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# The Case against compulsory vaccination: the failed arguments from risk imposition, tax evasion, 'social liberty', and the priority of life

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## ABSTRACT

Arguments for mandatory or compulsory vaccination must justify the coercive infringement of bodily integrity via the injection of chemicals that permanently affect a body's inner constitution. Four arguments are considered. The allegedly libertarian argument declares unvaccinated persons a threat; accordingly, vaccination could take the form of justifiable defence of self and others. This argument conflates material and statistical threats. The harsh coercive measures permissible in defence against the former are not permissible in prevention of the latter. The argument from tax evasion claims that people can be permissibly coerced into bearing their fair financial burdens of community life and likens this to sharing burdens in the face of a viral threat. The argument fails to demonstrate that vaccination would be fair, permissible in spite of potential lethal side-effects, and sufficiently similar to taxation despite the categorical difference between temporary deprivation of money and permanent deprivation of one's original inner bodily constitution. The argument from 'social liberty' claims that the loss of freedom due to mandatory vaccination is only apparent, namely outweighed by corresponding gains in freedom. This argument conflates freedom as the absence of coercion with freedom as the presence of options for action. It fails to give the former its due weight and to demonstrate that persons may be coerced into increasing the options of others. The argument from the priority of life elevates the protection of life to an absolute value. This is unwarranted and leads to counterintuitive implications. Without better arguments, mandatory vaccination must be rejected.

## INTRODUCTION

Arguments for mandatory or compulsory vaccination must justify the coercive infringement of bodily integrity via the injection of chemicals that permanently affect a body's inner constitution. This is a tall order. Four arguments are considered. The allegedly libertarian argument declares unvaccinated persons a threat; accordingly, vaccination could take the form of justifiable defence of self and others. This argument conflates material and statistical threats. The harsh coercive measures permissible in defence against the former are not remotely permissible in prevention of the latter. The argument from tax evasion claims that people can be permissibly coerced into bearing their fair financial burdens of community life and likens this to sharing burdens in the face of a viral threat. The argument fails to demonstrate that vaccination would be fair, permissible in spite of potential lethal side-effects, and sufficiently similar to taxation in spite of the

categorical difference between temporary deprivation of money and permanent deprivation of one's original inner bodily constitution. The argument from 'social liberty' claims that the loss of freedom due to mandatory vaccination is only apparent, namely outweighed by corresponding gains in freedom. This argument conflates freedom as the absence of coercion with freedom as the presence of options for action. It fails to give the former its due weight and to demonstrate that persons may be coerced into increasing the options of others. The argument from the priority of life elevates the protection of life to an absolute value. This is unwarranted to begin with and leads to counterintuitive implications. Without better arguments, mandatory vaccination must be rejected as unjustifiable.

The terms 'mandatory' and 'compulsory vaccination' are used synonymously in this paper and as referring to state policies that make vaccination an inescapable legal obligation (medical or religious exemptions notwithstanding) or otherwise credibly threaten unvaccinated people with sanctions. In contrast, on the basis of freedom of association, a private school's policy of only accepting vaccinated pupils would not count as a vaccination mandate in the state-centred or public-centred sense intended here. However, if we are dealing with institutions from which members cannot legally withdraw (as might be the case with the military), then legally requiring members of these institutions to get vaccinated would also count as mandatory or compulsory.

## RISK IMPOSITION I: JESSICA FLANIGAN

Jessica Flanigan states her basic argument for 'compulsory vaccination' as follows:

[V]accine refusal harms and risks harming innocent bystanders. People are not entitled to harm innocents or to impose deadly risks on others, so in these cases there is little to be said for the right to refuse vaccination. Compulsory vaccination is therefore justified because non-vaccination can rightly be prohibited, just as other kinds of harmful and risky conduct are rightly prohibited. (p6).<sup>1</sup>

This is supposed to be true when four limiting conditions are met:

(1) the illness is contagious; (2) those who are exposed to the risks of transmission are not liable; (3) vaccination is necessary and effective at limiting contagious transmission; and (4) vaccination does not violate rights of self-defence. (p6).<sup>1</sup>



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Flanigan tries to support her basic argument by an analogy. She envisions your patriotic neighbours firing guns to celebrate Independence Day. While it is unlikely that a stray bullet will hit you, it could be deadly if it did. She claims that your gun-firing neighbours are in the relevant sense like non-vaccinators:

Both shooters and non-vaccinators may feel justified in exposing people to small risks of getting shot or infected with a contagious illness for the sake of their own freedom to fire guns or to refuse vaccination. Yet, neither shooters' nor non-vaccinators' rights entitle them to harm others, despite the fact that the risk of harm is of low-probability, their victims are unlikely to identify them, and they do not intend to injure their victims. (p8).<sup>1</sup>

