

Mental Health and the Aged in the Era of COVID-19*

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I. INTRODUCTION

Before CoVid felled the planet, the number of new cases of dementia every year tallied at ten million, or one new case every three seconds.¹ Alzheimer's disease, the most common form of dementia—which is fatal—affected 10% of Americans over sixty-five,² some 4.7 million people.³ In recent years Alzheimer's deaths rose 55%,⁴ expected to quadruple by 2050.⁵

COVID-19 has dramatically exacerbated the situation. “At least 15,000 more Americans . . . died in recent months from Alzheimer's disease and dementia than otherwise would have . . .”⁶ This is about 18% higher than average.⁷ The CDC reported that between mid-March and mid-April, “about 250 extra individuals suffering from some form of dementia were dying each day.”⁸ In Wales, excess non-coronavirus related dementia deaths was

1. *10 Facts on Dementia*, WORLD HEALTH ORG., <https://www.who.int/features/factfiles/dementia/en/> [<https://perma.cc/J98S-VZTW>] (Sept. 2019) (noting that currently 50 million people suffer the condition, which was expected to increase to 82 million in 2030 and 152 million in 2050).

2. Alissa Sauer, *Alzheimer's Is on the Rise in These States*, ALZHEIMERS.NET (Jan. 8, 2018), <https://www.alzheimers.net/alzheimers-is-on-the-rise-in-these-states> [<https://perma.cc/66JX-EGMC>].

3. Markus MacGill, *Dementia: Symptoms, Stages, and Types*, MED. NEWS TODAY (Dec. 1, 2017), <https://www.medicalnewstoday.com/articles/142214> [<https://perma.cc/CP59-MRPK>].

4. Press Release, Ctr. for Disease Control & Prevention, *US Death Rates from Alzheimer's Disease Increased 55 Percent from 1999 to 2014* (May 25, 2017), <https://www.cdc.gov/media/releases/2017/p0525-alzheimer-deaths.html> [<https://perma.cc/R8LZ-2B46>].

5. Ben Hanowell, *Dementia Prevalence Is Falling, So Why Is the Alzheimer's Death Rate Rising?* ALZHEIMERS.NET (Aug. 14, 2017), <https://www.alzheimers.net/dementia-prevalence-falling-alzheimers-death-rate-rising/> [<https://perma.cc/ZSK3-8U27>].

6. Jon Kamp & Paul Overberg, *Coronavirus Pandemic Led to Surge in Alzheimer's Deaths*, WALL ST. J. (June 28, 2020, 8:00 AM), <https://www.wsj.com/articles/coronavirus-pandemic-led-to-surge-in-alzheimers-deaths-11593345601> [<https://perma.cc/2VKR-R8N2>] (noting that “[a]s Covid-19 raced through long-term care facilities, it amplified mortality risks for those with Alzheimer's and other forms of dementia”).

7. *Id.* (noting that “[r]oughly 100,000 people died from Alzheimer's and dementia from February through May”).

8. Ethan Kim Lieser, *Alzheimer's Disease Deaths Are Spiking Thanks to Coronavirus*, NAT'L INT. (June 30, 2020), <https://nationalinterest.org/blog/coronavirus/alzheimer%E2%80%99s-disease-deaths-are-spiking-thanks-coronavirus-163785> [<https://perma.cc/9562-Z4TC>].

54% higher.⁹ In England, official figures tallied almost 10,000 unexplained extra deaths in people with dementia in April alone—83% over normal.¹⁰

Normally, dementia and Alzheimer’s development are a function of age,¹¹ but COVID-19 and public health response have added another element: social isolation,¹² and that, in turn, translated into more deaths than ordinarily would be expected in this cohort.¹³ On a statistical level, the numbers are ominous. On an individual level, the effects of social isolation policies—not just to dementia patients—but to the elderly as a group, are devastating:

This past summer, Mr. Chester Peake, an asymptomatic coronavirus patient, imposed in social isolation for two and a half weeks died—just short of his 100th birthday.¹⁴ His death certificate listed “social isolation” and “failure to thrive” as the primary cause of death.¹⁵

This article suggests a therapeutic justice approach to evaluating governmental intervention in the public health context is needed.¹⁶ Here, I seek to establish that CoVid responses targeting the elderly were unwarranted and overbroad, causing unnecessary deaths and diminished mental health status. In fact, social isolation policies targeted to the elderly as a homogenous group resulted in undue angst and mental distress.¹⁷ In the

9. *Statistics Show Increase in People Dying from Dementia*, ALZHEIMER’S RSCH. UK (June 5, 2020), <https://www.alzheimersresearchuk.org/statistics-show-increase-in-people-dying-from-dementia/> [https://perma.cc/V2G7-LFUW].

10. Hannah Devlin, *Extra 10,000 Dementia Deaths in England and Wales in April*, GUARDIAN (June 4, 2020, 7:01 PM), <https://www.theguardian.com/world/2020/jun/05/covid-19-causing-10000-dementia-deaths-beyond-infections-research-says> [https://perma.cc/DN8A-CBL9].

11. See Kamp & Overberg, *supra* note 6.

12. Devlin, *supra* note 10; see also *Acts of Kindness Prevent a Downward Spiral from Solitude to Loneliness*, ECONOMIST (April 18, 2020), <https://www.economist.com/science-and-technology/2020/04/18/acts-of-kindness-prevent-a-downward-spiral-from-solitude-to-loneliness> [https://perma.cc/RN4J-PXEM] (noting immunological changes accruing from loneliness and solitude creating a feedback loop that persists even when the loneliness state is removed).

13. See Phil Gutis, *People with Dementia Are at Higher Risk of Coronavirus: Here’s How To Prepare*, BEING PATIENT (Mar. 4th, 2020), <https://www.beingpatient.com/coronavirus-dementia/> [https://perma.cc/HM6G-U2QV].

14. Michael Cook, *World Elder Abuse Awareness Day on Monday*, BIOEDGE (June 13, 2020), <https://www.bioedge.org/mobile/view/world-elder-abuse-awareness-day-on-monday/13471> [https://perma.cc/MCT7-783N].

15. *Id.*

16. See Kathy L. Cerminara, *Therapeutic Jurisprudence’s Future in Health Law: Bringing the Patient Back into the Picture*, 63 INT’L J.L. & PSYCHIATRY 56 (2019); see also William Schma et al., *Therapeutic Jurisprudence: Using the Law to Improve the Public’s Health*, 33 J.L. MED. & ETHICS 59, 59–63 (2005).

17. As one psychotherapist put it, “I am deeply concerned about describing all people over 65 as a homogeneous high-risk group. I believe that the categorization of this entire age group as high-risk has had a negative emotional impact on older people who are indeed healthy” Mike

elderly-ill population, restriction of care and rationing of ventilators actually (artificially) increased the death spiral, bootstrapping an already faulty age-related policy.

