

Preface

The work on this book has taken much longer than we could have imagined when we started the project. The first trigger for thinking about an in-depth ethical and legal analysis of immunization policies was the 2013–2014 measles outbreak in the Netherlands, which primarily affected religious communities with low vaccine coverage. Reported cases of measles stood at 2700, 182 children were hospitalized, and one child died from complications. This outbreak could be seen as just another in a long series of measles and poliomyelitis outbreaks in the Bible Belt in The Netherlands, where members of orthodox reformed churches live together in close-knit communities and often refuse vaccination for their children. We were intrigued by the lukewarm reaction of politicians and policymakers to the impact of this outbreak. Prime Minister Mark Rutte went no further than merely recommending that parents get their children vaccinated. The general political stance was that—hopefully—vaccination rates would increase through persuasion and education. Mandatory vaccination was considered to be futile because objectors would not comply anyway. We were surprised by these restrained reactions. Why were such outbreaks and the vaccine refusal of these parents perceived as immutable facts of life? And why were more coercive vaccination policies not even considered as ways to protect children against these diseases?

Religious objections have ceased to be the only grounds for vaccine hesitance and refusal. Since the turn of the millennium, new forms of vaccine hesitancy have emerged in many parts of the world, fueled by an increasingly vocal antivaccination movement. Supporters of this movement promulgate the idea that the dangers of vaccination far outweigh its benefit and seek to carve out “all-natural” lives for themselves and their children. At the same time, they tap into and reinforce an increasing lack of trust in vaccination

programs, the medical establishment, and the state. This has resulted in an increased number of pockets of under-vaccination in many countries, and ultimately led to outbreaks of vaccine-preventable diseases. The infamous 2015 Disneyland outbreak in California made it abundantly clear that vaccine hesitancy could bring back diseases that (at least in high-income countries) had been safely under control for decades. In 2019, the World Health Organization (WHO) identified vaccine hesitancy as among the top health threats. It is remarkable that this health threat is not caused by a lack of a medical treatment for a serious disease: on the contrary, vaccines that are proven to be safe and effective are, at least in high-income countries, abundantly available. This health threat is caused by vaccine-hesitant persons' lack of trust in vaccines.

Looking at these events from a mindset that is informed by the COVID-19 pandemic, the mortality and morbidity of these outbreaks may seem limited. Yet even these "mild" epidemics of vaccine-preventable diseases touch a sensitive nerve in public debates and generate much political controversy. They confront liberal democracies with a difficult and morally-laden question: how should the state respond to citizens who refuse to participate in collective immunization programs that are meant to protect society at large and the health of children aged 16 or younger in particular? Should the government take a stronger stance by motivating, pressuring, or even compelling parents to accept vaccination?

Similar questions have emerged during the COVID-19 pandemic: should governments require adult citizens to have themselves and their children vaccinated, to prevent spread of infections, and counteract the societal disruption caused by the pandemic? Given that basic liberties and freedoms are at stake, such fundamental questions must be asked and answered, not only during a pandemic but also at times when vaccine-preventable disease are more or less under control.

This issue fitted well with our different research areas and expertise. Roland has extensive experience of analyzing the legal regulation of conflicting fundamental rights in liberal democracies and had just published a paper that takes a strong stance in favor of compulsory vaccination. Marcel has been working on the ethics of prevention and public health for decades and was deeply involved in policy advice work for the Health Council of the Netherlands. So, we decided to embark on a joint project: to analyze in depth

the problem of how to regulate collective vaccination for children and adults in times of vaccine hesitance.

From the very beginning, the project concerned more than a topic of mere academic interest. The Disney measles outbreak and a series of measles outbreaks in Europe made several states and countries implement more coercive childhood vaccination policies, leaving parents less freedom to opt out (Navin & Attwell, 2023). Governments, professionals, and public and private organizations put more emphasis on countervailing misinformation about vaccination. This was all highly controversial and public debates on this issue became more and more tense and polarized.

And then the COVID-19 pandemic emerged, which necessitated drastic public health measures. This triggered even more debate, especially when vaccines became available and governments rolled out mass immunization campaigns. We became heavily involved in these societal debates and in policy advisory roles. This inevitably slowed down the work on our book manuscript, but it also helped to test, apply, and improve our analyses. In the meantime, Roland joined the temporary committee on medical aspects of COVID-19 of Health Council of the Netherlands. Many of the proposals and arguments in this book have emerged from, and have been further elucidated through insights from our advisory work for parliament, ministries, and public health agencies. Arguments were often initially developed in op-ed articles we published in national newspapers.