However, the neighbours are in fact nothing like the non-vaccinators. The latter usually do not refuse vaccination in celebration of Independence Day, but rather to avoid being injected with chemicals. So let us change Flanigan's example accordingly. Suppose the biker gang *The Vaxxers* approaches your neighbours to inject them with a chemical substance. You neighbours can only keep them away by firing warning shots in the air to scare them off. Is this unjustified? It would not appear so; it is certainly legal. (Flanigan admits in the context of discussing her self-defence proviso that it would be permissible to fire the gun in order to chase away dangerous bears (p15).<sup>1</sup> However, as the example shows and self-defence law confirms, one is also permitted to use defensive force against people trying to inject you with chemicals, thereby violating your bodily integrity and exposing you to health risks you have not given informed consent to. Flanigan seems to be aware that critics might argue along these lines (p16),<sup>1</sup> but she does not provide any counterargument.)

Moreover, this does not even seem to change if you hired the *Vaxxers* in the reasonable belief that the chemical they would inject your neighbours with has significant negative side-effects only on rare occasions, but would prevent you from catching a lethal disease in case your neighbours got exposed to a virus currently making its round. In fact, if the *Vaxxers* succeeded in vaccinating your neighbours against their will, this would legally constitute assault, and you would be criminally liable as principal and for conspiracy.

This brings us to a third disanalogy between vaccination refusal and gunfire. Flanagan says that refusal harms innocents and 'imposes' a deadly risk. But refusal as such does not harm anybody; the virus does, and it does not matter if it finds its way to you from a non-vaccinated person or, as it often happens, a vaccinated person. Many non-vaccinated persons will not actually carry the virus, and as long as they do not (and they might never) or as long as their virus does not infect someone, they are not *harming* anybody.

Do non-vaccinated non-contagious people still impose a *risk*, though? Not in the same way as the shooters. The shooters unleash a deadly force (flying bullets) in your vicinity—a force that was not there before and that might smite you. The risk stemming from non-vaccinated non-contagious people (unlike the risk stemming from vaccinated contagious people) is merely epistemic, merely statistical instead of material. An assassin, even if he misses his target 99 out of 100 times, is a material threat when he is about to fire at his victim. An individual registered in a list of 100 persons of whom the secret service knows that one of them is about to shoot an innocent victim is merely a statistical threat, unless the person happens to be the one doing the actual shooting. There is a difference between *actually* firing a bullet and being *statistically* likely to miss (material threat), and

being merely *statistically* likely to fire a bullet but *actually* doing no such thing (statistical threat).

However, the threshold for the justifiability of intrusive measures, for measures violating other persons' bodily integrity, is much higher in the case of neutralising a mere statistical threat than in the case of a material threat (<sup>2</sup>: section 4.2). Consider the following example. A reliable artificial intelligence provides you with a list of 100 persons and affirms that one of them will assassinate you within the next months. It informs you that your only way to prevent this from happening is to inject all 100 with the newly developed but very safe (hardly no side-effects) anti-assassination nanobots.

Each of the innocent 99 would be legally and morally entitled to knock you out if this were necessary to stop you from injecting them with the bots. Some theorists of self-defence would even deem you liable to *lethal* force against your injection attempt if necessary to thwart it (<sup>2</sup>: sections 2.2.4.1 and 2.2.4.3,<sup>3,4</sup>: 83–84,<sup>5</sup>: 871–872). In fact, even the one on the list who *would* indeed assassinate you in a few months would arguably still be entitled to defend himself, because your assault is not covered by a self-defence justification, which is only triggered by *imminent or ongoing* rights-violations (<sup>6,7</sup>: 90–91,<sup>8</sup>: section 3.7,<sup>2</sup>: section 2.2.3). For your not strictly speaking defensive, but merely *preventive* act, you can at best have a lesser evil or, as some jurisdictions call it, a justifying emergency justification. This type of justification, however, is compatible with symmetry: while there is no justified self-defence against justified self-defence, there is justified self-defence against justified preventive attack (<sup>2</sup>: section 3.3,<sup>9</sup>: sections 4.1.5–4.1.6,<sup>10</sup>: section 2.4,<sup>11</sup>: esp. 69–71,<sup>12</sup>: 1039). In contrast, when the one actually does attack you, you are not only entitled to inject him with the bots, you could even shoot him dead if this were necessary to save your life, and he would not have a symmetrical right of self-defence against your use of force.