In the healthy elderly, lockdown policies translated into feelings of worthlessness, leading to deteriorated mental status, which in turn caused additional deaths, with over one quarter of folks over sixty-five describing themselves as being in a negative mental state.¹⁸

In this section I briefly discuss dementia and Alzheimer's disease. Part II details age-related policies and the unintended consequences of isolation and quarantine, demonstrating a culture of disposable elder care. Part III demonstrates the flawed data on which these age-related policies were based, and which in turn resulted in counter-productive policies. In the Conclusion, I reiterate the need for a therapeutic justice approach to the present situation.

"Dementia is . . . used to describe various symptoms of cognitive decline, . . . [it] is not a single disease in itself, but a general term to describe symptoms of impairment in memory, communication, and thinking,"¹⁹ problem-solving, concentration and perception. Dementia is often a degenerative disease, meaning it worsens over time.²⁰

"Alzheimer's disease is a fatal form of dementia. It is the sixth leading cause of death . . . accounting for 3.6 percent of all deaths in 2014 . . . [and] the fifth leading cause of death among people ages 65 years and older in the United States."²¹ The disease accounts for 60% to 80% of all cases of dementia.²² Dementia, as a co-morbidity of CoVid, is especially lethal.²³ Even before CoVid struck, most Alzheimer's deaths occurred in nursing homes or

Gropper, *Emotional Vicissitudes*, JERUSALEM POST MAG., July 17, 2020, at 31, <https://www.pressreader.com/israel/jerusalem-post-magazine/20200716/281925955319833> [<https://perma.cc/9AU4-JCHB>].

18. Maayan Jaffe-Hoffman, *'Mental Health Pandemic': A Coronavirus Side Effect*, JERUSALEM POST (July 31, 2020, 3:03 PM), <https://www.jpost.com/health-science/what-impact-does-the-coronavirus-pandemic-have-on-mental-health-636952> [<https://perma.cc/9WBU-XLHW>]; see also Maayan Hoffman, *3 Months into Pandemic, One-Third Said To Be Stressed and Anxious*, JERUSALEM POST, May 27, 2020, at 4, <https://pressreader.com/article/281629602477979> [<https://perma.cc/VVM5-LPD9>].

19. MacGill, *supra* note 3.

20. *Dementia*, MENTAL HEALTH FOUND., <https://www.mentalhealth.org.uk/a-to-z/d/dementia> [<https://perma.cc/CPH2-KDMA>].

21. Press Release, Ctr. for Disease Control & Prevention, *supra* note 4.

22. MacGill, *supra* note 3.

23. *Dementia, Hypertension, Diabetes Are Most Common Comorbidities in COVID-19 Deaths in Pennsylvania*, LANCASTERONLINE (June 9, 2020), https://lanasteronline.com/news/local/dementia-hypertension-diabetes-are-most-common-comorbidities-in-covid-19-deaths-in-pennsylvania/article_dfc6718a-aa76-11ea-b646-3322a5d60aeb.html [<https://perma.cc/8Q8A-ST7V>] (noting that "in Pennsylvania, dementia, high blood pressure and diabetes are the most common 'comorbidities' among COVID-19 victims").

long-term care facilities.²⁴ With nearly half of all long-term care facility residents living with Alzheimer's or another dementia, these individuals became one of the most disproportionately vulnerable groups in the country.²⁵

While affecting cognition and mental abilities, dementia is not relegated to those of low intelligence. It strikes hard and at will. "Alzheimer's dementia is arguably the most devastating disease of all, especially for family members who will see a loved one slowly and inexorably decline into a person who has lost virtually all mental capacity."²⁶ In 2018, Leon Lederman, who won the Nobel prize for his work on quarks, died of dementia at a nursing home, having had to auction his Nobel statue to pay for medical care.²⁷

II. A POLICY OF DISPOSABLE OLDSTERS AND THE EFFECTS OF ISOLATION

A. Elder-Oriented CoVid Policies

As a result of data claiming oldsters were at an increased risk of death, countries instituted lockdowns or ventilator-rationing policies aimed at those over a certain age. In the United States, until the government stepped in, ventilators were rationed by age in many hospitals,²⁸ and this became official policy in Italy.²⁹

24. Press Release, Ctr. for Disease Control & Prevention, *supra* note 4.

25. Roger Lowe, *COVID-19 Impacts Increasing on People Living with Alzheimer's in Nursing Homes and on Their Families*, US AGAINST ALZHEIMERS (July 1, 2020), <https://www.usagainstalzhimers.org/blog/covid-19-impacts-increasing-people-living-alzheimers-nursing-homes-and-their-families> [<https://perma.cc/WBD4-MEQE>].

26. Josh Bloom, *A Special Place in Hell: Hucksters Peddle Useless Alzheimer's Supplements*, AM. COUNCIL ON SCI. & HEALTH (Feb. 22, 2019), <https://www.acsh.org/news/2019/02/22/special-place-hell-hucksters-peddle-useless-alzheimers-supplements-13811> [<https://perma.cc/6VV4-VGCL>].

27. George Johnson, *Leon Lederman, 96, Explorer (and Explainer) of the Subatomic World, Dies*, N.Y. TIMES (Oct. 3, 2018), <https://www.nytimes.com/2018/10/03/science/leon-lederman-died-particle-accelerators.html> [<https://perma.cc/QX8P-FDY6>].

28. Barbara Pfeffer Billauer, *The Bioethics of CoVid19 Care in the Elderly: Ventilation and Vaccines* 2 (July 28, 2020) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3647276 [<https://perma.cc/7A53-BSXQ>].

29. *See infra* note 85 and accompanying text.

As far as strict lockdowns, in Colombia, the age limit was seventy.³⁰ A similar paradigm was initially enacted in Ireland.³¹ In England, policy for restricting the over-70s without pre-existing conditions was voluntary, although whispers circulated about more draconian approaches to be levied against the elderly regardless of health status.³² In Israel, the arbitrary age for elder lockdowns initially was sixty-seven (which perhaps not-so coincidentally was the mandatory retirement age, commingling economic and health policies).³³ Naftali Bennet, then Israeli Defense Minister, chillingly exhorted, “We must protect grandma . . . [as] the deadliest connection is between a grandparent and their grandchild, between an elderly person and a young person,” instilling abject terror in the elderly, now denied not only the contact with their families, in many cases their *raison d’être*, but all social contact.³⁴ Calling the directive “Operation Grandma,” Bennet’s plan purported to protect the elderly³⁵ without calibrating the impact on mental health. The national lockdown over Passover forced many elderly to spend the Seder night alone.³⁶ After the national lockdown was lifted, proposed

30. *Colombia Declares Coronavirus State of Emergency, Orders Elderly To Stay Home*, JAKARTA POST (March 18, 2020, 11:56 AM), <https://www.thejakartapost.com/news/2020/03/18/colombia-declares-coronavirus-state-of-emergency-orders-elderly-to-stay-home.html> [<https://perma.cc/NB57-QF9F>] (reporting that “[t]o protect our grandparents [the government] . . . declared an obligatory isolation starting Friday March 20 from seven o’clock in the morning until May 31 All adults older than 70 must remain in their homes except to buy groceries and medicines, use health services, and access financial services.”).

