

Mandatory Vaccination

1. The Argument for Vaccine Mandates: Consider the following sort of case:

Celebratory Gunfire It is the 4th of July and there is a fireworks display at Colonial Williamsburg. Some residents in a nearby neighborhood are celebrating by firing their guns into the air. You are minding your own business a mile away when a stray bullet falls from the sky and kills you.

Has the shooter done something morally wrong? It seems so. [*Do you agree?*]

And notice that this is true DESPITE all of the following:

- *No malicious intent.* They did not intend to hurt anyone.
- *Low probability of harm.* It was very unlikely that their action would cause harm.
- *Rights to property/firearms.* They were just freely using their personal property/firearm.
- *Unaware of the harm.* They have no idea they've caused harm, and may never find out.

Why is it wrong? Flanigan (from U. of Richmond!) suggests: Because it violates *other* people's rights – namely, **their right “not [to] be subjected to serious risks without their consent.”** (12)

Now ask: Should the shooter's actions be *illegal*? That is, should the government take steps to forcibly prevent him from acting in this way, or punish him if he does so? How about if his bullet never hits anyone – should it be illegal even in that case?

Most will probably answer 'yes' to these questions. As Flanigan notes, “coercion [by the government] is justified to prevent people from harming others and imposing serious risks on others.” (16-17)

And celebratory gunfire IS illegal to various degrees across the U.S. (In Virginia, it is a class 6 felony if the bullet injures someone, and comes with a 1 to 5 year prison sentence ; it is a class 1 misdemeanor if it doesn't, which has a maximum penalty of 1 year in prison and a \$2,500 fine.)

But now consider another case:

Pandemic It is the fall of 2021, during the Delta wave of covid. At this stage in the pandemic, the vaccine is widely available, and is over 90% effective at preventing infection and spread of the virus.¹ Professor Vance is fully vaccinated. A few days ago, one of his unvaccinated students, Carrie, had some close contacts with some students who later tested positive for covid. Carrie chooses to attend class anyway, without testing first – and without wearing a mask with a tight seal, e.g., N95. (In fact, she wears no mask at all.) Unbeknownst to her, she is largely asymptomatic, but infectious. Professor Vance contracts covid from Carrie. His illness progresses quickly. He is put on a ventilator, and dies within a week.²

Has Carrie acted wrongly by going to class unvaccinated (and unmasked)? Plausibly, 'Yes'. Note the similarities between the two cases. Carrie has:

- *Caused serious harm.*
- She didn't *intend* to harm anyone (we'll assume).
- It was *unlikely* that her action would cause harm, or result in someone's death.
- She was just exercising their *freedoms* or personal *rights* to bodily autonomy.
- She may have no idea that she is the cause of Prof's death, and may never find out.

If anything, refraining from vaccination seems even WORSE than celebratory gunfire. For,

"Unlike celebratory gunfire, non-vaccinators not only are more likely to transmit an illness, they make it more likely that others will transmit harmful diseases as well."

In short, diseases, unlike gunfire, are **contagious**. She adds,

"non-vaccinators deliberately endanger and potentially harm people by transmitting contagious illnesses, essentially turning themselves into biological weapons that are recklessly unleashed on a public that cannot consent to the risks."

¹ This would later change in December of 2021 with the rise of the Omicron variant, when the vaccine – while still extremely effective at preventing hospitalization and death – was no longer very effective at preventing vaccinated individuals from contracting and spreading the virus.

² Note: Flanigan is writing pre-covid and so has in mind diseases like polio and the measles. So, her example is something like this:

Polio Anti-Vaxxer You are minding your own business at the grocery store with your 6 month old child. You are fully vaccinated against polio (which is 99+% effective), and your child has had the recommended 2 doses of the polio vaccine so far (which is 90% effective at preventing infection with the virus). Unbeknownst to you, Carrie, another shopper in your aisle has chosen not to vaccinate her child (who is with her). As it turns out, Carrie's child has polio (which you can be infected with and spread without even knowing it). Your baby contracts polio, and later experiences paralysis, then death.

