

Article

Non-Consensual Vaccination and Medical Harassment: Giving Vaccine Refusers Their Due¹

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Abstract: This article argues that non-consensual vaccination is morally impermissible, for the same reasons for which sexual assault is not permissible. Likewise, mandatory vaccination is morally akin to sexual harassment, and therefore is not to be allowed.

Keywords: consent; bioethics; mandatory vaccination; sexual assault; sexual harassment; medical ethics

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Introduction

This article argues that non-consensual vaccination is similar in kind, though not necessarily in gravity, to sexual assault. Furthermore, the article will argue that the following two acts are morally analogous: (1) pressuring people into vaccination against their will, and (2) sexual harassment.

We will thus be discussing issues that are so emotionally loaded, and in so many ways, that it is difficult to undertake a dispassionate discussion without potentially arousing virulent anger from multiple sides. With much trepidation, therefore, I endeavor to write what follows.

Medical Assault and Medical Harassment as Analogues to Sexual Assault and Sexual Harassment

Let us introduce a thought experiment; the thought experiment owes a certain intellectual inspiration to Judith Jarvis Thomson's arguments in defense of abortion,² as well as to

¹ An early draft of this article was read and discussed with me by my colleague Vladimir Krstic. I am also grateful to the two anonymous referees for multiple suggestions.

² Thomson, Judith Jarvis. 1971. A Defense of Abortion. *Philosophy and Public Affairs* 1(1): 47–66.

Derk Pereboom's four-case argument.³ The likenesses, however, are fairly remote, the subject matter is different, and any merits or demerits ought to be assessed on their own.

Imagine that in the year 2025, a new virus occurs somewhere on Earth. This virus has a mortality estimated in the range of 0.1–1.0%. Not much later, scientists discover two things. One discovery is encouraging: there is a small number of people who are naturally immune, and who can transmit their immunity to others. The more disturbing discovery is that their immunity is transmitted only sexually. If one has intercourse with an immune person, one can acquire a partial,⁴ but not complete, degree of sexually transmitted immunity.

The medical authorities proceed to advise everyone to seek intercourse with one or multiple immune persons. Some consent, others do not. The former generally become immune, but only partially; the latter are usually not immune.

Because the partly immunized are still susceptible to infection, some of them are pressuring the medical community to find a way to immunize the non-consenting. A brilliant doctor invents a procedure that can immunize people without full-blown sexual intercourse: required is only penetration, by an immune person, with a penis-like object—a medical dildo. (To be sure, such a procedure would never work; it would be a particularly bad example of alternative medicine. But this is a thought experiment, so let us think.) Alas, only a small number of additional persons agree to receive immunization by dildo. The rest object that penetration by dildo is too similar to intercourse for them to consent to: after all, receiving dildo penetration would ordinarily count as cheating on their partners.

What to do now? Yet another doctor discovers that people can be immunized without the variety of penetration usually considered sexual. The medical dildos can also be inserted into artificial orifices created through surgery. Even better, the dildos can be miniaturized, and the surgery can be rendered virtually painless and almost free of side-effects. But most people reply that if a dildo doesn't belong in their natural orifices, then it has no business penetrating artificial ones; nor, for that matter, do they agree to be given such additional orifices to begin with.

The doctors now find out how to replace the miniaturized dildos with small knives. They no longer need to create the orifices separately: the knife creates the orifice with the same thrust with which it penetrates it. But numerous people still do not consent to be penetrated with these knives, nor do they consent to be thus injected with unwanted substances.

The knives are now replaced with needles. These needles penetrate the body quickly, with only a little pain, and with almost no bloodshed. Numerous people are still of the view, however, that where a small knife is unacceptable, a needle also may not go.

These people are objecting to something that is no longer sexual in nature. As in the sexual case, however, if done without consent, it is a violation of their bodily integrity. The violation may perhaps be lesser in gravity, but it is no less a violation. Albeit no longer a sexual assault, it is a physical assault, and one of a particularly disturbing variety.

