



Vaccination as a Duty?

OPINION · EXECUTIVE SUMMARY & RECOMMENDATIONS

27 June 2019

The full text of the Opinion “Vaccination as a Duty?” as well as all publicly available information and documentation of the German Ethics Council accompanying the work on the topic “public health” are available at <https://www.ethikrat.org/en/topics/medicine-and-health/public-health>.

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>> EXECUTIVE SUMMARY

Introduction

- 1) Many contagious diseases transmitted by viruses are only treatable symptomatically. To date, vaccinations against such viruses have been the most important measure to prevent serious health risks and to eradicate diseases. Measles are an objectively dangerous – albeit often underestimated – contagious disease that can be prevented by means of a well-tolerated and generally accessible vaccine. These facts make measles a prime example of a contagious disease whose global eradication is absolutely feasible. However, temporary successes notwithstanding, not even the elimination of measles has been sustainably achieved in many parts of the world. Also Germany has failed to meet its goal of eliminating measles to date.
- 2) There are several reasons why measles has not yet been successfully eliminated in Germany. On the one hand, both the first and second doses of the vaccine are given to children too late, whilst the critical

second dose is given at an overall insufficient rate. On the other hand, there are actually far more serious vaccination gaps in the adult population than in children.

- 3) The limited success of previous strategies raises important ethical and legal questions concerning future vaccination programmes. Specifically, the question arises whether obligatory/binding measures like the introduction of a mandatory vaccination policy are justified, and if so, to what extent. The present opinion of the German Ethics Council addresses these issues. Although it focuses on measles, the Council aims to develop general ethical standards that are also applicable to other vaccine-preventable infectious diseases.

Current situation

- 4) Measles is among the most contagious diseases of all. In Germany, the vast majority of patients who contract measles recover within just a few weeks without any major sequelae. Nevertheless, there are some measles sufferers who have access to good health care and no prior health issues but still experience various complications even during the “normal” course of the disease. These may include middle ear infections, diarrhoea, pneumonia and post-infectious encephalitis. The usually fatal late complication of subacute sclerosing panencephalitis (SSPE) might not develop until many years after an apparent recovery.
- 5) Usually, measles vaccinations are given in combination with vaccines against mumps and rubella (MMR). (Nowadays, MMR vaccines are often combined with a vaccine to protect against chickenpox and/or shingles.) The rate of side effects for these vaccines is considered extremely low.

- 6) The aim of vaccinations is to reduce the prevalence of a disease, and the frequency of its complications, as well as to prevent deaths resulting from the disease, as both targets are interdependent. The double MMR vaccine recommended in Germany prevents measles-associated morbidity, complications and mortality with a very high probability.
- 7) The term “community immunity” describes a condition where also non-immune individuals in the population are protected because a sufficient number of other people are immune and therefore can no longer transmit the pathogen to unprotected individuals. It should be noted, however, that this mechanism of protection only pertains to contagious diseases like measles that are exclusively transmissible from person to person. Most importantly, this type of protection benefits vulnerable people who cannot be vaccinated for medical reasons or in whom the vaccination does not effectively induce immunity. However, it also protects individuals who have not been vaccinated although there is no medical reason and who thus profit from other people’s willingness to be vaccinated without contributing their share. Due to measles’ high infectivity, about 95 percent of a population must be immune to achieve effective community immunity.
- 8) There are various reasons why people in Germany are not vaccinated against measles. Among the more important ones are a lack of knowledge about the significance of immunisation even in adulthood, distrust in the efficacy and safety of vaccines and in official vaccination recommendations, a lack of awareness about the severity of measles as a disease. Other reasons of equal importance are practical barriers such as everyday stress, misjudgements about vaccination risks due to dubious sources of information, and a lacking sense of responsibility towards the community as a whole or a lack of willingness to contribute to the protection of others by being vaccinated oneself.

Normative analysis

- 9) The ambiguous term “duty to vaccinate” can be understood either in the *moral* or in the *legal* sense. A genuine mandatory vaccination policy presupposes that, firstly, the group(s) of persons obliged by the duty to vaccinate must be clearly defined and, secondly, the legal consequences of violating this duty need to be precisely determined.
- 10) There is no provision for mandatory vaccination in the narrow sense in applicable German law, except for certain special regulations governing military personnel. In particular, there is no legal duty to vaccinate aimed at prevention or enforced by sanctions. Instead, the government largely relies on counselling that provides information and recommendations, but may also be binding.
- 11) The introduction of a mandatory vaccination policy has become the subject of increasing debate in Germany and is being called for by the Bundesministerium für Gesundheit (Federal Ministry of Health) and the Bundesärztekammer (German Medical Association), among others. From the perspective of constitutional law, it must first of all be stated that the current legal regulations do not raise any fundamental concerns. However, this does not answer the question of whether the legislator *would be allowed* to introduce “strict” mandatory vaccination regulations that go beyond current law.
- 12) With particular regard to mandatory vaccination for (young) children, both the basic right of the child to life and physical integrity guaranteed under Article 2 (2) GG and the rights of parents under Article 6 (2) sentence 1 GG have to be taken into account. The Bundesverfassungsgericht (Federal Constitutional Court) interprets the parental right as a fiduciary basic right on the part of parents to focus on the well-being of their child in their care and education efforts. Nevertheless, parents are fundamentally allowed to decide “free of state influence and according to their own ideas how they wish to

