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10 Conclusion: Vaccination Policies and Their Millian Justification

A very brief summary of our analysis in this book is that we have argued for a specific approach to the regulation of immunization, on the basis of a normative framework that fits well with John Stuart Mill's liberal philosophy. Mill's harm principle is the constitutive pillar of our defense of vaccination policies, which should neither be completely voluntary nor involve straightforward enforcement of vaccination. A large part of our book consists of exploring how coercion can be applied in a proportionate way. Ideally, immunization policies should adopt a *mandatory* approach, which still offers limited room for deviant choices, but in some cases, a *compulsory* policy is preferable. The exact nature of intrusive measures will depend on a variety of relevant contextual factors.

In this concluding chapter, we offer a more extensive summary of our practical conclusions and recommendations, and we reflect on the justification of vaccination policies for young children and adults. Both are firmly embedded in a similar Millian framework but are quite distinct in nature and justification.

The last part of this chapter offers a reflection on the Millian framework itself as we have adopted it throughout the book. Especially in public health ethics, the harm principle, as formulated by Mill himself, is often criticized for being too narrow and offering insufficient ground for necessary public health interventions. We explain and endorse this critique and outline how this does not affect our analysis of the regulation of immunization.

10.1 Mandatory Childhood Immunization: A Practical Proposal

By appealing to the harm principle, we have offered a principled ground for liberty-limiting measures that maintain a sufficiently high vaccine coverage

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to protect the basic interests of children and to protect society against the disruptive effects of dangerous infectious diseases. At the same time, any such measures should not be disproportionate, which involves considering the nature of the measures (how?) and the content of the program (what?), but also specific choices that ensure that restrictive measures are only taken if necessary (when? until when?).

Our specific proposal, which is that it should be ensured that restrictions of liberty are proportionate and not tighter than necessary, focuses on the *how* and *when*. First, the proposal entails opting for a *mandatory* policy as a "middle ground" between voluntary and strictly compulsory approaches. In a mandatory approach, parents are not given access to certain (very) desirable but nonvital social goods if they decide to forgo vaccination of their child. Hence, parents still have the possibility of opting out without a legal consequence and, thus, of remaining a citizen in good standing with the political community. Still, such a choice may be costly for them. Second, the proposal involves legislating the policy in such a way that liberty-limiting measures only kick in when the vaccine coverage is below a certain predetermined critical threshold level. In this way, restrictive measures are not actually imposed unless they are deemed necessary and urgent.

A variety of contextual and pragmatic considerations may play a role in further determining the specific content of these elements. In our own context, the Netherlands, we have developed a proposal for government policy that involves legislation for both the threshold and the nature of coercive interventions. If vaccine uptake falls below a certain threshold, then the government should implement a requirement that all child day care centers can only accept children who are participating in the national immunization program. Such a policy would legislate a liberty-limiting measure but would only implement it if the threshold was passed. Moreover, even if the measure kicks in, parents still have the possibility of opting out of vaccination: doing so will only make it impossible for them to make use of child day care. We see a coercive measure that is linked to child day care much more appropriate and in line with the purpose of the policy than mandatory approaches such as Australia's "no-jab-no-pay" policy, which means that vaccine refusers lose child benefits. We also advise prohibiting access to childcare facilities instead of prohibiting access to school, because the latter measure also negatively affects children's basic interests. If, after several years of implementation, the day care requirement appeared insufficient to raise the vaccine uptake above

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the threshold, the next step could be to extend the coercive measure to primary school entry or to accessing child benefits.

If vaccine coverage is declining but not yet below the predetermined threshold, government and public health authorities must employ a variety of voluntary measures to promote vaccine uptake that, ideally, would help to prevent the introduction of coercive measures. In a way, our proposed law can be considered a voluntary nudge: it expresses the norm that vaccination is the appropriate choice and that refraining from vaccination is at best only tolerated. Especially when vaccination rates are declining and approaching the threshold, this will spur societal discussion, notably among parents, about the importance of childhood immunization. For example, the moment that the measles vaccine coverage is in danger of dropping below the critical threshold value, parents in favor of vaccination will realize that there is something at stake for them as well, because that would also pose a danger to their youngest children, who cannot yet be vaccinated. This will engage them in these debates, and this public discussion on the importance of vaccination may push hesitating parents to opt for immunization, even before liberty-limiting policies need to be implemented. Between 2017 and 2020, we observed in the Netherlands, how, after a period of decline, such debates about—the objectionability of—vaccine refusal generated an increase in vaccine uptake, sufficient to avert the necessity of introducing more liberty-limiting policies.

