

**Redefining Mandatory Vaccination as Necessary to Life and
the Refusal of Vaccination as Criminal Negligence Causing Death**

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Introduction

Article 24 of the United Nations Convention on the Rights of the Child confirms the rights of children related to medical care and treatment (United Nations, 1989). Clauses within it include the responsibilities of countries to “diminish infant and child mortality,” “combat disease and malnutrition,” and “develop preventative health care” (24.2a; 24.2c; 24.2f). Canada is party to this treaty, and yet arguably the country’s government is shirking responsibility by not federally mandating mandatory vaccinations of preventable disease for children. It has been consistently and undeniably proven that vaccinations like the one for measles, mumps, and rubella (MMR) are safe, effective, and have contributed to the near-eradication of preventable disease in the last thirty years; while the Public Health Agency strongly recommends “that children are routinely vaccinated against measles through two doses of the MMR vaccine,” current laws have not adapted to consider this a necessity for children in Canada (Born et al., 2014).

Though the facts are one-sided, there have been divided opinions on vaccine safety; similar arguments arose around seatbelt regulation in cars in the 1970s and 1980s and routine vaccination “having undergone extensive testing” should similarly be required (CCMTA, 2011). Vaccinations should be considered part of the necessities of life cited in Section 215 (1) of the Canadian Criminal Code because of their proven benefits for protecting children from preventable disease, and parents who do not vaccinate children who are medically able to be should be considered responsible for death by criminal negligence under Section 220 of the Code if the child subsequently dies of a preventable disease (Calgary Legal Guidance, RSC, 1985). Extensive work has previously focused on herd immunity and public endangerment due to low

rates of vaccination in communities, but relatively little exploration has been done on the nature of withholding vaccination as a form of negligence causing death. This paper first outlines the history of the vaccine debate in Canada and the United States and the continued skepticism that exists when parents make a cost/benefit analysis on their child's life. My argument then frames a refusal to vaccinate as a form of indirect killing by defining liminality, parental responsibilities for their children, and the role of public institutions. The paper concludes by discussing the next steps to regulating and requiring routine vaccination through prevention and education, allowing parents and guardians to become more aware of the potentially fatal consequences associated with not vaccinating their child (CBC News, 2016).

History of Vaccine Skepticism

There has been steady opposition to vaccinations in recent decades, largely due to the MMR vaccination being a victim of its own success in its near-eradication of measles, mumps, and rubella (Kodish, 2014). When modern parents haven't witnessed peers dying of preventable diseases, they do not see the harm in neglecting to vaccinate their children. The lack of reinforcement through witnessing others die of these diseases has convinced parents these diseases are no longer a public health concern and vaccination is no longer necessary (Belisle, 2015). A 2011 EKOS study found the majority of parents are still choosing to vaccinate, but 11 percent still found the decision whether to vaccinate their children a difficult one (9). This is compounded by the fact that some children are not able to medically be vaccinated due to other existing conditions, allergies, or age – all legitimate reasons, and a factor in limiting the scope of this argument to parents who have children medically able to receive vaccinations (Born et al., 2014). A significant barrier faced to complete vaccination of all who are eligible is the

misinformation surrounding the dangers of vaccination. In 1998 Dr. Andrew Wakefield and his associates published a paper in *The Lancet* on the links between the MMR vaccine and autism. While Wakefield did not stress an unequivocal link between the two in the paper itself he made the claim in a subsequent press conference (Wakefield et al., 1998; Lillvis et al., 2014). In 2010, *The Lancet* issued a full retraction of the paper and the United Kingdom's General Medical Council revoked Wakefield's medical license because of the conflict of interest stemming from his paid work as an anti-vaccine consultant and unethical practices, such as the unnecessarily invasive procedures the children in his study were subjected to (Lipinski, 2013). Nevertheless, the Wakefield paper reignited a controversy which resulted in parents questioning the safety of the MMR vaccine for many reasons not limited to autism. The debate continues today as parents consider the harmful chemicals within vaccines such as mercury (does not accumulate in the body), thimerosal (not present since 2001), aluminum (lower quantity than aluminum found in breast milk, but can cause redness or swelling at the injection site), and antifreeze (not in vaccines at all) (Haelle, 2015).