31. *Coronavirus: What Are the Lockdown Rules for the Over-70s?*, BBC NEWS (May 11, 2020), <https://www.bbc.com/news/uk-52575594> [<https://perma.cc/T2QE-DRMJ>].

32. *Id.* (noting that “[t]here has been speculation that this means the current restrictions may be relaxed more slowly on older people than the rest of the population”). New rules forbid hugging or touching non-family members, including grandparents, and only one set of grandparents can be visited at a time. One designated family member can visit the elderly in nursing homes. See Max Stephens et al., *What Are the Current Social Distancing Rules, and When Will It End?*, TELEGRAPH (Oct. 13, 2020, 2:08 PM), <https://www.telegraph.co.uk/news/2020/10/13/social-distancing-shielding-new-rules-what-uk-restrictions-advice/> [<https://perma.cc/5PKE-8DJC>].

33. Barbara Pfeffer Billauer, *Al Tashlichaynu L’Et Zichna: Ageism in the Time of Corona*, TIMES ISR. (May 22, 2020, 3:41 PM), <https://blogs.timesofisrael.com/al-tashlichaynu-let-zichna-ageism-in-the-time-of-corona/> [<https://perma.cc/36AM-EBSW>].

34. *Bennett Tells Israelis To Avoid Grandparents To Protect Them from Coronavirus*, TIMES ISR. (Mar. 2020), https://www.timesofisrael.com/liveblog_entry/bennett-tells-israelis-to-avoid-grandparents-to-protect-them-from-coronavirus/ [<https://perma.cc/G5PM-GSX2>].

35. *Id.*

36. See *Solitary Seders and Zoom: Israel Celebrates Passover Under Coronavirus Lockdown*, TIMES ISR. (Apr. 8, 2020, 8:43 PM), <https://www.timesofisrael.com/solitary-seders-and-zoom-israel-celebrates-passover-under-coronavirus-lockdown/> [<https://perma.cc/4DVN-TDXB>]; see also Zachary Keyser, *Elderly Provided with Comfort, Hope by Israeli Org. Amid Coronavirus*, JERUSALEM POST (Aug. 5, 2020, 3:49 PM), <https://www.jpost.com/israel->

responses included surgically quarantining “[t]hose over 67 or with comorbidities, who are high-risk.”³⁷ In the United States, pressure on restricting social integration on the elderly continued. Anecdotal reports indicate that the elderly were banned from churches and synagogues, in many cases the only source of social contact this group, mainly widows and widowers, enjoyed.³⁸

B. *The Culture of the Disposable Elderly*

The perception that older age subjects those CoVid infected to a death sentence became a self-fulfilling prophecy, especially the denial of ventilators,³⁹ now infiltrating not only governmental directives, but medical and bioethical advisories. These further inflated both age-related deaths and mental health related illness.⁴⁰

Sweden institutionalized a “disposable oldster” approach: “[N]ursing home residents with suspected COVID-19 were immediately placed on palliative care and given morphine [and midazolam (a respiratory suppressant)] and denied . . . intravenous fluids and nutrition.”⁴¹ “Doctors

news/elderly-provided-with-comfort-hope-by-israeli-org-amid-coronavirus-637438 [https://perma.cc/L85H-5W2W] (noting that “[t]hose who are used to seeing children and grandchildren are being distanced, and those without close families are more alone and lonelier than ever”).

37. Maayan Jaffe-Hoffman & Lahav Harkov, *Coronavirus: What Are the Exit Strategies Israel Is Considering?*, JERUSALEM POST (Apr. 14, 2020, 11:31 PM), <https://www.jpost.com/israel-news/exit-strategy-624564> [https://perma.cc/5FHM-ZKJQ] (reporting “[o]ne idea is centering an exit strategy solely around age and risk of complications, keeping the high-risk under lockdown and reducing restrictions on others in stages”).

38. See Richard Armitage & Laura B. Nellums, *CoVid-19 and the Consequences of Isolating the Elderly*, LANCET (Mar. 19, 2020), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930061-X> [https://perma.cc/5QE6-YH3L] (noting that “[s]elf-isolation will disproportionately affect elderly individuals whose only social contact is out of the home, such as at daycare venues, community centres, and places of worship. Those who do not have close family or friends, and rely on the support of voluntary services or social care, could be placed at additional risk, along with those who are already lonely, isolated, or secluded.”). The effects of isolation are further compounded when they are imposed, and the targets feel out of control, as was the case here.

39. See *infra* note 84 and accompanying text.

40. Linda So et al., *Coronavirus Spreads Fear, Isolation, Death to Elderly Worldwide*, REUTERS (Mar. 20, 2020, 10:21 AM), <https://www.reuters.com/article/us-health-coronavirus-elderly-insight/coronavirus-spreads-fear-isolation-death-to-elderly-worldwideidUSKBN2172N8> [https://perma.cc/4PED-9CLT] (noting that the “growing isolation of the elderly has spawned its own crisis, as families try to balance the need to care for loved ones with directives to stay away”).

41. Michael Cook, *Questions Raised About Sweden’s Covid-19 Policy on Nursing Homes*, BIOEDGE (June 20, 2020), <https://www.bioedge.org/bioethics/questions-raised-about-swedens-covid-19-policy-on-nursing-homes/13479> [https://perma.cc/MT5K-6HPX]; see also Heba Habib,

overseeing nursing-home care were advised to keep their distance from residents because of infection risks and told to carefully weigh the condition of patients before referring them to hospitals, said Thomas Linden, chief medical officer of Sweden's National Board of Health and Welfare.⁴² So, "[e]lderly people were not taken to hospitals—they [were] given sedatives but not oxygen."⁴³ One geriatrician reported about doctors prescribing a "palliative cocktail" over the telephone for sick older people in nursing homes and called it active euthanasia.⁴⁴ A nursing home nurse reported that "people suffocated, it was horrible to watch. One patient asked me what I was giving him when I gave him the morphine injection, and I lied to him . . ."⁴⁵

In the UK, British bioethicists Julian Savulescu and Dominic Wilkinson called on seniors with CoVid (who he seemed to presume would die anyway) to volunteer for risky trials, organ donation, or euthanasia research,⁴⁶ noting that these elderly "patients [who are] severely affected by COVID-19 stand to benefit and may have little to lose in trialling possible treatments."⁴⁷ This perception of elder extreme vulnerability now manifested in withheld medical care translated into active fearmongering. In Israel, one epidemiologist claimed that a vaccine, if and when it comes, will not effectively protect the elderly, and that the situation will result in about 4,000 or 5,000 elderly Israelis dying.⁴⁸ Even the World Health Organization in its guidelines recommended "strict social isolation in the geriatric population to control the deaths in heavily affected countries."⁴⁹ Especially, in the elderly, this "policy of instilling fear' by . . . official bodies amid the pandemic

Has Sweden's Controversial Covid-19 Strategy Been Successful?, BMJ (June 12, 2020), <https://www.bmj.com/content/369/bmj.m2376> [<https://perma.cc/G65V-CB6T>] (noting that "municipalities lack the resources to save the lives of older people . . . [T]housands of lives could be saved if people in care homes with the virus received oxygen supplies.").