At this point, a politician stands up and says, "let us penetrate them with the needles forcibly, and inject them forcibly with the unwanted substances." Fortunately, the politician's proposal is rejected. No one will be forcibly penetrated, with needles or otherwise. The politicians do, however, decide to institute a "carrot and stick"

³ Pereboom, Derk. 2001. *Living Without Free Will*. Cambridge: Cambridge University Press, pp. 110–17.

⁴ The expression "partial immunity" is meant probabilistically, i.e., one who has such partial immunity is less likely to contract the disease.

system of incentives and disincentives, in order to bring everyone into line. Some people will be given money, or other benefits, in return for consent. The rest will be banned from restaurants; they will be banned from shopping centers; they will be banned from trains, airplanes, and buses; and they will be fired from their jobs, and banned from reemployment. Some of these bans will be implemented by the government itself, and others by privately owned corporations. Those who refuse to ban will be banned themselves.

Perhaps some readers would find such policies convenient in appearance. But consider this. We all agree that if a company threatens to fire an employee for refusing to have sex with the boss, that constitutes sexual harassment. This doesn't change if the boss transmits immunity through his penis, no more than it changes if he offers the employee a promotion, or if he promises to donate to a charity of the employee's choice. Likewise, if the company threatens to fire the employee for refusing to be sexually penetrated with a medical dildo, that still constitutes sexual harassment. If the company threatens to fire the employee for refusing to be penetrated with a micro-dildo into an artificial orifice, this disturbing act is no longer clearly sexual, but it is not clearly non-sexual either. Some people may perhaps find such a violation less frightening, outrageous, or traumatizing, but others may find it worse. Much of the wrongness transfers from sexual harassment to artificial-orifice harassment: the harasser would be unlikely to be let off the hook by arguing that the orifices were merely artificial.

If the company, instead, threatened to fire the employee for refusing to be penetrated with a small knife or with a needle into an artificial orifice (created with the knife or with the needle), and for refusing to be injected with a substance that the employee does not desire inside their body, then this would no longer constitute *sexual* harassment, and it is unclear what its legal status would be, and under which jurisdictions. Ours, however, is not a legal argument, but a moral one. I contend that a micro-knife differs from a micro-dildo only a little. People can be sexually assaulted, or harassed, with objects that do not resemble sexual organs; hence the fact that the micro-knife does not look like a penis is not morally decisive. What does matter a bit more is the perpetrator's intention: in the micro-knife case, the perpetrator does not have a sexual intention, but only a medical one. Hence we aren't dealing with sexual harassment anymore; instead, we are dealing with what we may call *medical harassment*.

As we see, the distinction between medical and sexual harassment rests largely on the employer's intention. From the victim's perspective, however, the perpetrator's intention sometimes matters much less than the actual consequences. For instance, it isn't much better to be killed accidentally than on purpose. If your employer attempts to violate your bodily integrity, or to coax you into surrendering it, then the employer's precise intention constitutes little more than a private going-on in the employer's head. Even if the employer does not intend to obtain sexual gratification from stabbing you with micro-knives or with needles, all that it means is that the harassment is not sexual in nature; your dignity, however, your autonomy, and your basic human rights are still violated just the same.

Let us now review the preceding arguments in numbered premise form. Notice that the two arguments take the form of chained conditionals.⁵ One may wonder at first how much the arguments' strength depends on their length. It may seem that length conflicts with strength, i.e., that more conditionals introduce more possible failure points.

⁵ This form is inspired by Derk Pereboom's four-case argument for incompatibilism (Pereboom, Derk, 1995. "Determinism Al Dente." *Noûs* 29: 21–45).

In practice, however, this should not be a very deep concern, because the conditionals are not probabilistically independent. Consider, for instance, the premises in sentences 2 and 4 below. They both rest on the same kind of reasoning: namely, that the acts they concern are morally similar to a degree that ensures that if one is impermissible, then so is the other. Since for each conditional the two acts were chosen deliberately in a manner that renders their similarity very close, it is improbable that one conditional would fail while the rest succeed. Far more likely, they stand and fall together: anyone who accepts one conditional is likely, *a fortiori*, also to accept the rest.

