York: Cambridge University Press, 2000).
20. For a convenient summary of traditional constraints, see E.J. Emanuel, D. Wendler, and C. Grady, "What Makes Clinical Research Ethical?" *JAMA* 283 (2000): 2701-710.
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