

Legal Obligation to Vaccinate Against COVID-19

Yuhan Xia

College of humanities, Donghua University, Shanghai, 200051, China
xiayuhan0221@icloud.com

ABSTRACT

In the context of the current COVID-19 pandemic, vaccine development and vaccination have become a top priority for all countries. Is it necessary for China to increase the vaccination rate of the COVID-19 vaccine through legal means so as to effectively control the rebound and outbreak of COVID-19 and maintain public order and security? This paper discusses the theoretical origin of vaccination obligation from the perspectives of deontology, utilitarianism, and moral utilitarianism, and clarifies the legal basis of vaccination obligation. Considering the needs of collective needs and the principle of fairness, this paper analyzed and determined the necessity of incorporating the COVID-19 vaccine into the scope of legal regulation and clarified the legal significance of COVID-19 vaccine vaccination. The paper finds that whether on the theoretical basis of deontology, utilitarianism, or moral utilitarianism, citizens all have the obligation to get vaccinated in the immunization program. At the same time, the COVID-19 vaccine has already met the substantive requirements of an "immunization planning vaccine" as stipulated in the Basic Medical and Health Law and the Vaccine Administration Law. Therefore, citizens' vaccination obligations can be included in the scope of legal regulation.

Keywords: *Vaccination, COVID-19 vaccine, rights and obligations, moral responsibility, utilitarianism, fairness*

1. INTRODUCTION

At present, the vaccines with a legal vaccination obligation in China are "immunization planning vaccines." As COVID-19 vaccines have not yet been included in the "immunization program vaccine" category, citizens are not obliged to have them. However, a number of domestic and foreign surveys show that there is a certain degree of hesitation and even anti-vaccine sentiment in all countries. So, should we use the rule of law to increase the vaccination rate so as to effectively control the rebound and outbreak of COVID-19 and safeguard public order and security? Due to the lack of research in this field, this paper will explore the theoretical origin of vaccination obligation from the perspectives of deontology, utilitarianism, and moral utilitarianism, and analyze the necessity of incorporating the COVID-19 vaccine into the scope of legal regulation by considering the needs of collective needs and the principle of equity. It is hoped to provide new ideas on the legal significance of COVID-19 vaccination and some instructive suggestions in this field.

2. THE ORIGIN OF THE PROBLEM

World-renowned tennis player Novak Djokovic was denied entry to the 2022 Australian Open after his visa was cancelled at Melbourne airport and he was asked to leave the tournament because he had not been vaccinated against COVID-19 and did not qualify for a "medical exemption".

Although the Federal Court ruled that Mr. Djokovic's visa was valid at a later hearing, Alex Hawke, Australia's immigration minister, used his "discretion" to cancel it again. In his view, Djokovic's presence in Australia could pose a threat to public health and good order in Australia as a matter of public interest and could be counterproductive to vaccination efforts by others in Australia. In addition, under Section 133C (3) of the Australian Immigration Act, a person affected by this section will not be eligible for a re-entry visa to Australia for up to three years, except in certain circumstances (where there are compelling circumstances affecting Australian interests). As a result, Djokovic may not be able to enter Australia for the next three years.

The continuous progress of global COVID-19 prevention and control and the successful research and development of the COVID-19 vaccine have largely

stabilized the spread and ravage of the epidemic, but this has raised another issue, namely the issue of COVID-19 vaccination. Such refusals to vaccinate have emerged one after the other in the last two years, bringing resistance to global COVID-19 prevention and control. A number of domestic and foreign investigation reports show that there is a certain degree of vaccine hesitancy and even anti-vaccine sentiment in all countries. There are those who believe the risks are too high, those who doubt the effectiveness of the vaccine, those who believe there are alternatives, and those who refuse to be vaccinated because of religious beliefs and lifestyle.