Thus, while Flanigan equates mere statistical 'threats' with actual material threats, these are two different categories when it comes to the justification of counterforce or compulsion. The shooters are material threats; the overwhelming majority of non-vaccinated persons are merely statistical 'threats'. This is a third disanalogy. Accordingly, Flanigan's supposed analogy is far too dissimilar to the case of mandatory vaccination to be able to make the case for it. In fact, her argument needs to be turned around: compulsory preventive vaccination violates bodily integrity and imposes risks of side-effects on innocent, non-harming bystanders. Short of a lesser evil justification, people are not entitled to violate the bodily integrity of innocent persons, so in these cases there is little to be said for the right to force others to submit to the injection of vaccines. Moreover, even if there were a lesser evil justification, this would indeed only provide a *justification* to coerce some party to get vaccinated, not a *claim-right* against this party that the party not resist vaccination. In other words, the lesser evil justification would justify the vaccinator, not oblige the non-vaccinated person. However, as the second version of the vaccinating bikers above shows, there is no lesser evil justification in the first place; otherwise, you would not be criminally liable for having hired *The Vaxxers* to assault your neighbours.

One might object that while my *Vaxxers* example is more analogous to the case of mandatory vaccination than Flanigan's, mandatory vaccination need not amount to a violation of bodily integrity if it is only 'enforced' by fines and one can avoid the vaccination and thus safeguard one's bodily integrity by paying them. However, if one does get vaccinated because one wants to avoid the threatened fine, the violation of bodily integrity

remains. Moreover, if the *Vaxxers* get money out of people by threatening them to otherwise inject chemicals into their bodies or to imprison them in their club house if they refuse both injection and payment, then the *Vaxxers* would at least be culpable of a violation of bodily *autonomy* (although not of integrity if the injection is avoided). Additionally, they would still be committing assault, now in combination with robbery. If the *Vaxxers* did this on a larger scale, it would be racketeering. Of course, some people claim that such racketeering is quite alright if done by the state: in this case it is called ‘taxation’. But if that is the argument, then we have left the one actually provided by Flanigan behind. We will consider the taxation argument after the next section.

## RISK IMPOSITION II: JASON BRENNAN

The same confusion of material and statistical threats as displayed by Flanigan also undermines the allegedly libertarian argument for mandatory vaccination provided by Jason Brennan. (Another author who fails to distinguish between material and statistical threats is Simon Clarke,<sup>13</sup> who refers to Nozick. Nozick does not make this distinction either; yet Nozick’s examples of permissible coerced risk reduction concern material threats, and therefore demonstrate nothing regarding statistical threats.) This is the more surprising as Brennan, trying to improve on Flanigan’s argument, at first implicitly acknowledges that non-vaccinators are not like Flanigan’s shooters: ‘[M]andatory vaccination forces individuals who are not a clear or present danger to others nor are at a high risk of being a clear and present danger to accept a vaccine against their will’ (p39).<sup>14</sup> But then he continues by relying on examples where people are not only clear and present dangers but definitely lethal. He gives the example of 10 sharpshooters about to kill an innocent child in such a way ‘that each shot will hit the child at the same time, and each shot would be fatal on its own.’ He suggests that it would be permissible to coercively keep any of the ten (or even of a million) shooters from taking his shot even if this would, because of the other nine shots, not save the child’s life. He explains this with ‘the “clean hands principle”: there is (sometimes enforceable) moral obligation not to participate in collectively harmful activities ... A collectively harmful activity is “a harmful activity caused by a group or collective, where individual inputs into the harmful action are negligible”’ (14: 40; the quote within the quote is from Ref. 15: 71).

Yet, as Brennan himself realises, the individual input in this case is ‘negligible’ because the outcome is *overdetermined* (p40 and p14),<sup>14</sup> which means that there is more than one cause at work (in this case ten) sufficient to bring about the outcome. Any shooter could abstain from shooting without this abstention saving the child. In fact, all but one of them could abstain without this preventing the lethal result. The reason for this is precisely that each of the inputs is lethal on its own.

This is completely different in the case of the non-vaccinated non-contagious person. His not being vaccinated is *not* lethal on its own. He is therefore not to be compared with someone lethally shooting at an innocent child, but with someone non-lethally taking a stroll. He simply does not provide any ‘input’ into, nor does he ‘participate’ in, any collectively harmful activity.

Of course, the non-vaccinated non-contagious person can still be a statistical threat (so can vaccinated persons), but he is not a material threat. There is a huge difference between people shooting at children and killing them and people to whom a one in a million statistical likelihood attaches that they might shoot and kill children in the future. You may apply coercive force to

the former, but not to the latter, at least not on the basis of the libertarian principles to which Brennan professes allegiance. (For some scepticism about Brennan’s libertarian credentials, see Ref 16.)