42. See Cook, *supra* note 41.

43. *Id.*

44. *Id.*

45. *Id.*

46. See Michael Cook, *The Elderly Can Still Be Heroes in the CoVid-19 Crisis*, BIOEDGE (Apr. 26, 2020), <https://www.bioedge.org/bioethics/the-elderly-can-still-be-heroes-in-the-covid-19-crisis/13411> [<https://perma.cc/E2Z9-Y2ES>].

47. Julian Savulescu & Dominic Wilkinson, *Extreme Altruism in a Pandemic*, J. MED. ETHICS BLOG (Apr. 23, 2020), <https://blogs.bmj.com/medical-ethics/2020/04/23/extreme-altruism-in-a-pandemic/> [<https://perma.cc/R2P9-ZR76>].

48. David Horowitz, *'Under-50s Have Little To Fear, but Even Vaccine Won't Save Millions of Elderly'*, TIMES ISR. (June 17, 2020), <https://www.timesofisrael.com/under-50s-have-little-to-fear-but-even-vaccine-wont-save-millions-of-elderly/> [<https://perma.cc/KQ2B-ADLY>].

49. Debanjan Banerjee, *The Impact of Covid-19 Pandemic on Elderly Mental Health*, WILEY ONLINE LIBR. (May 4, 2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/gps.5320> [<https://perma.cc/5G4K-SE7H>].

has . . . contributed to feelings of anxiety,”⁵⁰ conditions for which the elderly are already at a greater risk as a result of social isolation.⁵¹

III. STRESS AND QUARANTINE—A CAUSE AND A MARKER FOR DISEASE

A. A Policy Fostering Adverse Mental Health

“I was talking to a friend recently who is over 70. She explained that because she’s unable to hold her lovely infant granddaughter the pain was intense, almost physical in nature.”⁵² The psychological effects of quarantine and isolation are devastating for everyone,⁵³ resulting in anxiety, panic, depression, post-traumatic stress disorder, even suicide,⁵⁴ and is exacerbated by the duration of the isolation.⁵⁵ The elderly, however, are especially susceptible,⁵⁶ and the effects can be extreme,⁵⁷ including vulnerability to elder

50. *Suicide Hotline Sees Sharp Rise in Calls Amid COVID-19 Pandemic*, TIMES ISR. (July 22, 2020, 4:51 PM) [hereinafter *Suicide Hotline*], <https://www.timesofisrael.com/suicide-hotline-sees-sharp-rise-in-calls-amid-covid-19-pandemic/> [https://perma.cc/78JU-LGSU].

51. Armitage & Nellums, *supra* note 38.

52. Caroline Abrahams, *Is a Lengthy Lockdown for Older People on the Way?*, AGE UK (Apr. 26, 2020), <https://www.ageuk.org.uk/discover/2020/04/lengthy-lockdown-coronavirus/> [https://perma.cc/9T5Z-Y3GX] (noting that “it . . . look[s] like the Government may at least be considering some kind of prolonged lockdown for older people as part of its ‘exit plan.’ . . . And yet proposing that everyone beyond a certain age puts their life on hold and hunkers down for many months or longer is, by definition, ageist and deeply objectionable”).

53. Jeffrey A. Singer, *The “Drug Czar” Says Overdose Deaths Were Already Rising Before Pandemic and Now Are Spiking—The Ultimate Blame Belongs to Prohibition*, CATO INSTITUTE (July 1, 2020, 4:35 PM), <https://www.cato.org/blog/drug-czar-says-overdose-deaths-were-already-rising-pandemic-now-are-spiking-ultimate-blame> [https://perma.cc/MLX8-U6LL] (noting an increase in opioid drug-related deaths have also been reported, attributed to anxiety, social isolation, and depression resulting from the COVID-19 pandemic); see Samantha K. Brooks et al., *The Psychological Impact of Quarantine and How To Reduce It: Rapid Review of the Evidence*, 394 LANCET 912 (2020), [https://www.thelancet.com/action/showPdf?pii=S0140-6736\(20\)30460-8](https://www.thelancet.com/action/showPdf?pii=S0140-6736(20)30460-8) [https://perma.cc/WS2U-WNSA].

54. *Suicide Hotline*, *supra* note 50. Calls by Israelis to crisis hotlines since March grew by 30% over the same period last year, and there has been a sharp increase in reports of attempted suicide. *Id.*

55. See Brooks et al., *supra* note 53; see also *Acts of Kindness Prevent a Downward Spiral from Solitude to Loneliness*, *supra* note 12.

56. Armitage & Nellums, *supra* note 38.

57. Banerjee, *supra* note 49.

abuse.⁵⁸ While the effects in the elderly are well-recognized,⁵⁹ as of May, only two papers even acknowledged the issue in the context of CoVid,⁶⁰ mentioning social isolation of the elderly as a “serious public health concern” due to their bio-psychosocial vulnerabilities.⁶¹ Reduction of social contact and time outdoors are further associated with depression in the elderly.⁶²

Social connectedness is vital during the public health breakdown, more so when “ageism” becomes a factor for stigmatization in this marginalized population. This leads to neglect and therapeutic nihilism. . . . Cognitive impairment, and problems like wandering, irritability, and psychotic symptoms can worsen the panic and make it difficult for [the elderly] to follow the precautions of distancing and hand hygiene.⁶³

Nursing home residents face an additional burden.⁶⁴ And those with CoVid are doubly encumbered, especially those with dementia.⁶⁵ “Among the

58. Jennifer E. Storey & Michaela Rogers, *Coronavirus Lockdown Measures May Be Putting Older Adults at Greater Risk of Abuse*, CONVERSATION (May 10, 2020, 9:11 PM), <https://theconversation.com/coronavirus-lockdown-measures-may-be-putting-older-adults-at-greater-risk-of-abuse-137430> [<https://perma.cc/CV2Z-KF42>] (noting “[e]lder abuse [victims] are also more likely to report mental health problems—particularly depression, high stress and an inability to cope evidenced by behaviours such as self-neglect”).

59. See, e.g., Kerstin Gerst-Emerson & Jayani Jayawardhana, *Loneliness as a Public Health Issue: The Impact of Loneliness on Health Care Utilization Among Older Adults*, 105 AM J. PUB. HEALTH 1013, 1013–19 (2015); see also Ziggs Ivan Santini et al., *Social Disconnectedness, Perceived Isolation, and Symptoms of Depression and Anxiety Among Older Americans (NSHAP): A Longitudinal Mediation Analysis*, 5 LANCET e62 (2020), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2819%2930230-0> [<https://perma.cc/Z8TR-TECZ>].