In the case of Djokovic, he believes that vaccination is not in line with his basic right to physical integrity, let alone his basic right to freedom of belief, so he refuses to be vaccinated, even though it will put him at risk of not being able to compete in countries or regions where vaccination is required to some extent. As a result, Djokovic justified his refusal to vaccinate, claiming that everyone is the best judge of their own interests and has complete control over their own body. Any decision or behavior on his own body can only be made with his consent, and no country or government has the authority to interfere. In his view, as a professional tennis player, vaccinations did him more harm than good, and far more harm than ill.

Article 6 (2) of China's Vaccine Administration Law stipulates, "Residents living in China shall have the right to be vaccinated against planned immunization according to law and fulfill the obligation to be vaccinated against planned immunization." The government provides the population with immunization program vaccines free of charge. Article 21 of the Law on Basic Medical and Health Promotion clearly states: "The state implements a vaccination system and strengthens immunization planning." According to the law, residents have the right and obligation to be immunized against planned immunization. The government provides free immunization programs and vaccines to the population. That is, individuals have both the right to be vaccinated against novel coronavirus infections and the obligation to prevent transmission of the virus to other citizens in order to maintain the common safety of society. So why should citizens be obliged to get vaccinated against the immunization program? The following will explain the vaccination obligation of citizens from the perspectives of deontology, utilitarianism, and moral utilitarianism.

3. VACCINATION OBLIGATIONS FROM A DEONTOLOGICAL PERSPECTIVE

Deontology is also called "primordial theory", "deontological theory" or "non-consequentialist theory". In western modern ethics, the moral theory holds that human behavior must conform to some moral principle or just principle. The theoretical system focuses on the motivation of moral behavior, but does not pay attention

to the consequences of behavior, but appeals to certain rules, norms, and standards of behavior. The core of its theory is obligation and responsibility. In other words, the correctness of an action is not determined by the consequences of the action but by the motivation and standards of the action, focusing on whether the motivation of the action is "good." In the process of the conclusion of the social contract, each person transfers his or her rights to a certain extent and promises that the government will set necessary restrictions on his or her freedom to maintain the social order so that part of the moral obligation is transformed into a legal obligation and has the state compulsion force. [1] From a moralistic perspective, the obligation to vaccinate in a COVID-19 pandemic context is an individual's moral obligation to avoid the risk of poisoning others in the coronavirus pandemic.

During the pandemic, personal morality requires everyone to abide by the country's epidemic prevention and control measures and accept the derogation of civil liberties or new obligations imposed by the emergency executive power. Infected people and their close contacts should be quarantined for observation, treatment, and epidemiological investigation and follow-up. When after the success of vaccine research and development, the international community in the vaccination race, to avoid lags behind that of other countries in forming the immune divide, social needs through a large number of individuals vaccinating to herd immunity to form a protective barrier, society's moral obligation at this time also accords with the conditions of inoculation requirements of individuals "can do", to assume the guardianship of the state, public health, and safety of civic responsibility.

As for the state, deontology emphasizes that the state should conform to the rules of justice when it makes the legal system and distributes citizens' rights and obligations. That is, "evil laws are illegal." In the process of national public health management, especially in the prevention and treatment of infectious diseases, it is the duty of the country to treat infection patients, save lives, and extend the lives of the masses of the population's health in the first place, not because of age, identity, or occupation of patients, where there is a difference, exploiting them for the right to receive state aid. [2] At the same time, national morality also requires the state to promote the timely research and development of new drugs, infectious disease vaccines, and other products, and provide them as public goods, so as to create conditions for better protecting people's lives and health. However, public health governance is never a one-man show for the state. The maintenance of public health inevitably requires the coordination of national morality and individual morality. National morality creates conditions for the protection of public health, and individuals must accept the necessary restrictions on their freedom from public power and assume the specific

obligations entrusted by law. Therefore, vaccination, which was originally a moral obligation, was gradually adopted by the public power of the state and transformed into a legal obligation through legislation. Therefore, it is in line with its morality to establish partial vaccination as a legal obligation.