Brennan provides still a further supposed analogy, in which ‘reckless astronauts’ teletransport to a newly discovered planet containing water and ‘for all they know... a wide range of deadly bacteria and viruses’ to which they ‘actively expose themselves’. Given this description, this appears to be a planet teeming with life on which the astronauts walk around without their suits. Brennan claims that ‘libertarians could hold that it is justifiable to use coercion to protect others from these astronauts’ and that ‘anti-vaxxers in the USA are relevantly similar to the reckless astronauts’ (p41).<sup>14</sup>

Brennan himself concedes that ‘there are some disanalogies’, for instance, that the astronauts ‘are exposing themselves and others to a completely unknown risk’ (p41).<sup>14</sup> This is an understatement. By camping in the jungles of Borneo or eating undercooked meat in an exotic restaurant, one exposes oneself to an ‘unknown risk’ (but libertarians would certainly not impose here any coercive measures on adventurous travellers or gourmets). In contrast, by drinking water and walking around without protective suit on what appears to be *Pandora*, one exposes oneself to a breathtakingly new risk, the likes of which humanity has never seen before. This situation is, pun intended, lightyears away from that of antivaxxers in the USA and indicates nothing about their obligations on planet Earth.

## TAX EVASION

Alberto Giubilini argues for mandatory vaccination from an analogy between vaccine refusal and tax evasion: ‘[I]n both cases of vaccine refusal and of tax evasion individuals fail to make their fair contribution to important social and public goods, regardless of whether each individual contribution “makes a difference”.’ (p446)<sup>17</sup> He does not explicitly distinguish a number of different questions worth being distinguished. For instance, it might be morally impermissible to pass a mandatory vaccination law and yet be morally obligatory to abide by it. In other words, it is not conceptually incoherent to claim that, at least in a reasonably just society, one can sometimes be morally obliged to follow even unjust or imprudent laws. Neither is it incoherent, conversely, to claim that it can be morally justified to violate just laws or to even resist their administration through executive officers (<sup>18</sup>: esp. chs. 2 and 3). Be that as it may, it seems that Giubilini is arguing for the position that under certain circumstances mandatory vaccination laws are both just or justified and produce an obligation of citizens to abide by them and get vaccinated.

This is so, he claims, for three reasons. First, ‘vaccination normally entails a small cost to individuals’, second, ‘individually it can prevent infecting others and collectively would allow achieving herd immunity’, and third, ‘fairness requires that the burdens of the collective responsibility to realize herd immunity be fairly shared among the individual members of the morally responsible collective’ (pp451–452).<sup>17</sup> Of course, the second premise will not be satisfied for all vaccines, but will be satisfied for some.

As regards the third point, Giubilini seems to simply presuppose that everyone getting vaccinated (probably excepting cases of medical exemption) would be fair. However, those who rightly think that their immune systems can deal with a certain virus but might suffer from the side-effects of chemicals injected into their bodies have much less to gain and much more to lose

from vaccination than others (see also Ref 19: 241).<sup>1</sup> Accordingly, by refusing vaccination such people could actually make the overall scheme fairer, which could provide a justification for refusal.

Moreover, as Michael Kowalik argues, imposing a mandatory vaccination scheme on such confident and resilient individuals would make them bear costs for the benefit of others ‘on the basis of innate biological characteristics’. He adduces ‘a hypothetical scenario of a treatment that would safely and infallibly prevent homosexuality in adults if administered to newborns ... in response to a pandemic of a novel and potentially lethal pathogen affecting almost exclusively elderly homosexuals and for which there is no reliable cure.’ Kowalik states that it would be unethical to make this treatment mandatory. Likewise, out of ‘respect for the innate characteristics of healthy human beings’, we must not coercively subject people to an ‘unwanted change’ in their ‘innate human constitution’ (p242).<sup>19</sup> This connection to a human’s innate constitution is a factor that goes far beyond the further disanalogy regarding ‘mere’ bodily integrity and makes the case of taxation completely disanalogous to the case of vaccination.

As regards the first premise of his argument, Giubilini admits that vaccination can sometimes come with very high costs *ex post*. Given that he concedes that John Harris’ infamous ‘survival lottery’ is considered impermissible, he needs to explain the difference between this lottery and mandatory vaccination. In Harris’ lottery, a computer randomly selects from time to time a person among a large population. This person’s organs would be harvested to save a much larger number of people in need of organs.<sup>20</sup> The *ex ante* cost is small (very low probability of being selected) and only the *post facto* cost (one’s organs being removed) very high. The existence of the lottery would therefore increase everyone’s survival chances *ex ante*. Thus, ‘the survival lottery seems similar to the case of compulsory vaccination’ (p463).<sup>17</sup>

Giubilini responds that there ‘is a morally relevant disanalogy’ in that with the survival lottery ‘we pick someone randomly who we intentionally harm in order to benefit others: the positive effect is achieved by intentionally using a negative effect as a means’ (p464).<sup>17</sup> (Giubilini acknowledges that ‘the ‘doctrine of double effect’ is notoriously subject to criticism, especially from the consequentialist camp’, *ibid.* p464. It has also been severely criticised from the deontological side for lacking any plausible rationale as well as for relying in its support on a flawed methodology, see Refs. 21 22 for overviews on both aspects. We can set this issue aside here.)