60. See Banerjee, *supra* note 49; see also Armitage & Nellums, *supra* note 38.

61. Banerjee, *supra* note 49.

62. Storey & Rogers, *supra* note 58.

63. Banerjee, *supra* note 49.

64. *CDC Reports 20% Excess Death from Dementia, Alzheimer During Summer*, 124NEWS (Sep. 17, 2020, 8:35 AM), <https://www.i24news.tv/en/news/international/americas/1600356651-cdc-reports-20-excess-death-of-dementia-alzheimer-during-summer-months> [<https://perma.cc/HK84-5794>] (noting “[a]ccording to *Politico*, isolation and stress during lockdown, alongside disruptions in nursing homes, have likely been key factors in driving the figures upwards”).

65. William Wan, *Pandemic Isolation Has Killed Thousands of Alzheimer’s Patients While Families Watch from Afar*, WASH. POST (Sep. 16, 2020), <https://www.washingtonpost.com/health/2020/09/16/coronavirus-dementia-alzheimers-deaths/?arc404=true> [<https://perma.cc/34VZ-PCGA>].

[M]ore than 134,200 people have died from Alzheimer’s and other forms of dementia since March. That is 13,200 more U.S. deaths caused by dementia than expected, compared with previous years People with dementia are dying not just from the virus but from the very strategy of isolation that’s

sources of excess deaths, dementia has produced by far the most [excess deaths] more than the next two categories, diabetes and heart disease, combined.”⁶⁶

One survey of 128 care homes revealed “nearly 80% have seen a deterioration in the health of their residents with dementia due to lack of social contact.”⁶⁷ “[R]elatives of loved ones . . . tell[] [of] heart-breaking stories of people with dementia feeling confused and abandoned by the lack of visits, stopping eating, losing the ability to speak and ‘disappearing.’”⁶⁸ One care home worker noted “[t]hose in the end stages of dementia are declining at a faster rate than normal.”⁶⁹ Another care home worker stated that “residents living with dementia particularly are losing weight because they are constantly in their rooms and not eating and drinking as before.”⁷⁰

One study reports that:

While risks of COVID-19 are high in nursing homes and long-term care communities, the challenges are even greater for patients with Alzheimer’s or another dementia. That’s because most of these nursing home patients with dementia were no longer able to have families or caregivers visit them and assess their health.⁷¹

B. Non-CoVid Deaths

In addition to CoVid-related mental health concerns in the elderly, such as deaths attributed to Alzheimer’s disease (64%),⁷² the social impacts have

supposed to protect them. In recent months, doctors have reported increased falls, pulmonary infections, depression and sudden frailty in patients who had been stable for years. Social and mental stimulation are among the few tools that can slow the march of dementia . . . Other cases have been more subtle. In isolation, many are suddenly struggling with severe depression. “We have clients who have lost almost 30 pounds,” said Sharon O’Connor, who runs a program for dementia patients at Iona Senior Services . . . [Y]et nursing homes have accounted for roughly 40 percent of U.S. deaths from covid-19.

Id.

66. *Id.*

67. *Thousands of People with Dementia Dying or Deteriorating—Not Just from Coronavirus as Isolation Takes Its Toll*, THE ALZHEIMER’S SOCIETY (June 5, 2020), <https://www.alzheimers.org.uk/news/2020-06-05/thousands-people-dementia-dying-or-deteriorating-not-just-coronavirus-isolation> [https://perma.cc/9V4G-NRD7].

68. *Id.*

69. *Id.*

70. *Id.*

71. Lowe, *supra* note 25.

72. Chris Melore, *U.S. Death Rate Soaring, but More than a Third Are Not Caused by COVID-19*, STUDY FINDS (July 5, 2020), <https://www.studyfinds.org/u-s-death-rate-soaring-but-more-than-a-third-are-not-caused-by-covid-19/> [https://perma.cc/XV6V-NZRM].

manifested in a surfeit of non-CoVid stress-related deaths, such as heart disease.⁷³

One concern is that “[p]eople who never had the virus may have died from other causes because of the spillover effects of the pandemic, including emotional distress.”⁷⁴ Studies suggest that “the stress of the pandemic may be playing a toll on the heart,”⁷⁵ and the large excess in heart disease deaths (89%) and stroke (35%),⁷⁶ which primarily affect the elderly implicate known stress and stressors affecting mental health⁷⁷ and pre-cursors for heart ailments.⁷⁸ An unusual increase in a rare cardiac condition, known as “broken heart syndrome,” or Takosubuo cardiomyopathy, caused by an inability to regulate the stress response, further attests to stress-related impacts of the pandemic. Thus, it appears that the “psychological, social, and economic distress accompanying the pandemic” including stringent, elderly-directed lockdowns and isolation “rather than direct viral involvement and sequelae of the infection, are more likely factors associated with the increase in [these] cases.”⁷⁹

73. *Study: 35 Percent of Excess Deaths in Pandemic’s Early Months Tied to Causes Other than COVID-19*, SCIENCE DAILY (July 1, 2020), <https://www.sciencedaily.com/releases/2020/07/200701125506.htm> [https://perma.cc/P2B9-NU58]; see also Henry Miller & Shiv Sharma, *COVID-19 Is Causing Silent Epidemics—Societal and Medical Crises*, GENETIC LITERACY PROJECT (July 27, 2020), <https://geneticliteracyproject.org/2020/07/27/covid-19-is-causing-silent-epidemics-societal-and-medical-crises/> [https://perma.cc/A9FW-FPAJ] (noting a 27% excess of heart disease deaths).

74. Melore, *supra* note 72; see also Steven H. Woolf et al., *Excess Deaths from CoVid-19 and Other Causes, March-April 2020*, 324 JAMA NETWORK 510, 510–513 (2020), <https://jamanetwork.com/journals/jama/fullarticle/2768086> [https://perma.cc/BGW6-ZXJH] (noting that pandemic-imposed restrictions might have indirectly claimed lives from various causes encompassing psychological distress).

75. Yasemin Saplakoglu, *Cases of Broken Heart Syndrome Increase Amid Pandemic Stress*, LIVE SCI. (July 10, 2020), <https://www.livescience.com/broken-heart-syndrome-pandemic.html> [https://perma.cc/X46Z-5PAC] (noting the number of patients experiencing broken heart syndrome increased four-to-five fold during the CoVid pandemic).

76. Melore, *supra* note 72.

77. See Ben Renner, *Don’t Have To Be Sick To Suffer: Coronavirus Lockdowns, Restrictions Can Worsen Mental Health*, STUDY FINDS (Apr. 9, 2020), <https://www.studyfinds.org/study-coronavirus-lockdowns-restrictions-may-worsen-mental-health/> [https://perma.cc/TMP5-P3ZF].

78. See Melore, *supra* note 72.

79. Ahmad Jabri et al., *Incidence of Stress Cardiomyopathy During the Coronavirus Disease 2019 Pandemic*, 3 JAMA NETWORK 6 (2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768093> [https://perma.cc/NRR9-CS7U].