4. VACCINATION OBLIGATIONS FROM A UTILITARIAN PERSPECTIVE

Although deontology explains the moral requirement for the vaccination obligation to become a legal obligation, it inevitably falls into "idealism and agnosticism" while emphasizing moral obligation.[3] Because deontology focuses on whether the starting point of an action is in accordance with morality, it lacks consideration of the consequences of the action. Therefore, the transformation of moral obligation into legal obligation needs the complement of utilitarianism.

Utilitarianism, also known as utilitarianism, means that the "correctness" of an action, policy, or system can be determined by its tendency to promote happiness. This view is based on the assumption that individuals are motivated by self-interest, which can be defined as the desire to pursue pleasure or happiness and the desire to avoid pain or unhappiness. So-called utilitarianism refers to the actual utility or benefit (the tendency to increase happiness or reduce misfortune) of a certain behavior or measure as the criterion for approving or condemning the behavior or measure. [4] Utilitarianism is a typical consequentialism, which holds that a measure is justified if it conforms to the principles of self-interest for the individual and maximum happiness for society. [5]

On the one hand, vaccination in the individual can make the body obtain the corresponding disease resistance, thus reducing the probability of disease is conducive to the individual's own health; program vaccines, on the other hand, are a public good with positive externalities, and an external benefit for others while reducing the risk of illness for the recipient. At the same time, compared with other measures to prevent and control infectious diseases, the protection brought by vaccination is more thorough and sustainable, and has higher social benefits.

Establishing partial vaccination as a legal obligation is therefore a legitimate measure that is both self-serving and conducive to the greatest increase in social well-being.

5. VACCINATION OBLIGATION FROM THE PERSPECTIVE OF MORAL UTILITARIANISM

However, in the case of extreme utilitarianism, it is still possible to damage social fairness by focusing too much on utility. At this time, it is necessary to bring

deontology into its consideration again, so that deontology and utilitarianism can be combined together.

Herd immunity, or community immunity, is a form of indirect protection against the spread of an infectious disease. When enough people are vaccinated, herd immunity against infectious diseases can be acquired, allowing other non-immune individuals to be protected from infection. A higher level of herd immunity indicates a higher proportion of the population that is resistant to infection.

Some argue that when a large number of individuals are already actively vaccinated, there is little statistical difference in the effect of individual non-vaccination on herd immunity or in the increased risk to society. [6] Others believe that if herd immunity has not been formed, the contribution of individual vaccination to herd immunity is minimal and can be ignored. If herd immunity has been established, it does not matter whether an individual is vaccinated or not. [7]

But if the line of sight is limited to herd immunity but attention is paid to related individuals, we can discover that personal vaccination prevents the personal infection of the individual. He contacts everyone, especially those in the most unfavorable situations. That is because there are contraindications to being inoculated but equally vulnerable to infection. Individual vaccination, at a very low cost to the vaccinator, prevents him from causing great harm to all contacts, especially the most disadvantaged among them. [8]

Therefore, changing vaccination behavior from a moral obligation to a legal one is not only to better allocate public health resources, but also to return to the basic morality of protecting society. [9] Although utilitarianism provides a good theoretical support of law and economics for the country to make institutional arrangements and allocate rights effectively in terms of behavior mode, it should still take deontology as the bottom line and attribution, especially in emergency situations where moral motivation is far more important than economic considerations. Only on the premise of fairness and justice, using utilitarianism to find the most effective way to allocate rights and obligations, forming a moral utilitarianism theory combining the two, can provide good theoretical support for immunization planning and vaccination to become a legal obligation.

6. DISCUSSION

It can be seen that citizens have the obligation to vaccinate in the immunization program, and the obligation to vaccinate needs to be included in the scope of legal regulation.

In the context of the current COVID-19 pandemic, COVID-19 vaccines are essentially a scarce resource worldwide, and in many backward countries, it is even

"hard to get a vaccine." Through unremitting efforts in independent research and development, China has finally taken the lead in the race for vaccine research and development. A number of vaccines have been conditionally launched in China, and China now ranks first in the world in terms of COVID-19 vaccine inoculations. The world's largest number of vaccines is being developed at a record pace. Two COVID-19 vaccines, Xing Zhongwei and Beijing Bio, have been included in the WHO's list for emergency use and have made a significant contribution to alleviating global inequity in vaccine distribution and promoting the accessibility and affordability of vaccines in developing and underdeveloped countries.