However, we need not intend to *kill* the person, but only to harvest her organs, foreseeing her death as an unintended side-effect. It is true, though, that in this case parts of someone’s body are used as a means to benefit another person. Yet vaccines *also* work by using parts of a person’s body (namely the parts necessary to produce the immune response) as a means. If the person vaccinated did not consent and the procedure is done so that herd immunity is increased, it is both true that his bodily integrity is violated (a needle is stuck into his arm and chemicals injected) in order to benefit others and that parts of his body are used as a means to benefit others.

<sup>1</sup>An anonymous reviewer argues that this could be taken care of with further exemptions. However, states do not provide exemptions from mandatory vaccination simply on the grounds of people believing that they do not need a vaccination or that it would do them more harm than good. In fact, such a scheme of exemptions could hardly be called ‘mandatory’.

One might deny this and state that parts of his organism are used not to benefit others, but to not harm them. Yet, more precisely, what happens is that these parts are used to create an immune reaction that will increase the safety of others precisely by making the body less receptive to dangerous objects (like a virus) that could then harm others. As already argued above, as long as the body does not host those viruses, or does host them but without this leading to infections, there is no actual harm. Thus, what is happening is not the defensive suppression of harm, but a *preventive risk-reduction*. If Bob injects himself with antiassault nanobots making it impossible for him to attack others, he is actively increasing the safety of others, not merely refraining from harming them (he did this already). If others coercively inject him, they are actively increasing the safety of others at his cost. This *is* to use parts of his body as a means to increase other people’s safety.

Moreover, we can also avoid discussions of ‘using people as a means’ by offering still a further hypothetical. Suppose vaccination against COVID-19 does not work but the philanthropic billionaire scientist provides us with antiviral-drones hovering above our heads that destroy any approaching COVID-19 virus with otherwise harmless rays. Eighty per cent of all adults need to have one of these drones personally ‘imprinted’ on them (some kind of gene recognition) for the drones collectively to work really well (the so-called herd immunity). The drones increase overall life expectancy and are very safe, only one out of every one hundred thousand imprinted persons sooner or later gets his arms ripped out by the drone; for many, this incident ends fatally. Some people refuse to have the drones imprinted on them on account of being more averse to having a drone hovering over their heads and risk getting their arms ripped out than to dying from COVID-19.

Is this wrong of them? Are they obliged to accept the drones? Intuitively, this case might be less clear than the survival lottery. Nevertheless, it does intuitively seem that people have a right to decide for themselves how they want to (risk to) die, whether due to their own body’s lack of sufficient immune resilience, or at the tentacles of somebody else’s contraption. Likewise, it also seems that people have a right to rather risk dying of natural causes than to have their bodily integrity coercively violated and a chemical concocted and produced by people whom they are not particularly inclined to trust be introduced into their blood stream and permanently change their bodily constitution. These issues are not even touched on by taxation, and therefore an argument from the permissibility of taxation falls far short of providing support for the permissibility of legally coerced vaccination. (Another argument from analogy for mandatory vaccination is the seat belt analogy.<sup>23</sup> For a convincing criticism of this argument, see Ref 24.)

### ‘SOCIAL LIBERTY’

In a recent reply to Kowalik by Garrett Gooch and Abraham Graber, the two authors miss the point of Kowalik’s argument. They state that for ‘a refuser forced to vaccinate, the autonomy constraint is momentary—no more than the few seconds required to receive the vaccine’ (p432).<sup>25</sup> Yet Kowalik nowhere claims that people must not be detained for a few seconds if that magically destroys the virus *without* ‘coercively depriving a person of body autonomy with respect to a potentially life changing or otherwise irreversible decision about self-constitution’ (p241).<sup>19</sup> It is rather this latter deprivation and infringement of bodily

autonomy that concerns him; a concern Gooch and Graber do not address.<sup>ii</sup>

Moreover, their claim that the ‘existential risk faced by the vulnerable in such a world [of vaccine refusers] constitutes a coercive force that sharply limits their ability to make autonomous decisions’ (p431),<sup>25</sup> fails not only as a reply to Kowalik but also considered on its own. After all, as Isaiah Berlin states: ‘Coercion implies the deliberate interference of other human beings ...’ (p169).<sup>26</sup> Yet the refusers do not tell the ‘vulnerable’ to better stay home or else; rather, the mandatory vaccinators tell those to be violated in their bodily integrity to better submit or else. There is only one side doing any coercing here.

