

Liberty has its responsibilities

Holding non-vaccinators liable for the harm they do

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“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” J.S. Mill, On Liberty

“Liberty consists in the freedom to do everything which injures no one else” Declaration of the Rights of Man and of the Citizen

*“The right to swing my fist ends where the other man’s nose begins.”
Oliver Wendell Holmes*

David Ropiek in his useful essay on how society should respond to the risks created by those who choose not to vaccinate themselves or their children does a very useful job of identifying the enormous costs in money and health that non-vaccinators create.¹ He also pinpoints the many factors that drive vaccine resistance locating them not in a misunderstanding of the facts but, in fears and negative emotions.¹ It is important to pay attention to his message since frequently those who want to try to reduce vaccine hesitation or outright non-vaccination behavior put their faith in education and resort to an invocation of the facts about the value of vaccines when it is fear and emotions that must be addressed.²

Where Ropiek falls short, or rather is not ambitious enough, is in his proposed remedies for non-vaccination choices. He suggests making it harder for parents to opt their children out of vaccination. This is a strategy with which I agree and which can be done as long as it is consistent with

respecting parental choice. Respect for choice means policies that make it harder to opt out cannot make it impossible or absurdly difficult to opt out. When done properly this strategy works.³ He also suggests vaccine mandates which are ethically defensible and already rapidly being implemented in the US and elsewhere.⁴⁻⁶ He even goes so far as to suggest restrictions on where the unvaccinated can gather and financial penalties for those who won't vaccinate or rewards for those who do. It is not clear whether these ideas have a shot at political implementation given the reluctance to restrict freedom of movement or to single out non-vaccination for fiscal penalties.

What ought to be added to Ropiek's list of solutions is the need to hold individuals to account for the harm they do to others by their choice not to vaccinate. Legal liability ought accrue for demonstrable harm to others, both individuals and communities, in terms of non-vaccination decisions.⁷

Defenders of the right not to vaccinate often maintain that liberty gives them the right to decide to vaccinate themselves or their children as they see fit. They argue that any infringement on their choice violates their fundamental right to liberty (<http://www.nvic.org>, <http://articles.mercola.com/sites/articles/archive/2011/10/01/about-health-liberty.aspx>). That is not so.

Society can permit the choice not to vaccinate but it is not the case that the liberty to choose to do something must of necessity be unrestricted or unfettered. As the quotes offered at the beginning of this paper show, some of the staunchest

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defenders of liberty throughout history have well understood that your right to do what you wish does not immunize you against the harm your choices cause to others. If in choosing not to vaccinate yourself or your child you harm another or impose costs on a hospital or community for example by visiting a day care center or neonatal nursery where unvaccinated newborns are present you are liable for any harm your choice caused. Liberty does not release an individual from liability from the foreseeable harmful consequences of choice. You are free to smoke, drink, fire weapons, juggle knives, drive a car, own a dog, and so on but if you cause foreseeable harm to me or my property as a result of these freely chosen actions then you are and ought be held strictly accountable and liable.

Those who do not vaccinate can cause harm to the rest of us.⁸ A visit to a neonatal nursery by an unvaccinated person or sending your unvaccinated child to daycare where newborns are known to be present can cause death and disability.

The fact that society permits persons not to vaccinate or that some people simply do not do so without following legal requirements regarding refusal does not mean that they are indemnified from responsibility for harms that occur as a result of their choices. Liberty in regarding vaccination ends at the start of a vulnerable person's body. The threat of legal action for harm done ought be added to Ropiek's menu of policy strategies that might both discourage irrational, fear-based, non-vaccination and compensate those who are the victims of irrational, fear-based, choices.

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No potential conflicts of interest were disclosed.

References

1. Ropiek D. How society should respond to the risk of vaccine rejection. *Hum Vaccin Immunother* 2013; 9: (Forthcoming); PMID:23807359; <http://dx.doi.org/10.4161/hv.25250>
2. Caplan AL. Vaccination: facts alone do not policy make. *Health Aff* 2011; 30:1205-8; <http://dx.doi.org/10.1377/hlthaff.2011.0472>
3. Blank NR, Caplan AL, Constable C. Exempting schoolchildren from immunizations: states with few barriers had highest rates of nonmedical exemptions. *Health Aff (Millwood)* 2013; 32:1282-90; <http://dx.doi.org/10.1377/hlthaff.2013.0239>; PMID:23836745
4. Feemster KA, Prasad P, Smith MJ, Feudtner C, Caplan A, Offit P, Coffin SE. Employee designation and health care worker support of an influenza vaccine mandate at a large pediatric tertiary care hospital. *Vaccine* 2011; 29:1762-9; <http://dx.doi.org/10.1016/j.vaccine.2010.12.115>; PMID:21216318
5. Caplan AL. Morality of influenza vaccine mandates. *Clin Ther* 2013; 35:106-8; PMID:23312117; <http://dx.doi.org/10.1016/j.clinthera.2012.11.010>
6. Stewart AM, Caplan AL, Cox MA, Chang KHM, Miller JE. Mandatory Vaccination of Health Care Personnel: Good Policy, Law, and Outcomes. *Jurimetrics* 2013; 53:341-59
7. Caplan AL, Hoke D, Diamond NJ, Karshenboyem V. Free to choose but liable for the consequences: should non-vaccinators be penalized for the harm they do? *J Law Med Ethics* 2012; 40:606-11; PMID:23061588
8. Offit PA. *Deadly choices: how the anti-vaccine movement threatens us all*. New York: Basic Books; 2010. 288p.