The retraction of the Wakefield paper in 2010 has done little to convince those against vaccination their fears are unfounded. Below is a selection of online comments from readers of the articles researched for this paper, to highlight the different reasons people choose to withhold vaccination:

Aug 27, 2014, 11:19 am: Why would you want to purposefully put toxins, mercury, aluminum and many more harmful junk into someone you love???? once [sic] you see that what is in them. Think people and do your own research and then see if you still believe the government??? ó Brenda Webb (Born et al. 2014)

Aug 26, 2016: Are these authors from North Korea? Perhaps Hitler clones? It's obvious from reading their ridiculous article that they should refrain from blogging and start actually doing some common sense research, rather than just spew propaganda. ó Dr. Dan Spencer (Danzinger 2016)

June 27, 2014, 5:37 pm: PLEASE do your own research! There is a mountain of evidence showing that vaccines are the primary cause of the skyrocketing rates of autism, allergies, arthritis, asthma, diabetes, ADD, narcolepsy, SIDS, learning disabilities, etc... any honest person will see in a matter of minutes that the public is being kept in the dark by willful suppression of critical information ó Chris Robison (Kodish 2014)

Misinformation continues to circulate in communities and although arguments about the dangers of vaccines have been scientifically disproven, people remain skeptical of government research and data showing otherwise. Autism, which is now classified as a genetic disorder, has symptoms that generally appear in children at the same age they receive the MMR vaccination, so a correlative link was drawn that subsequent studies have proven does not exist (Bumiller, 2009; Maron, 2015). There is a distrust of scientific evidence because of the individual experiences of some parents; they believe vaccines cause autism because their first child was vaccinated and happened to have autism, while their second child did not get vaccinated and did not have autism (Bearman, 2012, 110). This parent infers they witnessed direct cause-and-effect because the symptoms of autism appeared soon after vaccination.

On the contrary, parents who choose to not vaccinate their children do not see a correlation between vaccination and their children getting measles three years later because the events happened at different times. The cause-and-effect defense can also be used as a counter to this paper's thesis: the parent did not directly kill their child, but that does not mean they are not responsible for the child's death, especially when parents have been convicted of similar indirect

negligence from lack of nutrition or proper clothing for extreme temperatures (Canadian Press, 2016; AP, 2016). Misinformation from sources like the Global Possibilities blog perpetuates baseless information that parents will research and base their conclusions on – especially when the “evidence” presented is a conspiracy theory about a whistle-blower at the CDC and “revelation[s] about the destructive effects of the MMR vaccines” (Coates Danson, 2015). The author claims the CDC purposefully withheld evidence linking thimerosal to autism, which undoubtedly leads parents reading the blog to make uninformed and potentially lethal decisions about their children (Bumiller, 2009).

Parents engage in a cost-benefit analysis when deciding on whether to vaccinate their children, which is an appropriate practice for decisions like whether to move to a new school district because the evidence is not overwhelmingly one-sided and the life of the child is not at stake depending on the school you go to. Objectively, there is difficulty in recognizing baseless opposition to facts in a decision to approve a vaccine, but the reality for many parents is their lived experience, and “illness of a close friend can impact one’s perception of ‘risk’ in far more powerful ways than media reports can” (Fu et al., 2011, 43). The reluctance of parents to vaccinate often comes from doubting a smaller child’s immune system or their likelihood of getting the disease in question versus developing autism or an allergic reaction (Harmsen et al., 2013; Bearman, 2010). It can be difficult to combat experiences with data even if “the science is sound and the ‘benefits’ have been demonstrated,” but that does not relieve parents of the responsibility to care for their children and provide them with other proven necessities of life like shelter and nutritious food (Danzinger, 2016). Only four percent of children have adverse reactions to vaccines, which is a success rate higher than the mortality rate of mumps (EKOS,

2011; Bearman, 2010). However, anti-vaccination comments still appear on pro-vaccination websites, indicating the divide between facts and experience remains deep.

