

# Evaluating potential unintended consequences of COVID-19 vaccine mandates and passports

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## INTRODUCTION

In a recent article published in this journal, Bardosh *et al* set out to ‘outline a comprehensive set of hypotheses’ for why COVID-19 vaccine policies (namely, vaccination mandates and passports) ‘may cause more harm than good’.<sup>1</sup> A clear articulation of potential unintended consequences is crucial for the ethical evaluation of any policy, including COVID-19 vaccine policies. While the authors raise some important considerations, their treatment of the potential unintended consequences of COVID-19 vaccine policies contains several shortcomings that may mislead, rather than assist, the ethical evaluation of such policies. This paper aims to complement Bardosh *et al*’s (hereafter: ‘the authors’) analysis to further inform the evaluation of potential unintended consequences of COVID-19 vaccine policies.

## UNINTENDED CONSEQUENCES AND ARRIVING AT POLICY JUDGMENTS

The authors present a set of ‘hypotheses’ for why COVID-19 vaccine policies ‘may’ have unintended consequences, acknowledging that ‘[e]mpirical assessments may or may not validate the concerns presented’ (p. 10). However, this does not square with their conclusion: ‘Our analysis *strongly suggests* that mandatory COVID-19 vaccine policies *have had damaging effects* on public trust, vaccine confidence, political polarisation, human rights, inequities and social well-being’ (p. 1, emphasis added). A conclusion about what *has happened* is not licensed by *hypotheses* adduced in the paper. Consequently, no grounds are provided to support the authors’ subsequent prescription that the ‘research community and policymakers [should] return to non-discriminatory, trust-based public health approaches’ (p. 1).

## Summary box

- ⇒ In a recent article published in this journal, Bardosh *et al* set out to ‘outline a comprehensive set of hypotheses’ for why COVID-19 vaccine policies (namely, vaccination mandates and passports) ‘may cause more harm than good’.
- ⇒ The authors’ treatment of the potential unintended consequences of COVID-19 vaccine policies contains several shortcomings that may mislead, rather than assist, the ethical evaluation of such policies. Among others, these include drawing conclusions that are not supported by the hypotheses they adduce, mischaracterising potential unintended consequences, and raising concerns related to key ethical concepts without fully articulating the rationale or justification for those concerns.
- ⇒ Investigating and evaluating the potential unintended consequences of COVID-19 vaccine policies is crucial; however, in doing so, we must be careful not to overstate the normative weight of hypothetical unintended consequences and resist the temptation to arrive at policy prescriptions based on those grounds alone.

But even if their hypotheses were empirically validated, should this cause us to ‘question the effectiveness and consequences’ of COVID-19 vaccine policies, conclude that they ‘may cause more harm than good’ and ‘urge the research community and policymakers’ to consider other measures instead?

It should not. Arriving at a judgment about policy requires an assessment of harms *and* benefits. Yet, the authors do not meaningfully engage with the benefits of COVID-19 vaccine policies, including how benefits might manifest for different designs and contexts (eg, mandates vs passports; in hospitals vs universities; to achieve distinct objectives such as increasing vaccination rates vs reducing transmission vs protecting health system capacity by preventing hospitalisations; post Omicron vs pre Omicron), nor do they evaluate how those benefits stack up against potential



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unintended consequences. This is understandable since the authors take unintended consequences as their focus. But if no attempt is made to fully account for the ‘good’, no warrant exists for speculative claims (in the title no less) about whether such policies ‘cause more harm than good’.

With that being said, even if the authors had fully characterised the benefits of COVID-19 vaccine policies *and* found they are outweighed by potential unintended consequences, it is still not a foregone conclusion that such policies will cause more harm than good and so should be rejected. All policies have unintended consequences. Instead of dismissing such policies out of hand, we may still choose to implement them and take steps to *mitigate* their unintended consequences. No reasons or evidence are provided by the authors to suggest the potential unintended consequences they cite cannot be avoided, mitigated or compensated for.

