

Vaccination, Transplantation, and a Social Contract

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Vaccination, Transplantation, and a Social Contract

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The impact of COVID-19 in transplantation has triggered a debate over pre-transplant vaccination requirements, which has several layers. First, is vaccination *right*, in the sense that it is supported by persuasive evidence? This question is accessible to most clinicians and health systems who, despite the ever-growing complexity of COVID-19 vaccination data, have expertise in interpreting this research and making clinical recommendations. Second, is vaccination *right*, in the sense that it is ethical according to any of several moral theories, whether based in harms and benefits, duties, virtues, or compassion? This question can be approached using the practical ethical toolkit that most clinicians are familiar with: the principles of beneficence, non-maleficence, autonomy, and justice. Many also have a moral intuition about the importance of vaccination. The previous literature explores these principles in depth, citing the devastating impact of COVID-19 after immunosuppression, the relative benefits of pre-transplant compared to post-transplant vaccination, the duty to responsibly distribute donor organs, and potentially competing duties to care for patients.^{1,2} These arguments establish the importance of vaccination and the role of transplant centers in promoting both vaccination and transplantation. But to best answer the question of whether transplant centers should impose vaccination requirements for transplant listing, we must consider a third, and deeper layer: What *rights* can be claimed or enforced with regard to vaccination and transplantation?

Social contract theory is an approach to moral and political philosophy that uses the metaphorical device of negotiation among parties to establish a rational justification for some proposed system or norm. This approach can illuminate fair and reasonable compromises to individual liberty for the sake of broader responsibilities, and thus is a useful new approach to the question of vaccine requirements. A social contract is already invoked in calls for vaccination and supported in behavioral research.^{3,4} Familiar appeals to cooperation for mutual benefit, like ending the pandemic, harken back to the theory of John Locke. Calls to consider the least well off, like protecting the immunocompromised, have parallels in the theories of John Rawls and T.M. Scanlon.

We apply the social contract theory of T.M. Scanlon to the question of vaccination requirements for transplant candidates, because we find Scanlon's theory to be approachable yet nuanced. In his book, *What We Owe To Each Other*, Scanlon asserts that the reason for moral actions is the need to justify oneself to others.⁵ "What we owe to each other," then, is to act in ways that are justifiable, or not objectionable, to others. To evaluate a proposed principle within this framework, such as a vaccination requirement for transplant candidates, we ask

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3 whether any affected individual could *reasonably object* to it. Although all social contract
4 theory presupposes some sacrifices of autonomy for the good of society, Scanlon's theory is
5 attentive to individual perspectives, rather than acquiescing to any overriding majority. Clearly
6 there are rare transplant candidates who do object to vaccination, but Scanlon gives criteria to
7 determine whether such objections are reasonable. We will use two such criteria here:
8 genericness and the greater burden principle. An objection is generic if any person, had they
9 experienced the same circumstances as the objector, would be expected to raise the same
10 objection. The greater burden principle is used to compare possible objections among
11 individuals. In Scanlon's words, "It would be unreasonable... to reject a principle because it
12 imposed a burden on you when every alternative principle would impose much greater burdens
13 on others."

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18 A principle of requiring COVID-19 vaccination as a condition of solid organ transplant listing is
19 proposed for a society of transplant candidates. We will consider four objections: 1) harm from
20 vaccination 2) overriding personal philosophy 3) perpetuating racial injustice and 4) harm from
21 denial of transplantation. When evaluating objections, we will consider whether they are
22 generic and whether they satisfy the greater burden principle.

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25 To do this, we must understand the burdens imposed on individuals by the alternative
26 principle: not requiring vaccination. Concerns begin with the risk that non-vaccinated transplant
27 recipients might experience preventable COVID-19 infections. These infections can in turn lead
28 to strain on transplant center resources, where these patients will likely be treated, as well as
29 COVID-19 transmission to vulnerable patients or to the healthcare team. Such events might be
30 rare, but the affected individuals have an equal position at the negotiating table in Scanlon's
31 theory, which rejects aggregation. Burdens need not be physical or material; offense to
32 common-sense morality, or disregard for the equal moral worth of others can also be
33 considered.