Medical Neglect as Indirect Killing

The comparison of unvaccinated children to liminality is no doubt unintentional to their parents but exists nonetheless. Liminality traditionally exists as a sociological theory of being in-between life and death, and the same logic could be applied in a Schrodinger's cat scenario ó if a child is unvaccinated, they simultaneously do and do not have the ability to be infected with the preventable disease, and the results cannot be determined until they either contract the disease or get the vaccine. Nancy Scheper-Hughes' 1985 essay on her visits to Brazilian shantytowns provided the basis for my connection of unvaccinated children to liminality, and while understanding her work was focused largely on deliberate killing, the parents in her essay still killed indirectly. Killing does not necessarily have to be direct or active; Section 220 of the Canadian Criminal Code cites "negligence causing death to another person" as an indictable offense with an associated punishment (RSC, 1985, s.220). In the Ezekiel Stephan case, the crown prosecutor was quoted as saying "people who cannot care for themselves will receive the minimal standard of care expected by society," and the conviction of two parents who had neglected their child would reinforce the standard of care (Canadian Press, 2016). At the same time, most courts generally recognize the difference between not providing medical care and not properly feeding children, and would not consider a comparable sentence (CBC News, 2016). If vaccinating children was to be considered the same as providing nutritious food, however, it would be taken more seriously. Another similarity between the liminality of children in developing nations and North American countries is childhood mortality as a "problem of

political economy, not of medical technology (Scheper-Hughes, 1985, 292). Ethical questions arise when safe and necessary vaccines exist and children are not being vaccinated; it makes no sense to have this medicine available and choose not to use it (Kodish, 2014).

That choice of whether to vaccinate their children is something anti-vaccination parents demand is their right as the child's guardian. The United States Senator Rand Paul was quoted as saying "the state doesn't own your children, parents own the children" in response to a proposed law limiting religious and philosophical exemptions to state-mandated vaccinations (Floyd, 2015). Rand's statement neglects the fact that children are not objects and parents have both rights and responsibilities. Having a child may mean you have a right to decide how to care for them, but "the rights of parents are [not] beyond limitation," as decided by the US Supreme Court in *Prince v. Massachusetts* (1944) (Skinner & Kohler, 2002). Countries have the duty to protect all their citizens, including children, and countries like France have considered withholding vaccinations a form of child abuse (Rouillon, 2014). Canada has similar laws, but they have not yet been applied to mandatory vaccinations. Section 215 of the Criminal Code outlines the responsibilities of a parent, "to provide necessities of life for a child under the age of sixteen years," and considers "the failure to perform a duty [that] endanger the life of the person to whom the duty is owed" as a punishable offence (RSC, 1985, s.215(1), 215(2)ii). Logically, the preponderance of evidence that vaccines are beneficial with limited danger would fall under this provision, where "parents still have to follow the standard of care set by the criminal law," regardless of how they choose to parent their children (CBC News, 2016).