What should the threshold be for enacting restrictive measures? As we explained in chapter 7, deciding about a minimum level needs to be based on epidemiological evidence, but epidemiology as such cannot determine a threshold. The relevant epidemiological insights will be about the vaccine coverage that is deemed necessary for herd immunity. In this book, we have focused on measles because this virus is one of the most infectious pathogens that also causes a severe and potentially fatal disease, and hence it makes sense to argue for a minimum threshold vaccination rate that is necessary to protect against this virus. The RIVM, the Netherlands Institute for Public Health, argues that elimination of measles can be attained if 94 percent of the population is immune.[1] Hence, we would see 94 percent vaccine coverage as a reasonable proposal for such a minimum threshold. Herd protection effects will, to a certain extent, also occur below this level. On the other hand, the population average of 94 percent is less safe if there are small regions where coverage is far below that average. This illustrates the limitations of

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determining a clear threshold on solely an epidemiological ground and the importance of more precautionary considerations.

Ultimately, determining this threshold level is subject to political decision-making, and therefore other considerations, including more pragmatic concerns, might be relevant as well. For example, a government could choose a slightly lower threshold compared to what experts see as a minimum for the elimination of measles, especially if, at that time, vaccine coverage is on the rise so the "elimination" minimum might be attained without more coercive measures. Notwithstanding our legal and ethical justification of coercive measures, mandatory childhood immunization remains a controversial policy, and arguably it will be most feasible to get democratic support for legislation if coercive measures are made conditional on a threshold that has already been met.[2]

10.2 Coercive Policies for the Immunization of Adults

If immunization is not directed at children but at adults, the room for coercive measures is much smaller. We have argued that nonvoluntary collective immunization programs can only be considered in exceptional circumstances, notably during a widespread epidemic that disrupts societal life, or if there is a realistic threat that such an extreme outbreak could occur. During the outbreak, all kinds of (coercive) social measures will already be in place to reduce transmission of the disease, and this influences how immunization policies should be evaluated. For example, it will often make sense to allow vaccinated individuals more freedom during a lockdown—at least when the vaccine is effective in preventing infection of others (hence "harm to others"). This can be done by means of a protected access pass that allows people to engage in social activities or visit pubs, events, and so on. At the same time, there will often also be other grounds for giving people access to social activities, such as a very recent negative test or having gained immunity after infection. Such 3G policies can be considered a limited form of mandatory vaccination.

We have argued that if it is necessary to further tighten immunization policies to promote vaccine coverage, it would be wrong to make the protected access policy more restrictive through a 2G policy. The drawback of this approach is that the government would be requiring private actors

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(organizations, citizens) to refuse other people access to social life on a daily basis, leading to social exclusion and polarization within society. If it is essential to further increase immunization rates to prevent, mitigate, or end lockdowns, the government should emphasize its own responsibility for enforcing the policy, and then a *compulsory* approach is preferable. This would imply that vaccination refusal is made illegal (through criminal or administrative law) and that noncompliance is punishable with a periodical fine.

10.3 The Justification of Coercive Childhood and Adult Immunization

In this book, we have developed a specific proposal for regulating childhood immunization but have also shown how some (but not all) the arguments for mandatory childhood vaccination also apply to the immunization of adults, for example, during an outbreak of a novel virus. Let us summarize the central steps in the justification of using state power to "induce immunity," taking differences between the vaccination of children and that of adults into account.

Our proposal for mandatory immunization is shaped by the requirements of proportionality: a government's interference with citizens' freedom should not overshoot the mark but, instead, should be proportionate to the goal the law seeks to achieve and strike a reasonable balance between competing interests. But that does not take away from the fact that it *is* intrusive and does curtail parental autonomy and the freedom of thought, conscience, and religion.

Our justification for constraining freedom fits well in a liberal-democratic view of the role of the state. Let us combine, step by step, the arguments offered in this book. Steps (i)–(viii) are relevant to collective vaccination programs in general; steps (ix)–(x) are specific for childhood immunization programs.

(i) The harm principle: to protect each person's opportunities for well-being according to their own conception of the good life, it can be necessary and justified for the state to set limits on certain individual freedoms.