IV. FLAWED DATA DRIVING POLICY AND ARTIFICIALLY INFLATING DEATHS

That policies directed at protecting elders affected excess deaths and mental health determinants is now clear. If the data on which these policies were contrived was accurate, that would have been a sorry state, although perhaps excusable due to “fog of war” conditions.⁸⁰ It turns out, however, that the data, themselves, were flawed, suggesting some element of negligence on the part of hospitals, nursing homes and governmental agencies.⁸¹

The policies for elder-targeted lockdowns and restrictions derived from data furnished initially by Chinese and Italian reports,⁸² which suggested that the elderly were more susceptible to dying from CoVid,⁸³ although these studies were sorely compromised by the limited number of people studied.⁸⁴ The Italian studies were further compromised by flaws in reporting deaths and triage practices, including denying ventilators to seniors, regardless of their health. Official guidance to Italian doctors provided that only patients “deemed worthy of intensive care” should get it, defined as those under sixty-five in some places.⁸⁵ Cause of death reporting conventions were also

80. See Chuck Dinerstein, *COVID-19s Math: Why Don't the Numbers Add Up?*, AM. COUNCIL ON SCI. & HEALTH (Apr. 13, 2020), <https://www.acsh.org/news/2020/04/13/covid-19%E2%80%99s-math-why-dont-numbers-add-14711> [<https://perma.cc/Y4U8-PUHB>] (noting the Italian directive that all patients dying during the peak attacks were to be identified as a coronavirus death) Since, by and large all patients dying from any cause would be older, the mischaracterization skews the deaths in favor of the older category without basis.

81. Whether governments can be sued for negligence is jurisdiction specific. In Israel, this remedy is available. See CA 243/83 Gordon v. Municipality of Jerusalem, 39(1) PD 113 (1985) (Isr.).

82. Barbara Pfeffer Billauer, *Politics, Pandemics, and Pariahs: Age Discrimination and CoVid19 Exit Strategies 3* (May 22, 2020) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3607888 [<https://perma.cc/6FEP-XQY8>].

83. Graziano Onder et al., *Case-Fatality Rate and Characteristics of Patients Dying in Relation to COVID-19 in Italy*, 323 JAMA NETWORK 1775, 1775–76 (2020), <https://jamanetwork.com/journals/jama/fullarticle/2763667> [<https://perma.cc/4NHD-ABWD>]; see also Special Expert Grp. for Control of the Epidemic of Novel Coronavirus Pneumonia of the Chinese Preventive Med., *An Update on the Epidemiological Characteristics of Novel Coronavirus Pneumonia (COVID-19)*, 41 CHINESE J. EPIDEMIOLOGY 139, 139–44 (2020), http://chinaepi.icdc.cn/zhlxbxen/ch/reader/view_abstract.aspx?file_no=002 [<https://perma.cc/R4KA-774H>].

84. See e.g., J. Bradley Segal, *Why I Don't Support Age-Related Rationing During the Covid Pandemic*, THE HASTINGS CTR. BIOETHICS F. (May 18, 2020), <https://www.thehastingscenter.org/why-i-dont-support-age-related-rationing-in-treating-covid-19/> [<https://perma.cc/CF9E-NMBE>] (“[S]carce resources like ventilators should not be distributed to those above a certain age since, by comparison, younger patients are more likely to survive.”).

85. Shaun Lintern, *'We Are Making Difficult Choices': Italian Doctor Tells of Struggle Against Coronavirus*, INDEPENDENT (Mar. 13, 2020, 9:52 PM), <https://www.independent.co.uk/news/health/coronavirus-italy-hospitals-doctor-lockdown->

bypassed.⁸⁶ In Italy, “any deaths in the hospital were attributed to COVID-19.”⁸⁷ Because, at any given time more older people were likely to die in hospitals from any condition, these practices skewed the death statistics, artificially inflating elder-deaths. Anecdotal reports indicate the same practice is being followed in the United States,⁸⁸ although for different reasons. Here, it seems, hospitals receive more funding based on the number of CoVid patients treated.⁸⁹

As with many groups subject to discrimination, old age was evaluated as one monolithic category, commingling sex, race, co-morbidities, income, and social status—all of which impact on prognosis—and led to the false conclusion that older age, in the absence of confounding factors or co-morbidities, is an independent risk factor for elder-deaths. The falsity of that claim suggested that ensuing age-related responses were “being used merely as a convenient, rather lazy proxy for . . . other factors [responsible for the disease]—a blunt instrument that overlooks the enormous differences in fitness and health across the older population and even between people of the same chronological age.”⁹⁰ As I have written about the impact of these

quarantine-intensive-care-a9401186.html [https://perma.cc/UTE5-59ZT] (noting that decisions should be made “based on a ‘distributive justice’ approach balancing the demand for care versus available resources”); see also Lisa Rosenbaum, *Facing Covid-19 in Italy—Ethics, Logistics, and Therapeutics on the Epidemic’s Front Line*, 382 NEW ENG. J. MED. 1873 (2020), <https://www.nejm.org/doi/pdf/10.1056/NEJMp2005492?articleTools=true> [https://perma.cc/JE48-V2E9] (noting that in one hospital in Italy, the respirator cut-off was designated at age seventy-five and recounting one story “about an 80-year-old who was ‘perfect physically’ until he developed Covid-19–related respiratory failure. He died because mechanical ventilation could not be offered,” also noting similar assessments were promulgated by Maryland practitioners, published in “Too Many Patients . . . A Framework to Guide Statewide Allocation of Scarce Mechanical Ventilation during Disasters”).

86. See CTRS. FOR DISEASE CONTROL & PREVENTION, ICD-10 MORTALITY MANUAL 2A SECTION 1—INSTRUCTIONS FOR CLASSIFYING THE UNDERLYING CAUSE OF DEATH, 2014 (2014), https://www.cdc.gov/nchs/data/dvs/2a_2014.pdf [https://perma.cc/A3MJ-9C3D].

87. Dinerstein, *supra* note 80.

88. See Chuck Dinerstein & Charles Gesheker, *Rethinking COVID-19 Mortality Statistics*, AM. COUNCIL ON SCI. & HEALTH (May 27, 2020), <https://www.acsh.org/news/2020/05/27/rethinking-covid-19-mortality-statistics-14811> [https://perma.cc/4SPR-AB62]. According to Dr. Deborah Bix, “All deaths of patients with a linkage to COVID-19 are now classified as ‘COVID-19 deaths regardless of cause or *underlying health issues that could have contributed to loss of life.*’” *Id.* The Dinerstein article states that “deaths from coronary disease, diabetes, morbid obesity, or pneumonia may be *linked or connected* to a COVID-19 positive test result.” *Id.*

89. E-mail from M.F., Nurse, N.Y. Hospital, to author (July 10, 2020) (on file with author).

90. Abrahams, *supra* note 52.

confounding factors in the aged elsewhere,⁹¹ I will confine myself to the most salient points here.