1. It is impermissible to immunize people through non-consensual sexual intercourse.⁶
2. If immunization through non-consensual sexual intercourse is impermissible, then so is immunization through non-consensual sexual penetration with a medical dildo.
3. Therefore, immunization through non-consensual sexual penetration with a medical dildo is impermissible. (From 1 and 2)
4. If immunization through non-consensual sexual penetration with a medical dildo is impermissible, then so is immunization through non-consensual penetration with a medical dildo into a surgically created orifice.
5. Immunization through non-consensual penetration with a medical dildo into a surgically created orifice is impermissible. (From 3 and 4)
6. If immunization through non-consensual penetration with a medical dildo into a surgically created orifice is impermissible, then so is immunization through non-consensual penetration with a small knife into an orifice surgically created with that knife.
7. Immunization through non-consensual penetration with a small knife into an orifice surgically created with that knife is impermissible. (From 5 and 6)
8. If immunization through non-consensual penetration with a small knife into an orifice surgically created with that knife is impermissible, then so is immunization through non-consensual penetration with a needle into an orifice surgically created with that needle.
9. Immunization through non-consensual penetration with a needle into an orifice surgically created with that needle is impermissible. (From 7 and 8)
10. It is impermissible to vaccinate people without their consent. (From 9)⁷

Furthermore:

- 11 It is impermissible to sexually harass people.
- 12 If it is impermissible to sexually harass people, then it is impermissible to harass them into having sexual intercourse with an immune person.

⁶ Within this argument, the term “impermissible” is used as shorthand for the phrase “ethically impermissible.”

⁷ This argument directly applies only to vaccines delivered through injection. But a similar argument can be given against putting things non-consensually into people’s noses or mouths.

- 13 If it is impermissible to harass people into having sexual intercourse with an immune person, then it is impermissible to harass them into being sexually penetrated with a medical dildo.
- 14 If it is impermissible to harass people into being sexually penetrated with a medical dildo, then it is impermissible to harass them into being penetrated with a miniaturized medical dildo into a surgically created orifice.
- 15 If it is impermissible to harass people into being penetrated with a miniaturized medical dildo into a surgically created orifice, then it is impermissible to harass people into being penetrated with a small knife into an orifice created with that knife.
- 16 If it is impermissible to harass people into being penetrated with a small knife into an orifice created with that knife, then it is impermissible to harass people into being penetrated with a needle into an orifice created with that needle.
- 17 In sum: If it is impermissible to sexually harass people, then it is impermissible to harass people into being penetrated with a needle into an orifice created with that needle. (From 12–16)
- 18 It is impermissible to harass people into receiving vaccination through penetration with a needle. (From 11 and 17)

Sentences 10 and 18 are weighty conclusions. Let me therefore emphasize what these conclusions are not. Sentence 10 is *not* the conclusion that non-consensual vaccination is exactly as wrong as sexual assault. The conclusion is simply that non-consensual vaccination is impermissible: it may perhaps be less wrong,⁸ to be sure, but it is wrong. Likewise, sentence 18 is not the conclusion that medical harassment is exactly as bad as sexual harassment. It is simply the conclusion that medical harassment is not to be permitted.

Further Discussion and Clarification

Vaccination and consent

Notice that the first argument above, to wit, the one extending from sentence 1 to sentence 10, employs the term “non-consensual” (“without their consent,” in sentence 10). There are, however, multiple ways and degrees in which vaccination can be non-consensual, as discussed, for example, by Alberto Giubilini⁹ or by Mark Christopher Navin and Mark Aaron Largent.¹⁰ What, then, is the sense in which we conclude that it is impermissible to vaccinate people without their consent? By logical necessity, the sense is the same in the conclusion as in the premises. That is to say, “non-consensual” means the same in “non-consensual vaccination” as it does in “non-consensual intercourse.” Here is not

⁸ I have also encountered the opposite opinion. An anonymous referee points out that non-consensual vaccination sometimes yields lifelong adverse effects, whereas sexual assault sometimes does not. Hence, depending on further details, non-consensual vaccination may in certain cases be worse than sexual assault.