live up to their responsibility as parents”. This means that mandatory vaccination constitutes an interference with parental rights. As such it would only be legitimate in the context of the state’s supervisory function (Article 6 (2) sentence 2 GG) and would have to adhere to the principle of proportionality in a broader sense. In other words, said interference must be suitable, necessary and appropriate in respect of the – indisputably legitimate – objectives of the vaccination, i.e. protecting public health, the health of children or the health of particularly vulnerable population groups.

- 13) Any interference with parental rights by the family court that strips parents of their right to decide about vaccinations and transfers it to a supplementary curator, or any vaccination being forcibly carried out on a child, does not seem justifiable under the present circumstances, especially since such a procedure might traumatise the child. Accordingly, linking school attendance to a previous measles vaccination also appears questionable. However, a possible constitutionally permissible design for a “hard” mandatory vaccination policy could comprise a regulation that makes children’s attendance at day-care facilities (child-care centres, childminders) or the operating licenses of such facilities contingent upon proof of sufficient immunisation against measles.
- 14) Besides children, adults should also be considered as addressees of a mandatory vaccination policy. For example, it might be reasonable to prohibit persons without proof of immunity or vaccination from being employed in jobs where their daily work involves dealing with people for whom a measles infection would pose a particularly high risk of serious illness or even death. A mandatory vaccination policy of this kind does not appear to be constitutionally inadmissible from the outset. Depending on the design of such a policy the degree of restriction of the individual’s professional freedom may vary and must be proportionate to the purpose of the restriction.

- 15) The term “duty to vaccinate” is often associated with the idea that the state imposes this duty by law and in extreme cases enforces it by means of coercion. The term can, however, be understood both in the sense of a strict legal duty and in the sense of an ethical “duty of virtue”, i.e. a purely moral duty. If the demand for mandatory vaccination was conceived as a strict legal duty, then the constitutive attributes of inescapability, enforceability and unambiguity would apply, which would lead to a number of highly problematic consequences.
- 16) Overall, from an ethical point of view, priority should be given to a regulation within the framework of socially binding rules of ethos. This assessment could change if special situations of emergency arise. For example, it could be justified to turn duties of virtue into strict legal duties if an acute health hazard threatening large parts of the population required rigid interventions. Moreover, the different types of obligation can also co-exist, depending on the group of people concerned and the given context of action. For example, there is no contradiction in merely appealing to the parents’ sense of moral responsibility in order to increase vaccination coverage in children, while calling for mandatory vaccination enforced by appropriate sanctions for medical personnel who have contact with highly vulnerable people.
- 17) Members of some groups put forth religious or ideological reasons against a duty to vaccinate justified on moral grounds. In principle, every individual should be free to live their lives according to their own individual religious and ideological convictions. This freedom has its limits, however, when the consequences of their actions affect the legitimate interests of other people. This not only applies to the execution of actions, but also their omission. Anyone who fails to get vaccinated (or fails to have those for whom he or she is responsible vaccinated) against measles is very likely to cause harm to (possibly unknown) others. Thus, freedom of faith or conscience cannot be invoked to justify an avoidable threat to third parties.

- 18) Reference to the child's well-being is of central importance when answering the question of whether parents are morally obliged to have their children vaccinated against measles. In this vein, it could be argued that because of the factual contribution of the measles vaccination to the well-being of children there is not only a moral duty on the part of the parents to not withhold protection by vaccination from their children. Rather, one may even argue that the legislator is in principle legitimised to codify this parental duty in law.
- 19) The first prerequisite for a duty of parents to have their children vaccinated is that it is *reasonable* for them to fulfil this duty. In the case of a mandatory measles vaccination this includes, firstly, access to the vaccination; secondly, it must also be reasonable to accept the (very rare) side effects associated with the vaccination for the child. When weighing the desired benefits against the possible harm of a vaccination, parents must trust epidemiological experts who are able to make reliable benefit-risk analyses solely by comparing the data of millions of vaccinations and millions of disease courses.
- 20) The strongest case for a duty to vaccinate on the part of parents could be made by claiming that they unnecessarily cause avoidable and serious health damage to their children by deciding not to have them vaccinated against measles. Parents can harm their children by refraining from vaccinating them against measles because in doing so they fail to protect them against the risks of contracting measles in the future. However, the real problem when referring to the harm inflicted upon children by their parents' decision not to have them vaccinated against measles is that this risk decreases as the willingness of all other individuals to be vaccinated increases, who might infect those children in the future.
- 21) Immunisation against a highly contagious disease like measles is not a purely private matter, because each unvaccinated child attenuates the population's immunity, thus elevating the risk of measles outbreaks

as well as putting at risk particularly vulnerable individuals (who themselves cannot be vaccinated).