[If you like, you may add the following detail: Recent tests of the sewage where you live indicate that there are hundreds of undetected cases of polio within your city. (Note that this [actually happened in NYC](#) in 2022, and left one man paralyzed.) Does it make a moral difference whether a disease is presently circulating or not? Why or why not?]

[Do you agree? If you answered 'Yes, it's wrong' in Celebratory Gunfire, but 'No, it's permissible' in the vaccine case, then what is the moral difference between the two cases?]

Flanigan's argument for mandatory vaccination is as follows:

"Begin with the assumption that a prohibition on celebratory gunfire is permissible. Since non-vaccination is morally similar to celebratory gunfire in that it harms people and exposes bystanders to undue risks of harm, non-vaccinators are liable and some coercive intervention to prevent or limit the effects of their wrongful behavior is justified. And so, prohibitions of non-vaccination are permissible, just like other coercive public safety measures." (13)

In argument form:

Argument By Analogy for Vaccine Mandates

1. Celebratory gunfire is immoral, and laws prohibiting it are just.
2. Celebratory gunfire is morally analogous to refusing vaccination.
3. Therefore, refusing vaccination is also immoral, and laws prohibiting this are just.³

Qualifications: Obviously, the analogy only applies when:

(a) A disease is *contagious*,

[For example, we have a nearly 100% effective vaccine against tetanus, which causes muscle spasms, lockjaw, and even death. However, if you have tetanus, you cannot pass it on to others, and so you pose no threat to others. So, refraining from being vaccinated does not violate others' right not to be subjected to serious risk of harm without consent.]

(b) and is not spread via *consensual activity*,

[For example, we have a 98-100% effective vaccine for hepatitis B, which causes severe prolonged illness, and in some cases death due to liver failure. Yet, as a sexually transmitted disease, Flanigan believes that this vaccine shouldn't be mandated. Instead, sexual partners ought to discuss STD's before sex – after which, if you still have sex, then you have *consented* to any associated risks.]

³ Alternatively, we might present the argument more generally, without appealing to the analogy, as follows:

1. It is immoral to impose significant risk of severe harms on others.
2. Laws prohibiting the imposition of significant risk of severe harms on others are just.
3. Refraining from being vaccinated imposes significant risk of severe harm on others.
4. Therefore, it is immoral to refuse vaccination, and laws prohibiting this are just.

(c) and we have a vaccine for it that is *effective*, and

[For example, since the omicron variant, covid vaccines are no longer very effective at preventing transmission. (Though they *are* still effective at preventing the vaccinated individual from hospitalization or death.) In this case, receiving the vaccine doesn't significantly decrease the risk of harm that you pose to others.]

(d) is *safe* for the user.

[Some people would risk adverse outcomes by being vaccinated – whether do to severe allergic reaction to the vaccine, being immuno-compromised, receiving chemotherapy, etc. In their case, it seems morally permissible for them to impose a small risk of severe harm on others (by remaining unvaccinated) in order to avoid severe harm to themselves. To illustrate, imagine that a bear is charging you, and you need to fire your gun into the air a few times to scare it off. In this case, it seems permissible to increase the risk of harm to others by a tiny amount in order to prevent severe harm to yourself, and it would be unjust to enforce the law, punishing you for your action. (Similarly, a law mandating that people who are severely allergic to a vaccine be vaccinated would also be unjust.)]

2. Objections: Here are some potential objections to Flanigan's argument:

(1) **Bodily Autonomy.** A prohibition on gunfire merely forces me to refrain from a certain kind of activity, but a vaccine mandate forces me to perform a certain activity—namely, *seek out and receive a medical treatment*. Yet, I have a right to refuse medical treatment, on grounds of bodily autonomy.

Reply: First, it *does* seem permissible for the government not only to forbid certain actions (e.g., laws against murder, or theft), but also to *mandate* the performance of certain positive actions (e.g., everyone is legally required to pay taxes, and attend school; and every driver is required to put on a seatbelt, and pass a driver's test, etc.).