Finally, it would be too hasty to reject COVID-19 vaccine policies and urge policymakers to use alternatives without naming such alternatives and evaluating them against COVID-19 vaccine policies; for it may be that alternative policies are less capable of achieving policy objectives or carry even more unfavourable unintended consequences than COVID-19 vaccine policies.

### CHARACTERISING POTENTIAL UNINTENDED CONSEQUENCES

Despite their focus on ‘consequences’, the authors fail to give sufficient attention to matters of causation. For example, one potential unintended consequence of vaccine policies proffered by the authors is political polarisation (p. 7). Yet, the causal story of political polarisation during the COVID-19 pandemic is a complex one. Is the cause of political polarisation vaccination mandates or is it misinformation about vaccines? Could such polarisation be the result of legal disinformation stemming from unsophisticated narratives about rights and freedoms?<sup>2</sup> Might opposition to vaccination mandates be the effect, and not the cause, of political polarisation?<sup>3</sup> Or could much of the political polarisation have little to do with vaccine policies at all?<sup>4,5</sup> A body of scholarship exists that has sought to understand and explain such complex phenomena, and so we would risk ‘repeating simplistic narratives’ (p. 2) by simply attributing political polarisation to vaccine policies.

Moreover, we have reason to believe that some hypotheses outlined by the authors are not true or are unlikely to be true. For example, there is little doubt that vaccine policies are divisive in some populations. However, to support their claim that current vaccine policies are ‘divisive and unpopular with many’, the authors arguably overstate the extent of this divisiveness when they claim that ‘vaccine policies may influence upcoming elections’, citing Canada and its People’s Party as an example (p. 7). The authors fail to note that Canada recently held a federal election on 20 September 2021 after many COVID-19 vaccination mandates and passports had

been implemented and a mere 4 months before the so-called ‘freedom convoy’. The People’s Party did not win a single electoral riding.<sup>6</sup> The Liberal Party, which made its support for vaccination mandates and passports an explicit and central part of their platform,<sup>7,8</sup> won the election and formed government. It is hard to see why this should count as reason to think vaccine policies are divisive and unpopular with many; indeed, it seems to show just the opposite. Perhaps this is why the authors use the awkward phrasing of ‘unpopular with many’, since such policies have actually enjoyed majority (ie, popular) support in many jurisdictions (including Canada).<sup>9,10</sup>

### EQUALLY PLAUSIBLE CONSEQUENCES IN THE ABSENCE OF VACCINE POLICY

A challenge for speculating about ‘what bad things could happen if we do x’ is that this sort of speculation can cut both ways. For example, the authors suggest there is a ‘possibility that current vaccine policies may fuel existing inequity’ (p. 8). This is certainly possible. Yet, there is also reason to believe mandates could *promote* equity by protecting persons more vulnerable to infection or severe outcomes. Indeed, this is the position of the American Civil Liberties Union.<sup>11</sup> By the same token, the authors note that trends of reduced health system capacity could be exaggerated by mandatory vaccination policies (as a result of firing unvaccinated staff). Yet, because health-care workers who remain unvaccinated are at greater risk of being unable to work due to COVID-19, a plausible consequence of not introducing a mandate is also reduced health system capacity.<sup>12</sup> Finally, public trust could similarly be threatened should governments and institutions fail to introduce whatever measures are at their disposal to protect populations in vulnerable situations. It is wishful thinking that forgoing such policies despite the majority of the population supporting them would not similarly lead to anger, polarisation and mistrust. No reason is provided by the authors as to why we should believe the choice not to use such policies during a once-in-a-century pandemic when the majority of the public supports them would be any less divisive.

### ON COERCION

On several occasions, the authors mention the coercive nature of COVID-19 vaccine policies. Without elaboration, coercion and coercive public health measures are portrayed as inherently bad or wrong (eg, ‘these vaccine policies have largely been framed as offering ‘benefits’ (freedoms) for those with a full COVID-19 vaccination series, but a sizeable proportion of people view conditioning access to health, work, travel and social activities on COVID-19 vaccination status as inherently...coercive’ (p. 2)). There are several problems with this, especially if we aim, as the authors say they do, to avoid ‘repeating simplistic narratives’.