(ii) Outbreaks of contagious diseases are a serious threat to individual health and, via outbreaks and fear of infection, to public health too; they are also a serious threat to public order and an open society,

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which are the basic framework in which individual liberties, freedoms, and opportunities for well-being are enjoyed.

(iii) The spread of infection—and the containment of the spread of vaccine-preventable diseases—is largely determined by human behavior/individual choices and decisions.

(iv) Hence there is a principled ground for democratic states to implement liberty-limiting measures that are necessary to prevent the spread of dangerous infectious diseases but are not disproportionate restrictions on individual liberties.

This brings us to the role of immunization, particularly to immunization of children, given that many common infectious diseases are most risky for young children who have not yet developed disease-specific immunity.

(v) The most effective way to prevent (outbreaks of) infectious diseases is to maintain robust herd immunity via collective vaccination programs.

(vi) Herd immunity can only be achieved through collective effort and action: governments need to offer collective programs (free of charge), and citizens need to accept vaccination for themselves and their children.

(vii) Vaccine refusal can be considered harm to others in various ways: it implies increased risk for one's own child, and it enables a risk to directly infect vulnerable others. Most important in our analysis is that it undermines the collective endeavor to protecting society via herd immunity. Moreover, a massive outbreak can also disrupt society, and lockdown measures may need to be continued for a longer time if too many people refuse vaccination. The latter implications can be considered as constituting harm to all citizens.

(viii) Preventing these harms can be done effectively and proportionately via mandatory immunization, which strikes a middle ground between fully coercive policies (compulsory or forced immunization) and voluntary options.

(ix) In a liberal-democratic society, the state has a duty to maintain children's basic interests. This government responsibility can also overrule the right and responsibility of parents to raise their children in line with their own view of what is best: parental autonomy is of utmost importance but is not absolute.

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(x) The protection and maintenance of herd immunity via a mandatory policy is an indirect but effective and proportionate way for the state to fulfill its special obligation to protect the basic interests of children against the imprudent choice of their parents to opt out of vaccination.

Hence, the vulnerable position of children offers additional ground for mandatory childhood vaccination. This is one reason for concluding that coercive approaches are easier to justify in the case of childhood immunization than in the case of adult citizens. Another ground for such a distinction concerns the right to bodily integrity, which is often invoked against coercive vaccination policies. This right is highly relevant and clear if it is about adults who are in a position to make decisions about their own body, but less so in the case of children, who cannot observe and claim that right themselves. Someone's right to refuse medical treatment is an exceptionally strong moral and legal right because it is about their choice of determining what is done to them as embodied persons in the most basic sense: *it is their body*. On the other hand, parents deciding about medical treatment for their child are not determining what is happening to *their own* body but to that of their child. As dear as the child is to them, that child is still a different person. If parents object to a treatment that is deemed medically necessary for the child, and their objection is overruled by a court order or a law mandating vaccination, it is their views as parents that are set aside, but the bodily integrity of their child is not violated. Therefore, we consider mandatory immunization of children justified in "normal times," but coercive measures regarding the vaccination of adults as only appropriate in extreme cases, for example, as a response to an immediate threat of a dangerous outbreak.

There is a potential weakness to the central role of the harm principle in our argument, and that is that one could argue that vaccine refusal does not constitute harm to others at all in circumstances of a robust and sustained herd protection. If vaccine coverage is high enough, say 95 percent of all children, then a deviant choice made by other parents will not make much difference (at least not when those 5 percent are living tightly together in close-knit communities). We have explained that refusal can still be considered a form of harm done to the collective, but arguably, the case for coercion is less strong than in a context in which the level of herd protection is under threat. It is not uncommon, therefore, to seek additional support for coercion by appealing to the unfairness of vaccination freeriding. However, this

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argument of fairness ultimately fails. Vaccine refusal amounts to freeriding, but it is not unfair because the public good of herd protection supervenes on the private goods of all persons who have opted for vaccination. This means that preventing harm to others is, and will remain, at that core of our ethical argument.