The conclusory statement that older age is related to CoVid deaths⁹² is true, but misleading. Not surprisingly, most deaths accrue in older people.⁹³ The pertinent question is, controlling for extrinsic factors, are seniors more susceptible to CoVid than other diseases? It appears that the answer is “no.” Older age is, apparently, associated with 80% of CoVid deaths, but normally about 82% of *all* deaths occur in people aged over seventy.⁹⁴ This means that the proportion of deaths due to coronavirus is much the same as the proportion of deaths overall.⁹⁵ The CDC concurs:⁹⁶ Old people are more likely

91. Billauer, *supra* note 82; *see also* Billauer, *supra* note 33 (quoting Professor Michael Levitt [Nobel Laureate in chemistry] who noted, “Is the coronavirus killing the elderly, or is it a background factor, with the disease only slightly accelerating the unavoidable result of the prior medical complications? In other words, the statistics do not separate age from co-morbidities, which may also be suffered by other groups, such as the poor, or of different races.”); *see also* Barbara Pfeffer Billauer, *Ageism and COVID: First They Lock Us Up, then They Refuse Ventilators. What’s Next?*, TIMES ISR. (July 7, 2020, 3:45 PM), <https://blogs.timesofisrael.com/ageism-and-covid-first-they-lock-us-up-then-they-refuse-ventilators-whats-next/> [<https://perma.cc/267Q-M8C4>].

92. Shannon Firth, *Seniors’ Safety During Pandemic Gets Senate Hearing*, MEDPAGE TODAY (May 22, 2020) <https://www.medpagetoday.com/infectiousdisease/covid19/86663> [<https://perma.cc/2DDQ-58VY>] (quoting Senator Susan Collins “[n]ursing home residents account for one-third of all COVID-19 deaths and seniors in general represent 80%.”).

93. Marian Anne Eure, *Top Health Conditions for Adults Over 65*, VERY WELL HEALTH (Jan. 3, 2020), <https://www.verywellhealth.com/top-causes-of-death-among-adults-over-65-2967470> [<https://perma.cc/XH57-ENSE>]. In Israel the average age of CoVid deaths is 80.4. *See* Maayan Jaffe-Hoffman, *Who Has Died from COVID-19? Health Ministry Provides New Data*, JERUSALEM POST (Sep. 3, 2020, 7:11 PM), <https://www.jpost.com/health-science/who-died-from-covid-19-health-ministry-provides-new-data-640945> [<https://perma.cc/2VWR-GDPL>] (noting that the oldest person dying of CoVid in Israel was 102; and that in the United States 74% of all deaths were over sixty-five, similar to the normal death demographics; only 49% of American deaths were in those over seventy-five). By comparison the average overall life expectancy in Israel was 82.5 years in 2017. Lidar Gravé-Lazi, *Israel 11th Among OECD in Life Expectancy*, JERUSALEM POST (Dec. 11, 2017, 6:57 PM), <https://www.jpost.com/israel-news/israel-11th-among-oecd-in-life-expectancy-517736> [<https://perma.cc/37K8-6BYG>].

94. BBC News, *supra* note 31.

95. *See Causes of Death Statistics—People over 65*, EUROSTAT STAT. EXPLAINED, https://ec.europa.eu/eurostat/statistics-explained/index.php/Causes_of_death_statistics_-_people_over_65 [<https://perma.cc/TC4P-7ETR>] (noting that in 2016, “around four fifths (82.9%) of all deaths in the EU-27 . . . occurred among people aged 65 years and over”).

96. *Deaths and Mortality*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nchs/fastats/deaths.htm> [<https://perma.cc/H322-5CNQ>] (noting that there was a total of 2,813,503 deaths in 2017). Seventy-three percent of those deaths, or 2,067,404, accrued in those over sixty-five. *See Older Persons’ Health*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nchs/fastats/older-american-health.htm> [<https://perma.cc/M89X-TQW7>].

to die than younger people,⁹⁷ a statement that is downright laughable, if it weren't an issue.⁹⁸ In fact, compared to flu, where those over age sixty-five account for 90% of all deaths,⁹⁹ CoVid is less deadly in the aged.¹⁰⁰

Nursing home residence (also an indicator of health status) confounds for CoVid deaths. In the United States, deaths in senior-care centers accounted for 40% of CoVid fatalities.¹⁰¹ In Sweden, it was 50%, and in Ireland, it was 62%.¹⁰² In Canada, 80% of the coronavirus deaths were in nursing homes.¹⁰³ But nursing home residence is more than a confounder for co-morbidities status; it also may confound for race and quality of care.¹⁰⁴ According to the Frameworks Institute, pandemic-related ageism effects are manifesting in, “under-resourced nursing homes Left unchecked, ageism will continue to have long-term, negative impacts—including elder abuse,¹⁰⁵ depression,

97. Erin Duffin, *Death Rate in the United States in 2017, by Age and Gender*, STATISTA (July 13, 2020) <https://www.statista.com/statistics/241572/death-rate-by-age-and-sex-in-the-us/> [<https://perma.cc/7RQD-TJD3>] (noting that “[i]n the United States in 2017, the death rate was highest among those aged 85 and over”).

98. See CTRS. FOR DISEASE CONTROL & PREVENTION, SEVERE OUTCOMES AMONG PATIENTS WITH CORONAVIRUS DISEASE 2019 (COVID-19)—UNITED STATES, FEBRUARY 12–MARCH 16, 2020, at 343–46 (2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm> [<https://perma.cc/BMX4-98ER>].

99. *Study Shows Hospitalization Rates and Risk of Death from Seasonal Flu Increase with Age Among People 65 Years and Older*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 12, 2019), <https://www.cdc.gov/flu/spotlights/2018-2019/hospitalization-rates-older.html> [<https://perma.cc/98JY-GCAT>] (noting that “people 65 years and older bear the greatest burden of severe flu disease. Approximately 90% of influenza-related deaths and 50-70% of influenza-related hospitalizations occur among people in this age group”).

100. See Janet E. McElhaney et al., *The Unmet Need in the Elderly: How Immunosenescence, CMV Infection, Co-morbidities and Frailty Are a Challenge for the Development of More Effective Influenza Vaccines*, 30 VACCINE 2060 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3345132/pdf/nihms355390.pdf> [<https://perma.cc/8WR5-5X75>]. Within the category of influenza, comorbidities affecting “the most vulnerable older adults [result in] more than 60 times the risk of hospitalization and death compared to that of healthy adults aged 65 to 75 years.” *Id.*

101. Billauer, *supra* note 91.

102. *Id.*

103. *Id.*

104. See Habib, *supra* note 41 (Jon Tallinger, specialist in general medicine stated, “older people die because they do not receive the treatment they need.”); Bar Peleg et al., *Israel’s Nursing Homes Beg for Help as More Residents Die of Coronavirus*, HAARETZ (July 4, 2020), <https://www.haaretz.com/israel-news/.premium-israel-s-nursing-homes-beg-for-help-as-more-residents-die-of-coronavirus-1.8746355> [<https://perma.cc/89HY-9DRL>] (quoting a granddaughter who said “we’re basically sending them to their deaths and no one is taking responsibility”).