Second: Sure, it is within your rights to refuse medical treatment, even if doing so would be really detrimental to your health, or even fatal. However, in this particular instance, your choice potentially *affects others*. And, Flanigan says, it is NOT within your rights to refuse a treatment when doing so runs the risk of harming others.

Generally, it is agreed that, if we have certain rights, these **rights do not extend or apply in cases where exercising them would cause harm**. For instance, a right to free speech does not entail a right to shout "Fire!" in a crowded arena. A right to freedom of religion does not entail a right to perform ritualistic human sacrifices. And so on. Similarly, Flanigan would say that a right to bodily autonomy does not entail a right to turn one's own body into a potential biological weapon to be loosed in public. [*Do you agree?*]

[Rebuttal: Perhaps, but this is a mandate **to put a foreign substance into your body**.

Furthermore, what if the vaccine is just a LITTLE dangerous? Like, what if roughly one in 1.5 million people who receive it develop fatal blood clot in their brains? (This was true of the Johnson and Johnson vaccine, for example.) Is this small risk to ourselves great enough to make it permissible to impose some risk of harm onto others?

Potential Reply: If you see someone drowning, are you morally obligated to jump in and save them? Seemingly, yes. But: You have at least a 1 in 1.5 million chance of drowning *yourself* during an attempted rescue from drowning. Even so, it seems that you are morally obligated to take on this risk, in order to prevent significant harm to others.

Furthermore, in this drowning case, you are merely SAVING someone's life. You are HELPING them. But, as Flanigan notes, getting vaccinated prevents you from HARMING others. (Carrie *killed* professor Vance!) It seems that we have *much* stronger moral reasons to prevent ourselves from harming others, than we do to prevent others from coming to harm. To illustrate, consider two cases:

Drowning Betty Alice has been bitten on the hand by a poisonous snake and has applied a tourniquet around her arm to stop the venom. She is rushing to the hospital to receive an anti-venom in time to save her life, as well as her arm. (If she leaves the tourniquet on for too long, her arm will need to be amputated.) As she speeds to the hospital, she sees Betty in a pond on the side of the road, drowning. If she stops to save Betty, she will not make it to the hospital in time to save her arm. Is it permissible for Alice to speed past Betty in order to make it to the hospital in time to save her arm?

Speed Bump Betty Exactly like Drowning, except that, rather than Betty drowning alongside the road, Betty has fallen and is lying in the middle of the road. As it is, Alice will need to run over Betty in order to get to the hospital. If Alice stops to pull Betty to the side of the road, she will not make it to the hospital in time to save her arm. Is it permissible for Alice to run over Betty in order to make it to the hospital in time to save her arm?

Interestingly, most people think that what Alice does in the first case is permissible, while in the second it is not. In other words, people feel that we are required to make MUCH larger sacrifices in order to prevent ourselves from actively KILLING others than we are in order to prevent ourselves from merely LETTING others DIE. (Alice is obligated to sacrifice her arm to avoid *killing* Betty in the Speed Bump case, even if she is not also obligated to lose her arm in order to avoid *failing to save* Betty, in the Drowning case.)

The lesson: By remaining unvaccinated we would potentially be turning ourselves into “biological weapons” (as Flanigan puts it), and KILL people. Yet, according to the lesson above, we are obligated to make very large sacrifices in order to avoid harming others.]

- (2) **Religious Freedom.** What if my religion prohibits vaccination? Don't I also have a fundamental right to religious practice? If so, a vaccine mandate violates this right. By contrast, a prohibition on celebratory gunfire would not infringe on any religious belief.

Reply: First, Flanigan points out that some are so deeply rooted in gun culture, that celebratory gunfire can be LIKE a religious belief—and yet, we still think that laws against it are permitted.

[Is this fair? The religious claim is that the creator of the entire universe, who holds our eternal lives in the balance and may condemn us to infinite suffering if we get vaccinated – the religious people in question believe that THAT ENTITY has demanded that we do not receive a vaccine, and may punish them with infinity amount of suffering if they do not comply. Should there be a religious exemption in this case? Why or why not?]