- 22) In this context, an argument for solidarity and justice can be based on, firstly, the insight that the risk of infection by dangerous pathogens constitutes a hazardous situation for most individuals, and, secondly, the morally relevant fact that it exceeds the power of the individual to effectively avert this hazard. For every child there is a certain probability that it cannot be protected directly, but only indirectly via the protection of others, e.g. in the event that it does not develop antibodies despite having received two doses of vaccine. From this perspective, vaccination as a societal practice is a prime example of solidarity where the well-being of the individual is closely intertwined with the common good. However, it must be taken into account that a vaccination represents an intervention in the physical integrity of a person, which as a rule is subject to a higher burden of justification.
- 23) Closely linked to the idea of solidarity and justice is a second argument which refers to prevention at the population level or herd immunity as a *public good*. Unlike private goods, public goods concern all members of a population and therefore cannot be exclusively assigned to one of its individual members. Given the fact that the measles pathogen is highly contagious, any improvement of prevention at the population level is a reasonable and necessary aim of public health measures. The considerations outlined here show that there are strong arguments for the existence of a moral duty on the part of parents to have their minor children vaccinated against measles.
- 24) In order to establish a moral or even legal duty for adult vaccination, one could first of all develop an argument from harm by referring to the health impairments threatening for one's own health which an infection would pose and by which one's personal well-being would be unnecessarily jeopardised. It should, however, be considered that a liberal constitutional state must not force any mentally capable

person into treatment or preventive measures solely for his or her own good.

- 25) The entitlement of third-parties to protection against harm from others may justify an infringement of the right to self-determination, where appropriate even including interference with an individual's physical integrity, provided that the danger is substantial and imminent and that it cannot be averted by other less invasive means.
- 26) In the case of infectious diseases like measles that are transmitted from person to person, it is particularly important that some people cannot sufficiently protect themselves against this infection, even if they wanted to. They can only be protected from illness and possible death with the help of others who are willing to get vaccinated. This is true, among others, for sick people with compromised immune systems, for children and adults without sufficient immunisation despite two doses of vaccine, and for infants without adequate maternal passive immunity. Unvaccinated individuals travelling abroad can also endanger children and adults in other regions of the world who do not have satisfactory access to preventive vaccination.
- 27) Due to their occupation, some of the adults without adequate immunisation are especially exposed to infection risks and thereby also at risk of passing their infection on to others. This includes teachers and, in particular, medical, nursing and midwifery staff.
- 28) Specifically with a view to the members of certain health care professions, it should be examined whether there are sufficient reasons for introducing an *occupation-related mandatory vaccination policy* – as yet not existent in Germany. In the interest of community immunity, there is a strong moral imperative to make vaccination mandatory at least for people who by virtue of their occupation bear an increased risk of becoming infected and of transmitting the infection to third parties, in particular to susceptible and especially vulnerable persons.

This argument is all the more valid since these people have voluntarily assumed increased responsibility by their choice of profession.

- 29) Although it has been demonstrated that, on the whole, there are sufficiently strong arguments in favour of a moral duty to be vaccinated oneself and to have one's children vaccinated against measles, the question remains as to how this duty should be implemented in practice. In view of the close ties between individual well-being and common good, answers to this question should not only do justice to the moral aspects put forward here, i.e. fair burden sharing, solidarity and intergenerational justice. Rather, they should also be committed to the fundamental ideas of liberalism and proportionality. As a matter of principle, statutory coercion should only be used as a last resort, namely where all other less intrusive measures come up against their limits. Constructive steps towards improving vaccination coverage should therefore initially address those everyday practical barriers that have been proven to significantly contribute to the fact that vaccination targets set by German health policy have not been met up until today.

- 30) There is evidence to suggest that the vaccination coverage rate of 95 percent prescribed by the World Health Organization for the second vaccination in children can in principle be achieved even without coercion, since 97 percent of young children in Germany already now receive a first dose of vaccine. Moreover, childhood vaccination rates have been on the rise for several years now due to the measures already taken, which are mainly aimed at improving public information. This proves that the acceptance of measles vaccinations is very large these days. The number of people who fundamentally oppose vaccinations and who are often perceived as the true cause of the problem (and whose children would only be accessible by means of forced vaccination) is extremely small and has been declining for several years now, although it is regionally heterogeneous.