34 35 36 37 **Individual harm from vaccination**

38 For most individuals, the harm from vaccination will be a sore arm or other mild side effects,
39 clearly not meeting the greater burden standard.⁶ Individuals with known serious medical
40 contraindications to vaccination, such as life-threatening anaphylaxis, have a more persuasive
41 objection to vaccination requirements based on the burden of harm from vaccination. Many
42 vaccination policies offer exemptions for medical contraindications to vaccination, such that the
43 proposed policy does not impose this particular burden.⁷ Whereas an analysis based entirely on
44 maximizing the benefits of transplantation might conclude that individuals who *can not* be
45 vaccinated and those who *will not* be vaccinated should be considered equivalent (because
46 they have comparable risks for COVID-19), a social contract analysis of helps to explain this
47 intuitive distinction in terms of the burdens imposed by vaccination.

48 49 50 51 52 **Overriding personal philosophy**

53 Candidates who have declined vaccination may object to vaccination requirements as
54 disregarding or overriding their personal philosophy. These are the objections foremost in
55 many transplant professionals' minds. Some of these objections may fall into the realm of
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3 “eccentric” personal beliefs, beliefs that others, even those with the same experiences or
4 circumstances, do not share. In extreme cases, individuals who have only ever received vaccine
5 information from unreliable and manipulative sources do have a generic objection, because
6 others exposed to the same limited information might come to hold to same beliefs. Transplant
7 centers weighing vaccination requirements should consider the nature of the vaccination
8 information and counseling available to their candidates and provide patient vaccine education
9 to ensure all candidates have the opportunity to critically examine beliefs based in
10 misinformation.
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14 **Perpetuating racial injustice**

15 For some transplant candidates, the circumstances leading to vaccine hesitancy are not simply
16 unbalanced misinformation but personal, community, and historical experiences of racism,
17 exclusion, and exploitation in the healthcare context.⁸ Objections grounded in these
18 experiences are generic. Furthermore, these objections are based on considerable burdens,
19 including the burden of having these traumatic histories disregarded and perpetuated by the
20 very institutions that caused them. Transplant programs considering vaccination requirements
21 should reflect on the communities they have served historically and those they have the
22 opportunity to serve better. All transplant centers should recognize and acknowledge injustices
23 that affect transplant patients of color and should take steps to reduce these burdens. Steps
24 can include developing strategies to promote vaccine uptake and transplantation specifically for
25 candidates of color, monitoring the impact of vaccination policies on racial equity, and
26 correcting other candidate criteria or transplant practices that may exacerbate racial injustice.
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31 **Harm from denial of transplantation**

32 The final and most basic objection is that vaccination requirements will result in some
33 individuals being excluded from transplantation, facing continued and progressive illness or
34 death. Such exclusion imposes a great burden, but it can never be the greater burden. Because
35 organs for transplant are scarce, if we do not exclude candidate A for not meeting a vaccination
36 requirement, we will instead exclude some unknown candidate B by unfortunate chance. It
37 doesn't matter that, when averaged across all the candidates, the probability that any one
38 candidate will be the one whose status decreases to the point that they do not receive a
39 transplant is low; Scanlon's procedure considers this candidate's objection individually. Thus,
40 because of organ scarcity, no individual can raise a reasonable objection on the basis that they
41 do not get a transplant, because this does not satisfy the greater burden principle. Instead, all
42 reasonable objections must be based on the burdens imposed by the requirement itself, in this
43 example by vaccination.
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48 The social contract theory of T.M. Scanlon provides a novel but well-suited framework for
49 examining vaccination requirements for transplant candidates. This approach focuses on the
50 burdens of vaccination, and considers these burdens at the individual level, such that no
51 perspective is overridden by a competing majority. It also considers these burdens in the
52 context of organ scarcity, where all candidates have an equal objection to being denied
53 transplantation. This analysis reveals important differences among candidates with various
54 objections to vaccination requirements, such as those who have medical contraindications to
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vaccination, those who refuse vaccines on the basis of eccentric beliefs, and those who refuse vaccines as a result of histories of racial injustice. It is our hope that understanding these objections in terms of burdens will aid transplant centers in determining whether a vaccination requirement is appropriate for the communities they serve, and in developing the nuances of such policies.

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Bruce Kaplan: Conceptualization, Resources, Supervision, Writing – review & editing

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