Second, while it is clear that everyone ought to be permitted to make personal decisions that affect only themselves (for instance, some religions demand that their followers refuse certain kinds of medical treatment), it is NOT the case that they ought to be permitted to make the sorts of decisions that harm, or impose a risk of harm on *others*. Again, **rights do not extend or apply in cases where exercising them would cause serious harm to others, or significantly increase the RISK of severe harm to others.**

[Like, clearly it is permissible to enforce laws against murder, even if the murderer believes that their god has demanded human sacrifice.]

(3) **Absurd Implications:** If our conclusion is that it is immoral to do something that increases the risk to others without their consent, and that such activity should be prohibited by the government, then doesn't it follow that **driving should be outlawed?** After all, every time you drive a car, it increases the risk that someone will be injured, or killed. (There are over 40,000 traffic fatalities in the U.S. each year – e.g., 40,990 in 2023 – and over 2 *million* injuries. [Source](#)) That's absurd! Surely there is a flaw in this reasoning!

Reply: Flanigan doesn't address this charge. Here's how I think she ought to reply:

It's not the mere act DRIVING that imposes severe risk on others. Over 90% of all traffic collisions are due to human error. It's really driving while texting, or while speeding, running stop signs, not using a blinker, changing lanes erratically, etc. – THESE are the behaviors that impose a significant risk of harm on others. And we DO have laws prohibiting these behaviors.

Similarly, it's not the mere act of owning a gun, or even using one responsibly that imposes significant risk on others. Rather, it's *firing one into the air in a populated area* that imposes the risk. And we DO also have laws prohibiting this behavior.

Finally, *going into public places while unvaccinated* is the behavior that imposes risks on others in the case of contagious diseases. And it is THIS behavior that Flanigan is in favor of legally prohibiting.

Also: We might also try to identify some differences between driving and non-vaccination, to see if they make a moral difference. For instance, it seems that the personal costs of giving up driving would be very high for most people. Meanwhile, the cost of getting vaccinated is very low – just temporary mild discomfort and inconvenience.

As Flanigan argued, if taking measures to reduce the risk that you impose on others requires you to make a large sacrifice to your own well-being, your refusal to take those measures seems more excusable, morally. (Remember firing the gun into the air to scare off the bear.)

[*What do you think? Does being in favor of a vaccine mandate commit you to the conclusion that driving ought to be illegal? Why or why not?*]

(4) **Practical Objections:** There may also be some practical concerns. For instance,

- (i) enforcement may be difficult
- (ii) vaccine mandates may inspire some citizens to riot, or rebel, or cause harm
- (iii) such a mandate might set a precedent for future government overreach, or abuse of power, and so on.

Reply: Let us set these aside. Let's assume that the people over in the public policy department can iron out all of these difficulties. The question we're most interested in here is, **morally** speaking, **theoretically** speaking, **philosophically** speaking: Would it be permissible to have a legal vaccine mandate?

Conclusion: Flanigan concludes that the legal enforcement of a vaccine mandate is just.

If you disagree, it may help to imagine someone who is presently contagious with **ebola**. Do you think that it is permissible to legally enforce a quarantine? (Note: [This actually happened in the U.S.](#) in the fall of 2014.) The answer seems to be 'Yes'. If so, then you already agree that it is permissible for the government to restrict personal freedoms in the interest of public health and safety. The question then just becomes one of degree. (e.g., How deadly does the disease need to be in order to justify restrictive laws? How contagious? How prevalent? Etc.)

Note: When she suggests that non-vaccination should be illegal, Flanigan isn't suggesting that violators should receive jail time. She suggests fines, and/or exclusion from certain public services, or employment (e.g., health care work) as acceptable forms of punishment. What do you think of a vaccination law like that?

[Further food for thought: In fall of 2021, W&M mandated vaccines for all students, faculty, and staff. Was it permissible for the college to do this? Why or why not?]