Our role in public debate thus delayed the progress of the book project but also improved the quality of the argument. In our experience, doing work on legal and political philosophy is much more relevant, fruitful, and interesting if it interacts with, and actually contributes to policy making and public deliberation. Our discussions with practitioners in the field and political decision makers provided us with a wealth of situational knowledge. Political philosophy and ethics helped us to outline, test and justify practical proposals; taking contextual factors and the complexities of public health practice into account also enabled us to adjust and further develop theoretical and principled arguments in moral and political philosophy.

This book therefore combines philosophical analysis with practical policy proposals, and this combination recognizes the importance of fundamental individual rights, the role of democratic decision making, and the inherent tension between the two. Ultimately, however, the question about

how the state should respond to vaccine hesitance cannot be decided by ethical analysis alone. An ethically justified approach to vaccination can only become legitimate when it is discussed in public debates and is ultimately the outcome of a democratic process in which all relevant interests have been taken into account, especially the special protection that fundamental rights deserve. The fact that this is such a controversial topic only reinforces the importance of such a democratic process.

The controversy surrounding this theme was both a blessing and burden. On the one hand, we enjoyed having our op-eds published and being able to discuss our ideas on national radio and TV. It is a godsend for an academic if their research topic suddenly becomes world news. On the other hand, we also experienced personally how polarized the societal debate had become; there were disagreements not only on the status of normative principles and fundamental liberties but also, increasingly, about which facts, institutions, and people can be trusted and which cannot. In such a context, it will often be impossible to develop a discussion merely by offering a philosophical analysis. The angry responses, insults, and personal threats we received made it clear that some citizens considered us to be dangerous, self-interested, untrustworthy nonexperts who were probably paid by the pharmaceutical industry or government to prepare society for a new world order.

These extreme reactions may be characteristic of societal debates nowadays. At the same time, we see that most policy makers, politicians, scientists, and co-citizens are very interested in, and open to philosophical reflection on the dilemmas that arise in times of vaccine hesitance. The fact that public debate is sometimes overheated does not imply that we should abandon critical ethical reflection on a topic like this. Ideally our book will contribute to fundamental debates in philosophy of law and ethics, but especially also to political decision making and responsible vaccination policies. We hope that it will not only be read and discussed in academic circles, but also by professionals and policymakers in public health. Even though a large part of our analysis centers around the idea of proportionality, which is most prominent in the European legal tradition, the overall argument is relevant in any liberal democratic jurisdiction, including the United States of America.

While we were writing this book, many academics and practitioners in the field engaged with our project. We have learned a lot from discussions with scientists in the Health Council of the Netherlands (Gezondheidsraad) and from our various interactions with infectious disease specialists from the

National Institute for Public Health and the Environment (RIVM) and the WHO. It was great to discuss some early chapters with our colleagues at the Philosophy chair group at Wageningen University and the Paul Scholten Centre for Jurisprudence at the University of Amsterdam. We are especially grateful for the generous comments we received at a manuscript symposium in October 2021 in Amsterdam. Justin Bernstein, Alberto Giubilini, Mariëtte van den Hoven, Steven Kraaijeveld, Mark Navin, Dorit Reiss, and Brigit Toebes had read the first complete draft and offered in-depth critical yet constructive feedback. We also want to thank the reviewers for their suggestions that helped us to improve many small and larger arguments in the book. Parts of the book build on analyses we have published in papers in academic journals, including *Public Health Ethics*, *Vaccine*, *Journal of Applied Philosophy*, *Ethnicities*, *American Journal of Bioethics*, *het Tijdschrift voor Recht en Religie*, and *het Nederlands Juristenblad*. Section 4.4 is more or less a reprint of Marcel's paper "The (un)fairness of vaccination free riding," published in *Public Health Ethics*. We are grateful for being able to use this earlier work.

The societal debates, epidemiological developments, and all the academic interactions and contributions to policy making may have significantly delayed the completion of the book. At the same time, all these interactions made this project an endeavor that we enjoyed immensely. They have been invaluable in the development of the central line of our argument and our discussion of policy options for regulating collective immunization. We are grateful for all these opportunities, and we genuinely want to thank everyone who directly or indirectly contributed to this work. We also express our gratitude for the financial support we received from the Netherlands Organization for Health Research and Development (ZonMW 522004004).

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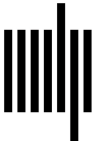
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