- 31) Moreover, the proportionality of purpose and means must be kept in mind. For example, monitoring a general mandatory vaccination policy for children at day-care facilities, enforced by means of appropriate sanctions, can be anticipated to cause a considerable bureaucratic effort. In addition, the children of socially or financially disadvantaged parents would suffer much more from the consequences of an exclusion from day-care centres or fines than children of wealthier parents. Considering that according to a study by the Sabin Vaccine Institute, the vaccination rates achieved in European countries with and without mandatory child vaccination do not differ significantly, it would seem justified in this context to first exhaust all available less stringent means to increase vaccination coverage, in particular by having paediatricians or youth or health authorities directly approach tardy parents.

>> RECOMMENDATIONS

The elimination of measles is an important ethical aim, both for the individual and for society as a whole. The following recommendations serve the purpose of increasing vaccination rates among all age brackets and population groups to the extent required for the elimination of measles. Apart from professions with a special responsibility, the preferred means to achieve this aim shall be information, advice and easier access to vaccination. In case these means are not successful, stricter regulatory measures and measures with a greater depth of intervention will be necessary. Although the recommendations provided in this document focus on measles, they might also be developed further to suit vaccinations against other diseases.

Regarding vaccination against measles, the German Ethics Council recommends the following:

1. Attempts to further increase vaccination rates against measles shall be undertaken. The measures taken to achieve this aim must address not only children, but also adolescents and adults. Targeted information campaigns should be carried out in order to raise awareness – amongst adults in particular – for the importance of vaccination to protect oneself against illnesses which many people mistake for children's diseases.
2. Low-threshold offers of information and vaccination (e.g. open vaccination consultation for working people, regular vaccination days in day-care centres, schools and universities or vaccination days carried

out by the medical service of companies) should be established. Any obstacles of an administrative nature should be removed, especially those contained in rules governing the various professions. Particular attention must be devoted to language and cultural barriers.

3. GPs and paediatricians should be obliged to use automatic reminder systems for vaccinations. They should be paid an adequate compensation for their efforts to do so.
4. The management of community facilities (Section 33 IfSG) and health care institutions should be entitled and obliged to find out about their employees' status regarding relevant vaccinations, and to point out to them the importance of adequate disease prevention through individual vaccination measures.
5. Doctors of all medical specialties should be qualified and entitled to carry out vaccinations; vaccination qualification courses should be mandatory in medical studies. Greater importance should be attributed to the issue of vaccinations in vocational education and training, as well as in further training and development of medical staff, educators and teachers (including the importance of being vaccinated oneself).
6. People with uncertain residence status should be given access to protected vaccination opportunities; medical aid organisations offering such services should be granted support and legal security.
7. It is recommended to set up a structured national immunisation register, in order to base future measures on better data. When collecting and evaluating these data, attention should be paid to regional and social particularities, so that interventions can be ideally targeted.
8. Imposing mandatory vaccination by applying physical force ("forced vaccination") is not justifiable.

9. For justice and effectiveness considerations, the German Ethics Council does not deem it advisable to impose fines or other financial sanctions in order to increase vaccination rates.
10. Given the statutory obligation for children to attend school, a general interdependence of school attendance and vaccination status must be rejected, except for a temporary exclusion from school to prevent imminent threats in specific situations.
11. The German Ethics Council also opposes a general exclusion of children who are not vaccinated from pre-school educational institutions (day-care nurseries, day-care centres for school-age children, child minders etc.). In specific individual cases it should be possible to exclude an unvaccinated child for risk prevention purposes.
12. The control and consulting programme introduced pursuant to Section 34 (10a) IfSG should be tightened (documentation of the vaccination status upon registering for an institution, annual checks of the vaccination status carried out by the institution, regular consulting visits including the offer to carry out vaccinations through local health authorities or doctors mandated by these).
13. Except for one of its members, the German Ethics Council favours a mandatory vaccination policy that can be sanctioned with a work ban for professions with a special responsibility. This applies especially to staff in health care, social welfare and education.
14. If a mandatory vaccination policy was introduced, the practical opportunity should be provided to restrict vaccination to the specific disease that the policy refers to. Accordingly, it must be guaranteed that the respective mono-preparations are available.

15. Sanctions pursuant to professional law must be considered against doctors who publicly (especially in social media) spread incorrect information on vaccination against measles.

>> DISSENTING VOTE

In a dissenting vote, Christiane Fischer speaks out against any form of mandatory vaccination. In order to increase the measles vaccination rate, measures should only be aimed at easier access, information and counseling, because individual freedom, the basic right to physical integrity and the primacy of parental custody are higher values than the elimination of measles.

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