Gooch and Graber also err in claiming that without vaccine mandates ‘vulnerable populations are left with no choice. Isolation from a non-vaccinated public is their only option’ (p432).<sup>25</sup> No, it is not. Their other option is to take the risk of going out and getting ill—just like everybody else does, for life is not only risky for vulnerable people. In fact, we are all vulnerable—that is the human condition. Moreover, this risk would arise even if there *were* a vaccine mandate, for not all vaccines are sufficiently effective and there is no vaccine against all viruses anyway. So all that vaccine refusers do is increase the statistical risk for people—including themselves—to get infected by some virus. However, by doing so they neither deliberately coerce anyone nor do they collaterally, as a side-effect of their refusing vaccines, deprive other people of all options. (Compare also Ref. 27, arguing that the ways virus bearers might constrain freedom are very different from the ways states imposing lockdowns do so and that these differences weigh against lockdowns. Similar considerations apply to a comparison between non-vaccinated people’s effects on freedom and such effects by state-mandated vaccination.) In contrast, if the vaccination enthusiasts call for mandatory vaccination, an apposite reply of a vaccine refuser would be: ‘Let me get this straight: You want to *intentionally coerce me* into *definitely* accepting a foreign substance into *my body* that I would like to keep out of it, so that *you* can avoid merely *accidental* or *likely* contact with a substance *you* would like to keep out of *yours*? You are a true paragon of autonomy and fairness, aren’t you?’

A conflation of who is doing the coercing and who is being coerced, together with a truly remarkable rhetorical reversal of perpetrator and victim, is also evidenced by a statement of Frank Ulrich Montgomery, at that time the President of the World Medical Association, during the COVID-19 crisis: he talked of a ‘tyranny of the unvaccinated’.<sup>28</sup> (The former President of the German Ethics Council, the theologian Peter Darbrock, not only agreed with Montgomery, but topped him with a disturbingly unrestrained and emotional polemic against vaccine refusers.<sup>29</sup>) As already noted, however, the unvaccinated did not coerce anybody into staying home. It was states that did. States closed

<sup>ii</sup>An anonymous reviewer objects that I nowhere defend my assumption that the inner constitution of the self bears significant weight and suspects that this assumption is based on some distinctive philosophy of the human. For the record, I think that anyone is morally free to change his or her own inner constitution as he or she wishes. However, it appears to be an intuitively plausible idea that in comparing the moral significance of *coercively* detaining someone for a minute, injecting him with a chemical that will dissolve after a minute without lasting effect, and injecting him with a chemical that will alter the physiology of his body for the rest of his life, things get sequentially more difficult to justify from one case to the next. Moreover, it is coercion that needs to be justified. So the burden of proof is on those who argue for compulsory vaccination that the obvious differences between the three cases are, surprisingly, morally irrelevant. Defenders of vaccination mandates fail to do so.

down schools, prohibited gatherings and visits, enforced wearing masks even outdoors, and imposed lockdowns. In fact, if they had not done so, many, perhaps most people would still have engaged in many (not all) the activities the state now prohibited by law or decree or that overzealous police officers prevented without basis in either. Thus, not private people without vaccination, but often public officials with guns interfered.

Still, Gooch and Graber are not alone in availing themselves of a concept of autonomy or liberty that does not identify it with freedom from coercion. For instance, the German Ethics Council states: ‘Freedom consists first of all in warding off both internal and external influences, restrictions, or constraints.’ They add:

The individual freedom of every single person exists in the first place thanks to a coexistence with all others that enables or promotes freedom. The pandemic demonstrates this fundamental fact: in the event of a serious illness, a functioning healthcare system that is provided by a society based on solidarity is an essential prerequisite for maintaining or, if necessary, regaining individual freedom. (p8)<sup>30</sup>

It is worth emphasising, though, that with regard to freedom of coercion this is mistaken. One would also be free from coercion living alone on an island. Conversely, in order to be free from coercion in a society under the conditions of a pandemic, one would need a strong liberal state protecting one from coercive violations of bodily integrity, freedom of association and freedom of movement. With its argument for mandatory vaccinations, this is apparently not the kind of freedom the ethics council wants to promote and facilitate.

Instead, they seem to have options for action in mind (in the German debate this is often labelled ‘social liberty’). And it is true that Robinson Crusoe on his island, while free from coercion, lacks options people in an industrialised and technologically advanced society have. Likewise, given widespread vaccine refusal, people (not only ‘vulnerable’ people) will lack the option to leave their house incurring only a relatively low risk of infection; they will have to run a somewhat higher risk. Of course, they could themselves reduce the risk by keeping greater distances or wearing protective gear, but the option of having the same low risk without such countermeasures is foreclosed.