First, there are the matters of whether vaccination mandates are in fact coercive, and if so, whether this

is necessarily bad or wrong. In one sense, vaccination mandates are straightforwardly coercive. Coercive policies use force or threats to compel individuals to do something they would not otherwise do.<sup>13</sup> Because mandatory vaccination compels people to get vaccinated by, for instance, threatening them with job loss if they are not vaccinated, we would count this as coercive. Yet, according to this understanding of coercion, the power wielded by governments is *commonly* coercive.<sup>14</sup> Coercion certainly demands justification, but the mere charge of coercion is not enough to conclude that an activity is necessarily ethically bad or wrong. Multiple justificatory conditions for the use of coercion have been proffered by public health ethicists, including that the proposed coercive policy should be necessary and effective for, and proportionate to, the achievement of an important public health objective, that it is implemented fairly, and so forth.<sup>15</sup> Vaccine policies can meet these justificatory conditions in some circumstances and not others, at one time and not another and in some jurisdictions and not others.<sup>16</sup>

Conversely, some argue that coercion exists only when people are made worse off no matter which choice they take.<sup>17</sup> Being vaccinated with a vaccine found to be safe and effective by national regulatory authorities around the world cannot plausibly be construed as making people worse off (particularly with medical and religious exemptions), and so on this understanding of coercion this should not be counted as coercive. But one need not subscribe to this latter understanding of coercion; no matter which way we understand coercion, it is clear that characterising a policy as ‘coercive’ and counting this as a reason to oppose it or consider it inferior without explaining why it is coercive, and if so, why that use of coercion is unjustified, is unhelpful.

## ON INFORMED CONSENT

The authors assert that ‘many COVID-19 vaccine policies clearly limit...the normal operation of informed consent’ (p. 9). They subsequently enjoin us ‘to consider the extent to which current policies, and how they are implemented in clinical settings, sets a precedent for the erosion of informed consent into the future and impact the attitude of the medical profession to those who are reticent to undergo a specific medical procedure’ (p. 9).

The authors acknowledge that vaccination mandates and passports have existed in many jurisdictions for decades, for example, in schools, for travel, and for healthcare workers. These policies have existed alongside ethical obligations and legal requirements of informed consent. Consequently, it is unclear why the authors believe vaccine policies for COVID-19 in particular limit the ‘normal’ operation of informed consent, nor why COVID-19 vaccine policies ‘set a precedent for the erosion of informed consent’. While it is true that vaccination mandates and passports for COVID-19 have been deployed more broadly than similar policies in the past,

the putative tension between vaccination mandates and informed consent is not unique to COVID-19 vaccination mandates. One might argue in response that mandates and informed consent have *always* been in tension, but this undermines the authors’ claim that COVID-19 vaccination mandates limit the ‘normal’ operation of informed consent and ‘sets a precedent’ for the erosion of informed consent into the future. In the spirit of not simply ‘repeating simplistic narratives’, it is incumbent on those arguing that vaccination mandates ‘clearly limit’ informed consent to provide an argument specifying how and why this is the case and account for why vaccination mandates and informed consent laws have coexisted for many decades without significant legal challenge on this point.

## CONCLUSION

Investigating and evaluating the potential unintended consequences of COVID-19 vaccine policies is crucial. Bardosh *et al* set out to do just that in a recent article published in this journal, which is laudable. However, I have argued that Bardosh *et al* ultimately draw conclusions that are not supported by the hypotheses they adduce, mischaracterise potential unintended consequences and raise concerns related to key ethical concepts without fully articulating the rationale or justification for those concerns. While it is important to have epistemic humility regarding the consequences of policy, it is also important to avoid overstating the normative weight of hypothetical unintended consequences and resist the temptation to arrive at policy prescriptions based on those grounds alone.

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