CITYLIMITS

Opinion: Criminalizing COVID-19 Will Only Worsen its Toll

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Seattle Municipal Archives

Firland Sanitorium, Seattle, in 1920.

On February 1st, 1901, New York City's Board of Health marshalled 125 doctors and 125 police for a vaccination raid on an Italian neighborhood where officials had uncovered a smallpox outbreak. That night, the doctors went door to door vaccinating everyone, and taking away anyone they found with the trademark sores. The police were stationed at all the building exits to catch people who tried to flee.

Some residents still got away, but several doctors managed to chase down a man in his pajamas who tried to escape down an alley by 114th street. When they caught him, the doctors found he was already vaccinated for smallpox. The man spoke no English, and didn't know the purpose of the raid. He ran to get away from violent government officials.

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The healthcare system has long played an important role in policing people's bodies, forcing vulnerable people to weigh their health against their autonomy. Babies die because pregnant drug users are afraid to access prenatal care. Trans people don't call suicide hotlines because an operator might contact emergency services, and get them taken to a psych ward against their will. Immigrants forego healthcare for fear of deportation.

Amid the pandemic, lawmakers are making this problem even worse by criminalizing sickness itself. The Yonkers Police Department is hoovering up the addresses of everyone who tests positive for covid-19. New York City's contact tracing data could easily end up in the hands of the NYPD. Some jurisdictions are fining, arresting, and even jailing sick people who break isolation orders.

These policies are part of a longstanding pattern with dangerous consequences for public health. If cooperating with contact tracers might mean getting surveilled by the police, people won't cooperate. If testing positive for COVID-19 puts people at risk of being criminalized, many won't get tested. When healthcare is bound up with policing, more people get sick, and more die.

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In 1911, Washington opened Firland Sanatorium, one of the first facilities in the state for people with tuberculosis. Firland, built on the outskirts of Seattle, filled a clear need and soon had a waiting list. The facility was able to be choosy about its clientele – its management preferred women who had dependent children.

After World War II, the state reorganized and expanded its network of sanatoria. Firland moved into a building in Seattle with more than five times its old capacity. By 1948, there were enough beds in Washington for everyone with tuberculosis.

Firland had long rejected "Skid Roaders" who sought treatment back when space was tight, but now homeless people with tuberculosis were finally able to get a bed. These new patients were sometimes unruly. Public health officials were particularly concerned about people who left the facility before the end of their course of treatment, which put them at risk of developing a strain of tuberculosis resistant to antibiotics.

Washington had a 1903 law on its books authorizing prison-style isolation of sick people who endangered public health, but until then, the state never had enough beds to bring it into force. Firland moved quickly to take advantage of the old law to control their new patients. By 1949, the facility had built one of the first locked wards in a sanatorium in the country. Administrators expected to only use the cells occasionally, as a last resort. But by 1960, Firland was jailing 30 percent of its patients.

These policies alienated patients – several tried to burn down Firland – and deterred people with tuberculosis from seeking treatment. Those people needed to be hunted down and cured by force, argued Washington public health officials in a 1952 paper. Every "flophouse district" had to be canvassed for tuberculosis, and the sick needed to be locked in medicalized jails.

"It will be necessary for every metropolitan area to seek cases 'on the other side of the tracks,'" the public health officials wrote. "In consequence it will be mandatory to set up in every city a facility for the detention of this type of patient."

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On June 23, 1987, Joseph Markowski tried to grab a gun from a bank guard and yelled "kill me! Kill me! I have AIDS!" He was psychotic and suicidal; he had tried to kill himself at least six other times over the previous four months. When police arrived, they happened to find a receipt in Markowski's pocket from a local blood bank, and contacted the company in case he returned to give blood again. Soon after his release from a psychiatric unit Markowski went back to the same blood bank, and police arrested him.

Markowski was homeless – he gave blood to earn $9, not to give other people AIDS. Blood donations were screened for AIDS anyway, and California didn't even have a law barring people who knew they had AIDS from giving blood.

In spite of the harmlessness and legality of Markowski's actions, The Los Angeles District Attorney decided to charge him with attempted murder. "We can either throw up our hands and say there's no law to deal with this or do something to try to protect the public," said DA Ira Reiner.

The case was part of a wave of prosecutions of people who knew they had HIV. Consensual sex, spitting, biting, and donating blood abruptly became serious crimes for people who had tested positive for the disease. Accordingly, many vulnerable people chose to not get tested – knowing one's status was a legal liability. HIV infected many more people as a result.

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Criminalizing sickness fulfills lawmakers' desire to "do something," as Reiner put it. Society's fear of disease is redirected onto a handful of sick, hapless, and vulnerable people. Controlling their bodies stands in for controlling disease itself. These punitive rituals harm public health – sick people quickly learn to act as though they aren't, which worsens the spread of sickness and death.

The fix is simple: healthcare must be completely confidential and consensual. It's outrageous that it isn't already.

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