Conversely, however, mandatory vaccination coercively (not only collaterally) forecloses people’s option to do things without a permanently changed inner constitution of their body. As long as they do not get vaccinated, they have both options, for they can still decide to get the vaccination: they can act with one constitution, but also decide to act with the other. But afterwards, there is no way of reversing the vaccination. Thus, since there is a foreclosing of options on both sides, all else being equal, the foreclosure that only happens collaterally instead of coercively is to be preferred. (An anonymous reviewer suggests that Philip Pettit’s notion of ‘Republican freedom’ might indicate that the real problem with the unvaccinated is that they impose ‘arbitrary’ restrictions on other people’s liberty, whereas a mandate would not be arbitrary. However, first, unvaccinated non-contagious people impose no restrictions in either a material or a statistical sense, while vaccinated contagious people do so in both senses. Second, it is mysterious why, for example, a minority’s refusing to get chemicals injected because they do not fear a virus is ‘arbitrary’ while a majority fearful of a virus forcing a minority to get chemicals injected is not. Third, Pettit’s account implies that ‘non-arbitrary’ imprisonment does not restrict freedom. That makes ‘Republican freedom’ not so much an account of liberty but rather a redefinition of the term.

In the context of the vaccination debate, vaccine refusers will rightly consider any such ‘account of liberty’ as an attempt at gaslighting. For a critique of Pettit’s ‘Republican freedom’ in the context of the lockdown debate, see also Ref. 31: 842–849.)

Moreover, there is no general duty to increase other people’s options by sacrificing one’s own. If another shipwrecked sailor strands on Robinson’s island, and they can only escape jointly sailing a sloop they found, why should Robinson be obliged to cooperate if he would rather stay on the island and profoundly dislikes the idea of ever being on a ship again? If the other sailor forced Robinson to join, this would in effect be slavery. Furthermore, if instead of the sloop there were a teletransporter that only activated if Robinson got injected with the safe nanobots described above, Robinson would still be entitled to refuse the injection. If the other sailor tried to inject the bots into Robinson anyway, this would in Western jurisdictions constitute assault and justify Robinson in using force in self-defence. Of course, states are in the enviable position of being able to make their own assaults on their citizens legal, but this is all the more reason to insist on strong individual liberty rights against the state.<sup>iii</sup>

### THE PRIORITY OF LIFE

If the state is morally obliged to give absolute priority to the protection of life and vaccination could protect life while alternative means cannot or not to the same extent, then the state would be under an obligation to implement mandatory vaccination. Obviously, the first premise is philosophically and ethically invalid, but in political discourse, especially in Germany, it was uncritically accepted by substantial parts of the media and the population. When at some point sundry politicians finally pointed out that under the German constitution the right to life, let alone the right to protection against death, is *not* an absolute value, they were thanked with relief by some parts of the population but met with almost hysterical outrage and routinely labelled ‘Nazis’ by others<sup>(32–34)</sup>, the reader comments under the articles are more revealing than the articles themselves.)

Thus, given the importance of the ‘absolute priority of life’ claim in political discourse regarding COVID-19, it is advisable to check its philosophical credentials. Apparently, however, only one philosopher has actually endorsed the priority claim, and only in qualified form, namely Jürgen Habermas. (In a newspaper article,<sup>35</sup> Habermas discusses the claim with Klaus Günther. Günther, however, does not unequivocally commit to it.) The qualification lies in Habermas’ affirmation that this priority holds in ‘exceptional situations’ (*Ausnahmesituationen*), by which he means large-scale emergency situations like the pandemic. Habermas does not explicitly apply this argument to mandatory vaccinations, but rather to infringements on freedom of association or movement, but the implication that in a pandemic vaccination would have to be enforced by the state if it is the most effective way to save life is compelling given the ‘priority of life’ premise and Habermas’ corresponding claim that under the conditions of the pandemic, ‘the actual task’ of the state is ‘to minimize deaths due to corona infections’.<sup>36</sup>

However, Habermas neither gives a reason for the qualification—why should life *only* have priority in large-scale emergency situations—nor does he provide an argument for the qualified claim itself—*why* should it have priority in emergency situations (this lack of argument is also noted in Ref. 37).

<sup>iii</sup>Obviously, I do not mean the term liberty right here in the Hohfeldian sense of privilege, but rather in the sense of a claim right against the state that the state not interfere and violate one’s bodily integrity.

Counterarguments, in contrast, are easy to come by. To wit, if the priority of life applied in all circumstances, the state would have to implement the organ lottery above. If it only applied in large-scale emergencies, the state would at least have to implement the organ lottery if organ failure became rampant, maybe due to some uncontrollable airborne disease. Both implications are counterintuitive.