⁹ Giubilini, Alberto. 2019. *The Ethics of Vaccination*. Berlin: Springer Verlag.

¹⁰ Navin, Mark Christopher, and Mark Aaron Largent. 2017. Prioritizing Parental Liberty in Non-Medical Vaccine Exemption Policies: A Response to Giubilini, Douglas and Savulescu. *Public Health Ethics* 10(3): 241–43.

the place to give an exhaustive theory of sexual consent, which is its own subject. Let us, however, state the following general principle, to which we will add a number of important illustrations:

Principle: If **C** is a consent-incompatible circumstance, and therefore, in the presence of **C**, sexual intercourse is impermissible, then it follows from our argument above (in sentences 1–10) that in the presence of **C** vaccination is also impermissible.

Here is a non-exhaustive list of circumstances that can play the role of **C**. Such circumstances include outright force; they include the threat of force; they include imprisonment, detention, and further violations of the victims' freedoms, such as depriving the victims of their right to leave town, or prohibiting them from shopping for groceries and other necessary items. The list also includes fines and other financial penalties: if a bandit threatens to rob a woman unless she has intercourse with him, that bandit is guilty of sexual assault, even if the assault may result in improved immunity, or in other benefits for the victim. Likewise, if a dictator were to fine citizens who refuse to have sex with him or with his inner circle, and if the dictator thus compelled even one citizen to comply, that would constitute sexual assault. Financial penalties are incompatible with consensual intercourse, and therefore, as per our argument, they are incompatible with consensual vaccination.

A complete list of consent-incompatible circumstances also includes violations of the right to self-defense. Suppose, for illustration, that a woman is hiding from the Nazis and that she has a handgun. Someone who knows her hideout steals the handgun and threatens not to return it unless she has intercourse with him. This evidently constitutes sexual assault. Furthermore, the assault is more egregious than if the assaulter had merely stolen the victim's handbag. The reason why it is more egregious is because the assaulter is depriving the victim not only of her right to property, but also of her right to self-defense.

Similar but far less hypothetical phenomena involve vaccination. Even as radical a proponent of non-consensual vaccination as Jessica Flanigan acknowledges that self-defense is a valid reason to refuse vaccination.¹¹ Sadly, Flanigan seems to suggest that there is only one known reason to refuse vaccination in self-defense, namely, a serious allergy. But there are, in fact, more such reasons, of which some are illustrated by the rather ill-famed "old" cellular DTP vaccine. I am placing the term "old" between scare quotes because the vaccine is still in use in developing countries. Very serious neurological side-effects have been attributed to this vaccine for many decades. Hence it was gradually withdrawn from use in developed countries, beginning in the 1970s with Japan, Sweden, and the UK. The World Health Organization (WHO) denies that these side-effects can be attributed conclusively to DTP.¹² On the other hand, the U.S. Center for Disease Control (CDC) lists several neurological counterindications and precautions, both for the "old" cellular DTP vaccine – which has not been in use in the U.S.A. for a long time – and for the safer, acellular DTaP that is in use nowadays.¹³ The CDC appears to suspect, in particular, that DTP and (presumably less often) DTaP can cause encephalopathy, with

¹¹ Flanigan, Jessica. 2014. A Defense of Compulsory Vaccination. *HEC Forum* 26(1): 5–25.

¹² World Health Organization. 2015. Pertussis vaccines: WHO position paper. *Weekly Epidemiological Record* 90: 433–58.