Institutions have a supplemental role to play where parents are found to be neglecting their children's needs. In the same way, parents are required to "use correct car seats and seat

belts for their children, they should be required to vaccinate their children because of the proven risks of not doing so (Danzinger, 2016; Floyd, 2015). Current regulations in Canada exist to have the state interfere for medical emergencies when children's lives are in danger; as the potentially lethal consequences of not vaccinating children are well-established, this should be classified as a "medical emergency" as well (Calgary Legal Guidance). If the emergency is deemed to be a result of neglect, there are repercussions for parents beyond forced medical intervention, which is consistent with the thesis of classifying vaccines as necessities of life. In doing research on vaccinations, many Canadian parents included Health Canada on their list of sources (EKOS, 2011). 68 percent also trust their physician's advice, and six in ten parents recognize misinformation that exists online (iv). Fortunately, this empowers existing government structures to enforce a vaccine schedule through their networks. There are, however, religious or philosophical exemptions that exist and they can undermine the message that vaccines are safe (Danzinger, 2016). There are no known exemptions available for parents who do not wish to properly clothe their children on a cold day because the negative and deadly effects of extreme weather are well-known; so too are the dangers of refusing to vaccinate children, and should be treated similarly in the case of a child's death.

Disease Prevention & Education

If the goal is limiting the killing of children through neglect, the previously mentioned efforts of institutions is essential to the success of defining vaccines as essential to children's health and preventing disease. There is evidence that criminal charges for parental neglect deters others from performing the same neglect (Vara, 2014). In France, a couple was sentenced for refusing to vaccinate their children against diphtheria, tetanus and polio; although the parents

did not want their child to die, they were responsible for the death by not adequately caring for them (AFP, 2016). The state cannot always address cases before the child dies and was unable to in this case, so extra-legal institutions are necessary for prevention over punishment. In Maine, a non-profit society worked with the state to check up on parents immediately after their vaccine schedules lapsed. Through contacting them immediately and offering reminders they saw an 11.1% increase in immunization rates in just over two years (Belisle, 2015).

Success stories like this can help clarify the need for vaccines for skeptical parents as well; 95% of Canadian parents surveyed already consider vaccines moderately to highly safe, so these programs capture the remaining 5% and persuade them to continue vaccinations before it resorts to criminal cases (EKOS 11, p. iv). Individual cases of infection can persuade parents if they see it firsthand, but is an unreliable method of deterring vaccine refusal (Marturana, 2016). If education is unable to occur without legislation, there is no harm in requiring education legally. Ontario has proposed a law that would force those who reject vaccination to take a science lesson (Mohdin, 2016). This initiative affirms the objectivity of vaccine safety studies by recognizing science as more valuable to the debate than personal opinions. While anecdotes are valuable, evidence is absolute and is becoming critically important in disseminating online information. The government must work towards gaining political and social capital on programs like this, and educating the public to prevent death (Aylward, 2001). The existence of laws without education and awareness is harmful and breeds conspiracy, while letting education and data speak for itself in conjunction with mandatory vaccination laws is preferred. Since the retraction of the Wakefield paper, more mandatory vaccination laws have sprung up and governments like Ontario are beginning to move towards mitigating violation of those laws

before it escalates to death.

Conclusion

It is true that high vaccination rates are important for public health, and when people make false claims about the dangers of vaccines it is the responsibility of scientists, journalists, and politicians is to criticize and refute them. But calls to ostracize and ridicule vaccine critics may be as likely to harden hearts as they are to persuade. (Rothstein 2015, p. 4)

For the future prevention of preventable deaths, a child dying of preventable disease should be labelled as criminal negligence causing death. By classifying vaccines as items necessary to the well-being of children, the government reiterates its stance that the indirect killing of children by their parents is avoidable through parents conducting proper research. Data have been objectively conducted and produced, but the failure to recognize vaccinations as a necessity for children is what enables parents to unknowingly kill them, because the evidence that exists already is not enough on its own (Danzinger, 2016). While detractors of vaccines will point to the omnibus bill working its way through the US court system on damages for parents who believe the MMR vaccine contributed to their child's autism, the Canadian government has a duty to redefine criminal negligence for parents and guardians to include medical prevention (Meyers, 2011; Willingham, 2013). Aylward (2001) points to vaccines as an effective tool for eradication, and in the same way tools like seatbelts have been proven to save lives and are no longer optional, precaution and preventing death through mandatory vaccinations outranks discomfort.