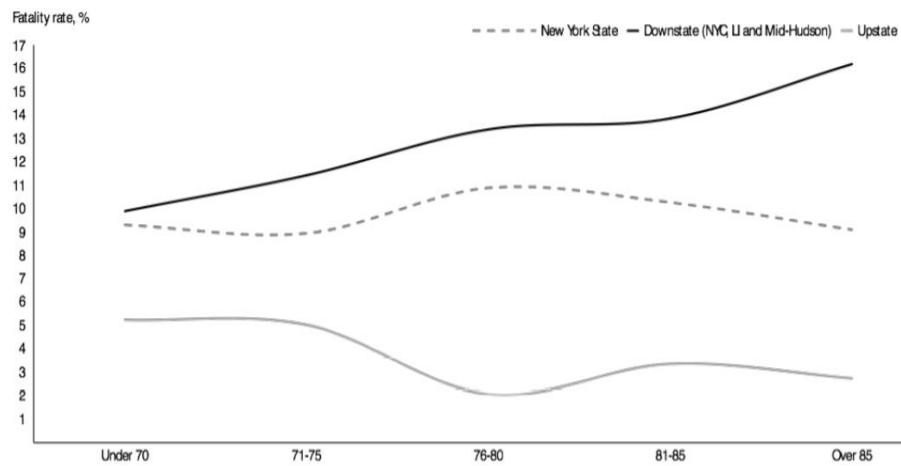
105. Cook, *supra* note 15; see also Storey & Rogers, *supra* note 58 (noting “[v]ictims of elder abuse are also more likely to report mental health problems—particularly depression, high stress and an inability to cope evidenced by behaviours such as self-neglect.”).

and early mortality—that discriminate against older adults and eventually affect us all.”¹⁰⁶

A. NYS Nursing Home Study and the Impact of Confounders

Lest there be any doubt of the impact of confounding variables, the *New York State Study on Nursing Home Report* is illuminating.¹⁰⁷ The majority of New York State nursing home deaths occurred in downstate New York and correlated with older ages, driving the overall state statistics.¹⁰⁸ However, no such correlation occurred when Upstate Nursing Homes were evaluated separately.¹⁰⁹ Here, deaths plateaued until age seventy-five—and thereafter *decreased*—until age eighty.¹¹⁰

Figure 1. Age Versus Nursing Home Fatality Rate by Region¹¹¹



SOURCE: MDS Q4 2019 - Analysis of age of the residents in the nursing homes

106. Cook, *supra* note 15.

107. N.Y. STATE DEP'T OF HEALTH, FACTORS ASSOCIATED WITH NURSING HOME INFECTIONS AND FATALITIES IN NEW YORK STATE DURING THE COVID-19 GLOBAL HEALTH CRISIS (2020), https://health.ny.gov/press/releases/2020/docs/nh_factors_report.pdf [<https://perma.cc/SAB9-PTN9>] (noting that “New York State has approximately 100,000 nursing home residents housed in 613 nursing home facilities statewide” and that it “has more nursing home residents than any state in the nation”).

108. *Id.* at 24.

109. *Id.* This is a classic example of epidemiological confounding, where when stratifying variables, the data skews in opposite directions and discounts the value of the data to sustain the conclusion. See LEON GORDIS, EPIDEMIOLOGY 266–70 (5th ed. 2013).

110. N.Y. STATE DEP'T OF HEALTH, *supra* note 107, at 24.

111. *Id.*

In fact, by late June, the CDC came to realize the flaws in their initial assessments and changed the categories of at-risk groups to remove the healthy elderly.¹¹² But the perception continues,¹¹³ fostering policies of lockdown and isolation for the elderly—which in addition to deaths, accounts for a decline in mental health and stress-related conditions in this population.

V. CONCLUSION: THE LAW OF UNINTENDED CONSEQUENCES AND A CALL FOR THERAPEUTIC JUSTICE

Data collection and interpretation has falsely fingered age as an independent risk factor for CoVid deaths. Yet, without controlling for contributing variables, such as race, sex, social status, and co-morbidities—these data present a flawed picture. While perhaps 80% of coronavirus deaths have, indeed, occurred in the elderly, similarly more than 80% of *all* deaths occur in this cohort, and there is no showing the elderly are especially vulnerable to CoVid, as opposed to say the flu. Nevertheless, policy decisions based on a perceived evaluation of the elderly as being especially vulnerable to CoVid resulted in lockdowns, social isolation, and denial of care. These responses in turn resulted in increased stress and elevated stress-related deaths, such as heart disease, both in the healthy and non-healthy elder communities. Those with dementia and Alzheimer's especially suffered. Policies denying care, contact with loved ones, and even ventilators translated into treating this group as a disposable population, further rattling the mental health of the aged and their loved ones. As this death spiral increased, elders are just giving up hope—and dying in droves.

Policies designed to protect the elderly from dying of a physical disease inadvertently triggered unintended mental health effects in those otherwise healthy¹¹⁴—and worsened the condition of those already suffering mental health related diseases such as dementia and Alzheimer's. In this regard, the

112. Mike Stobbe, *U.S. Officials Change Virus Risk Groups, Add Pregnant Women*, AP NEWS (June 25, 2020), <https://apnews.com/d4ca187cdf84a4f96c1f24ab213ce4bf> [<https://perma.cc/7XKJ-4KQ7>] (“The CDC said people are at increasing risk as they get older, but it removed people 65 and older as a high risk group.”).

113. Keyser, *supra* note 36.

114. Deficits to mental health are now being recognized for the entire population. See Emily Henderson, *Study: Elevated Adverse Mental Health Conditions Are Associated with COVID-19*, NEWS MED. LIFE SCI. (Sep. 17, 2020), <https://www.news-medical.net/news/20200917/Study-results-show-elevated-adverse-mental-health-conditions-associated-with-COVID-19.aspx> [<https://perma.cc/9ZKM-7A6Y>]; see also Christopher Magoon, Linda Rosenberg & Jeffrey A. Lieberman, *Preparing for the Mental Health Repercussions of the COVID-19 Pandemic*, PSYCHIATRIC TIMES (Sep. 16, 2020), <https://www.psychiatristimes.com/view/preparing-mental-health-repercussions-covid19-pandemic> [<https://perma.cc/QWT3-NDC3>].

concept of *Therapeutic Justice*, as admirably explained by Professor Kathy Cerminara,¹¹⁵ might find an important role.

Therapeutic justice calls for an assessment of how laws or rules might impinge on “mental health, [physical] health, and mental illness,”¹¹⁶ often using a sociopsychological approach. Heretofore, its approach often focused on evaluating mental health related laws, with suggestions for its expansion to include physical harm. In my conception, I seek to apply it to public health laws targeting physical health which both impact on mental health and also cause stress-related physical harms. These body-mind connections, somaticized effects of stressors, might otherwise manifest as psychological illness. In the case of CoVid, a psychological evaluation of the effect of lockdowns and social distancing—for elderly seniors living alone, for healthy seniors, and for those living in nursing homes—is warranted as the present directives are accomplishing the opposite of what was intended: harming the survival and longevity of the aged—the law of unintended consequences at work.

115. Cerminara, *supra* note 16.

116. *Id.* at 58.