¹³ Havers, Fiona P., Pedro L. Moro, Susan Hariri, and Tami Skoff. 2021. Pertussis. In *Epidemiology and Prevention of Vaccine-Preventable Diseases*, edited by Center for Disease Control, 14th ed. Public Health Foundation.

severe long-term consequences. Since there exist reasonable suspicions regarding DTP, and since the safer DTaP is available, the citizens of developing countries are morally entitled to exert their right to self-defense and to say no to the governments who would inject DTP into them or into their children.

Workplace Medical Harassment

I have argued that it is morally impermissible for employers or managers to harass their employees and subordinates into receiving medical penetration, in the same way in which it is impermissible to harass them into receiving sexual penetration. At this point one may worry about a potential disanalogy. One could reason as follows: (1) sexual harassment is a selfish act that benefits the harasser by exploiting the harassed, but (2) medical harassment is a mutually and publicly beneficial act that also benefits the harassed. Hence one could conclude that medical harassment is disanalogous to sexual harassment.

The response is twofold. First, vaccination frequently does not benefit the harassed. In such cases the above objection does not apply. Second, even when the harassed does incur benefits, the harassment is still selfish, abusive, and unjustifiable.

Let us take these two points in turn. First, imagine a disease that never kills or maims those younger than 25. The decision-makers, however, are older than 25, and decide, in order to protect themselves, to mandate all children and young adults to receive the vaccine. In such a case it is known in advance that the vaccine will not benefit the coerced, but only the coercers. The victims of coercion never stand to incur any benefits.

The above example, to be sure, is an idealized one. In real life, such perfect situations likely do not occur, but similar non-idealized situations do. For instance, many countries mandate one or another polio vaccine. In the popular imagination, polio is strongly associated with paralysis; in German the very name for polio is *Kinderlähmung*, i.e., child paralysis. While polio can indeed cause paralysis, it does so in far fewer than 1% of cases. In only slightly more cases it causes viral (hence relatively mild) meningitis; and the vast majority of the time it is harmless. Somewhat surprisingly, therefore, almost no one who receives a polio shot will ever personally benefit from it, even where polio is endemic.

Hence we must not assume that mandatory vaccination is a generous or beneficial act of enlightened despotism. It may be that some of the time, but it may also be selfish, misguided, or both.

At this point one may suggest a compromise: perhaps medical harassment is akin to sexual harassment when and only when the harassed is unlikely to benefit from vaccination. I contend, however, that it does not matter, from a moral standpoint, whether the harassed benefits or not. Imagine an employer who sexually harasses his employees. The ones who do not sleep with him, he persecutes or he fires. To the ones who do sleep with him, however, he grants various benefits. Some benefit extrinsically, because the harasser offers them money, promotions, better working hours, etc. Others may even benefit intrinsically because they enjoy the intercourse. This enjoyment, however, is not the reason why they do it; they can get the same or better enjoyment elsewhere, and they would never agree to do it if it were not for the harassment. No amount of money, privilege, or enjoyment can justify the harassment. The reason why sexual harassment is wrong is not only because of its consequences, good, bad, or otherwise. More fundamentally, sexual harassment is wrong because it uses one person's body, without that person's freely given consent, in order to further someone else's interests. But precisely this also occurs with mandatory vaccination: the body of the vaccinated is used to further the

interests of someone else, namely, those of the employers, and perhaps those of third parties, such as members of the general public.

Perhaps the interests of the general public make an important difference? This does not appear to be so. Suppose that an employer threatens to fire his secretary unless she stars in a pornographic video. Suppose furthermore that the employer publishes the video, knowing that the video will provide immense sexual gratification to some members of the general public. Now the interests of the general public are served, as in the vaccination case. But the employer's actions are no better than had he kept the benefits to himself. It is not commendable to be generous with someone else's body.

Conclusion

Under any circumstances under which sexual intercourse is non-consensual and therefore impermissible, non-consensual vaccination is not permissible either. Mandatory vaccination is likewise not permissible, for the same reasons for which sexual harassment is not.