Habermas realises that his position might have implications he would like to avoid. For example, apparently, he does not want to deny the German state’s moral right to refuse to grant the demands of the terrorist Red Army Faction in the context of the 1977 kidnapping of the President of the Association of German Employers, Hanns Martin Schleyer. Yet, this situation and the threat stemming from left-wing terrorism were perceived in Germany as an *Ausnahmesituation*. Habermas claims that while ‘the rejection of the extortionate demands for an exchange of RAF prisoners may have been a reason for the terrorists to act as they did, the government’s refusal in no way coerced the terrorists into this consequence. In this case, there was no causal link ...’<sup>36</sup> But of course there was a causal link, it was just not a link of *proximate* causation. However, if a lacking proximate causal link between government (in)action and a harm befalling innocent people absolves the state of his responsibilities, then Habermas’ argument collapses. After all, the government’s *refusal* to coerce people into staying inside and not throwing wild parties does not coerce them into going outside and throwing wild parties. Thus, the state would not be accountable for the free decisions of its citizens.

Contradictory is also Habermas’s following statement:

[T]he ban on rescue torture betrays the logic according to which the state is prohibited from accepting the endangerment of a citizen’s health and life as a consequence of its own political actions. If, in the case of a bank robbery, the state cannot save the lives of hostages without endangering the life of a hostage-taker, it intervenes in order to fulfill its duty to ensure the life of an innocent citizen who is currently in need of protection.<sup>36</sup>

Note that Habermas ascribes a duty to save innocent life here in a situation that, while exceptional, is certainly nothing like a pandemic, a large-scale crisis affecting the whole population. Note also that the distinction Habermas draws here between ‘rescue torture’ and the ‘final life-shaving shot’ (*finale Rettungsschuss*, an expression coined by German police), namely a lethal shot to the hostage taker’s head, is spurious. If it is permissible or, apparently, even obligatory to kill a hostage taker to save a hostage, then it is also permissible, in fact preferable as it is not lethal, to waterboard a kidnapper for half an hour to find out where he has imprisoned the child that will die if not found in time.<sup>38</sup> In other words, while Habermas once deemed the mere considering of the permissibility of torture a ‘regression into fascist thought patterns’<sup>(39: 99, n. 4)</sup>, his insistence on the absolute priority of life now commits him to the doctrine ‘the end justifies the means’—at least as long as the end is the protection of life. This is a curious commitment for a self-described deontologist. Thus, when Habermas states in the final sentence of his article that ‘[t]he measures justified in this way for the period of the pandemic could probably only be demonized as an outgrowth of biopolitics by Corona deniers’,<sup>36</sup> one might, in the same polemical spirit, be inclined to reply that they could perhaps also be criticised by those who want to avoid a regression into fascist thought patterns.

Finally, the paradigm of an *Ausnahmesituation*, of an emergency a state might face, is the unjust aggression by another

state. This raises the following problem for Habermas. Just war theorists have discussed the hypothetical of ‘the bloodless invasion’ (Ref 40 for an overview). In this hypothetical situation, an invading army credibly assures the population on the opposing side that they only want to take their resources and their liberties, not their lives—unless, of course, they meet resistance, in which case they credibly threaten to employ lethal force. Habermas, committed to the absolute protection of human life in the face of a large-scale emergency situation, would have to require the unjustly attacked state to ‘roll over’. This might square well with Habermas’s comments on the Ukraine-Russia conflict,<sup>41</sup> but it neither squares with just war theory, nor with the German constitution, nor with the sentiments of, for instance, Ukrainians willing to risk their lives in defence of freedom. (Admittedly, there is a hand-full of just war theorists who think that resistance against the bloodless invasion is impermissible. However, they do not base this position on an absolute prioritisation of life as such, but on a misinterpretation of the triggering and limiting conditions of self-defence, see Ref. 9: section 4.1.2.)

Julian Savulescu, a defender of mandatory vaccination, states:

In the gravest emergencies, where the existence and freedom of the whole population is at stake, people are conscripted to serve their country, often with high risk of death or permanent injury. We often analogise the pandemic to a war: we are fighting the virus. If people can be sent to war against their will, in certain circumstances some levels of coercion are justified in the war on the virus. (p81)<sup>42</sup>

This argument needs to be turned from its head to its feet. If for the sake of the freedom of the population some people may be *coerced* into going where they risk a high risk of being intentionally killed by enemies, then surely a minority of people can be *allowed* to die in order to *avoid* the coercion and the loss of freedom of the whole population.

## CONCLUSION

Four arguments for mandatory vaccination have been considered. They all failed. Three of them are particularly influential and have not been surpassed by alternatives. If these four arguments are taken to be the basis of mandatory vaccinations, mandatory vaccination must be rejected.

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