10.4 A Critique and an Appraisal of the Millian Framework

John Stuart Mill's liberal philosophy, and notably his discussion in *On Liberty*, largely determines the normative framework for our argument. The harm principle is central to our justification of the coercive measures that are needed to establish and maintain herd protection. We have put forward herd protection as a common good and have argued, in line with Mill's discussion, that refraining from contributing to a collective project that is beneficial to everyone can count as harmful. There is also a second way in which the harm principle informs the analysis—namely, in the view that the state has a responsibility to overrule parental choices if these conflict with a child's basic interests. Preventing harm to others can thus be a ground to set limits on freedom of thought, conscience, and religion, as well as on parental autonomy.

The harm principle does offer a strong basis for coercive immunization policies, but it is not a sufficient justification. Again, in line with liberal thought, restrictions on freedom should be proportionate and not more intrusive than necessary. The fact that 100 percent coverage is not necessary for herd protection offers some room for tolerating vaccine refusal, and we have argued that this supports policies that refrain from coercion if herd protection is robust. Note that the political principle of toleration does not imply that we should accept that such refusal is morally justified. On the contrary, vaccine objectors can rightly be criticized as making irresponsible choices that show a lack of concern for vulnerable people and that involve an uncooperative if not egoist attitude toward collective efforts to prevent the spread of infectious diseases. Some might even deliberately act as free riders in a society where most people do the right thing. Yet in a liberal-democratic context, these moral concerns should not dictate public policy unless there is a clear case of preventing harm to others.

A final Millian strand in our analysis is the strong emphasis we put on the preservation and protection of freedom of expression, even in times when

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many vaccine-hesitant parents are persuaded by fake news and misrepresentation of medical science. For Mill, freedom of opinion is the most fundamental liberty that democratic states should defend. Our discussion of how governments should respond to the spread of vaccine misinformation is in line with his almost absolute defense of liberty of thought and expression. From a liberal perspective, containing freedom of speech is less acceptable than constraining parents in their choice to opt out of vaccination, even though spreading misinformation undeniably does have harmful consequences. The restrictions on parental freedom that come with mandatory vaccination can be much more tailored and minimized (and thus can be proportionate) than restrictions in policies that aim to restrict freedom to spread harmful misinformation, which have no clear boundaries. After all, even continuing to point at specific scientific uncertainties could contribute to widespread hesitancy and thus undermine herd protection.

The heavy reliance of our analysis on Mill's liberalism should also give us pause to reflect on its weaknesses. In public health ethics, this liberal approach emphasizing negative liberty is also widely criticized: many authors have pointed out the limits of Millian liberalism, as it seems to offer insufficient justification for the state protecting and promoting people's health. At the center of Mill's liberalism, of course, is a rejection of any paternalist aspirations of the government. The harm principle allows room to constrain the freedom of individuals to prevent harm to others, but any strong paternalism directed toward competent adults is rejected. This liberal philosophy has been criticized on a more fundamental level as it presupposes an all-too-strict distinction between self-regarding and other-regarding behavior, as if individuals could shape their own lives independently of others. If, on the other hand, it is acknowledged that personal autonomy can never be self-contained but has important relational dimensions as well—which are arguably most visible in family or community contexts—then this may give reasons to adjust some of the core tenets of liberalism (Jennings, 2009). Although we do see that the classical liberalism as defended by Mill faces such problems and might require adjustments that offer more room for values such as positive freedom, relational autonomy, and solidarity, these theoretical weaknesses, in our view, do not affect the analysis in this book. Also, in a broader egalitarian liberalism or even within more communitarian perspectives, our principled justification for mandatory childhood immunization would stand strong. After all, the

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strongest arguments for liberty-limiting policies are arguments that cherish the value of negative liberty. The critique that Mill's approach leaves too little room for more paternalist or solidarity-inspired policies is rather misplaced in the context of childhood immunization: even Mill argues that if the well-being of young children is at stake, paternalism *is* justified. The harm principle also offers a basis for holding the state responsible for securing the basic interests of children. Moreover, if we broaden our perspective and consider vaccination of adults, then it is also clear that a choice to accept or refuse vaccination cannot be understood as a purely self-regarding choice. Hence, the sensible critique that Mill overemphasizes a distinction between self-regarding and other-regarding behavior has little or no impact on the appropriateness of applying his liberalism to our main subject: the role of the state to regulate and mandate immunization. Collective immunization can be regulated in ways that do set limits on freedom of choice, but such policies can also be defended by appealing to the value of liberty itself.

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Inducing Immunity?

Justifying Immunization Policies in Times of Vaccine Hesitancy

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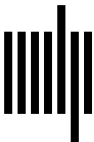

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