In China, COVID-19 vaccination is carried out in accordance with the "two-step" plan. The first step is mainly targeted at some key groups, including those working in the cold chain, port quarantine, medical disease control, and other high-risk workers, and those who go to medium-high risk countries or regions for work or study. Second, with the gradual improvement of vaccine production, orderly vaccination can be carried out for all eligible people to "catch up" and gradually build an immune barrier among all groups to block the transmission of novel coronavirus in China.[10]

At present, the vaccines with statutory vaccination obligations in China are immunization program vaccines, sometimes referred to as "class I vaccines." According to the Law on Vaccine Administration, "planned immunization vaccines" refer to the vaccines that residents should receive according to government regulations, including those determined by the national immunization plan and those added by the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government during the implementation of the national immunization plan. And vaccines used in emergency vaccination or mass vaccination organized by the people's governments at or above the county level or their competent health departments"

Currently, COVID-19 vaccines do not fall under the immunization program and are only category 2 vaccines.

According to China's "two-step" plan for COVID-19 vaccination, the country is implementing a vaccination strategy from key groups to all members, in line with the provisions of the Vaccine Administration Law on "immunization planning vaccine" for the population. At the same time, the government has provided the COVID-19 vaccine as a public good for free to the public, meeting the prerequisite requirement of Article 21 of the Basic Medical and Health Law that "the government will provide free immunization vaccines to residents." This shows that the COVID-19 vaccine has already met the substantive requirements of being an "immunization program vaccine" at a factual level. If the COVID-19 vaccine falls under the "immunization program vaccine"

under the Basic Health Care Act and the Vaccine Administration Act, the obligation to vaccinate citizens can be regulated by law.

At present, the novel coronavirus strain is mutating at an increasingly rapid rate, with increasing transmissible and mortality rates. There is still no effective treatment and no effective drug to prevent the virus has been developed. Therefore, vaccination is currently the most economical and effective means to deal with the COVID-19 outbreak, and it is a powerful weapon to defeat the epidemic. After two years of continuous effort and practice, a vaccine against the novel coronavirus has been developed for use. China's current vaccination rate has also increased significantly, and people's willingness to vaccinate is becoming stronger and stronger. However, there are still a small number of citizens with a wait-and-see attitude and even a boycott mentality. Therefore, it is particularly important to improve the vaccination rate through legal means so as to maintain public order and security.

In order to effectively prevent the rebound and harm of the novel coronavirus pandemic and maintain the normal order of work and life, the government can set up a compulsory vaccination system for specific groups and promote the implementation of Article 21 of the Basic Medical and Health Law and the Vaccine Administration Law. Legislation was passed to make vaccination mandatory for workers in certain professions and residents of high-risk areas. Administrative penalties such as fines and quarantine can be imposed on those who refuse to vaccinate, and those who refuse to work in special industries can be restricted to reduce the harm to specific fields. At the same time, local COVID-19 prevention and control agencies can make it easier for COVID-19 vaccinators to work, live, and travel, and provide incentives to vaccinators to encourage more residents to take the initiative to get vaccinated.

7. CONCLUSION

In conclusion, whether on the theoretical basis of deontology, utilitarianism, or moral utilitarianism, all citizens have the obligation to get vaccinated in the immunization program. At the same time, the COVID-19 vaccine has already met the substantive requirements of an "immunization planning vaccine" as stipulated in the Basic Medical and Health Law and the Vaccine Administration Law. Therefore, citizens' vaccination obligations can be included in the scope of legal regulation.

Due to the differences in different regions, further improvement and consideration are still needed in the implementation of laws. However, this study has not covered these aspects, and supplementary studies will be carried out in the future.

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