MASK-LESS SHOPPING IS LIKE DRUNK DRIVING
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In response to the Covid-19 pandemic, many states in the United States issued stay-at-home orders that prohibited people from leaving their homes except to access essential services. Upon reopening, a number of those states passed mask mandates requiring people to wear face coverings while in public, but as I write this, in October of 2020, there remain a substantial number of states that have not outlawed what I'll call 'mask-less shopping'. This is a mistake. After describing the standard, public health argument for outlawing mask-less shopping and explaining why it fails, I give a better argument for outlawing mask-less shopping that depends on the claim that mask-less shopping is analogous to drunk driving. It follows that every state should outlaw it.

Introduction

Imagine a man named Mason who settles down one evening to eat dinner and watch a baseball game. After finishing his meal, Mason gets a craving for an ice cream sundae. He has peanuts and chocolate sauce, but no ice cream, so he drives to the store. Before getting out of the car, it occurs to him that he might be infected with Covid-19. Even though he doesn't have any symptoms of the virus, his job requires him to interact with others on a regular basis, and Mason knows that pre-symptomatic

people can spread it. He considers wearing his face covering into the store, but he decides against it. It's physically uncomfortable and he thinks that people who wear face coverings are cowardly. He also thinks it's probably safe for him to shop without it. On his way to the freezer aisle, Mason passes several other shoppers. He grabs his favourite flavour of ice cream, pays the cashier, and heads back home.

Should Mason's behaviour be outlawed? This is a controversial question. In the first few months of 2020, Covid-19 spread across the world, transforming the way people live. In the United States, for example, many states issued stay-at-home orders. Then, upon reopening, a number of those states prohibited people from entering public settings without face coverings. Some local governments and businesses did the same. But most states did not.

On 27 April 2020, for example, Ohio's governor, Mike DeWine, announced a reopening plan that would have outlawed what I'll call 'mask-less shopping'. But he received pushback, and by the next day, he had changed his position. This was a mistake. In fact, less than three months later, Governor DeWine essentially admitted as much when he issued a state-wide mask mandate that required people to wear face coverings in indoor, non-residential locations.[1] Nevertheless, as I write this in October 2020, a fair number of states still haven't outlawed mask-less shopping, and even when they have, those mask mandates remain controversial. Accordingly, it's worth looking at the arguments for and against such laws. In the next section, I describe what I take to be the standard, public health argument for outlawing mask-less shopping and explain why it fails. Then, in the following section, I give a better argument for outlawing mask-less shopping that depends on the claim that mask-less shopping is analogous to drunk driving. After that, I consider and respond to several objections to my argument. Finally, I present two reasons to think that mask-less shopping is even worse than drunk driving. It follows that every state should outlaw it.

The Standard, Public Health Argument for Outlawing Mask-Less Shopping

The standard, public health argument for outlawing mask-less shopping seems to be a consequentialist one. It begins with the premise that outlawing mask-less shopping reduces the Covid-19 infection rate and that reducing the infection rate promotes public health. Then, it posits that policies that promote public health should be adopted. Thus, it concludes that we should outlaw mask-less shopping.

We have good reasons to think that outlawing mask-less shopping reduces the Covid-19 infection rate. According to the Centers for Disease Control and Prevention, 'The principal mode by which people are infected with SARS-CoV-2 (the virus that causes COVID-19) is through exposure to respiratory droplets carrying infectious virus.'[2] This suggests that increasing mask-wearing is crucial to reducing the Covid-19 infection rates, especially in places where people cannot physically distance. And since outlawing mask-less shopping increases mask-wearing, it should come as no surprise that a study by Wei Lyu and George L. Wehby published in *Health Affairs* found that 'US states mandating the use of face masks in public had a greater decline in daily COVID-19 growth rates after issuing these mandates compared with states that did not issue mandates.'[3]

The problem with the standard, public health argument for outlawing mask-less shopping isn't its assumption that outlawing mask-less shopping will reduce the Covid-19 infection rate. Instead, the problem is its assumption that all policies that promote public health should be adopted. Consider speed limits on highways. For any particular speed limit above some relatively low number, reducing the speed limit would promote public health. So, if all policies that promote public health should be adopted, it follows that we should dramatically reduce speed limits on highways. But few people, I imagine, would accept that

conclusion. They are not willing to sacrifice the benefits of higher speed limits, like sixty-five or seventy mph, in order to promote public health. Assuming that this is rational, it's also rational to deny that we should adopt all policies that promote public health.

But even if *you* would support lowering speed limits, there are presumably other policies that promote public health that you wouldn't support. The reason for this is that the value of life itself does not swamp all other values. Achievements, friendships, knowledge, and pleasure all add value to life, so it can be rational for someone to live a shorter life that is filled with these things rather than a longer life that lacks them. This explains why we allow people to eat junk food, ski, and smoke cigarettes. We know that outlawing these things would promote public health, but we also think that people have a right to engage in them. Thus, the standard, public health argument for outlawing mask-less shopping fails. If we should outlaw mask-less shopping, we need a better argument for that conclusion.

Mask-Less Shopping Is Like Drunk Driving

Even though we shouldn't adopt all policies that promote public health, we should adopt some of them. Laws against drunk driving are a good example. The difference between the examples given in the previous section and drunk driving is that eating junk food, skiing, and smoking cigarettes do not significantly endanger third parties, at least, not unless those third parties have at least implicitly consented to the increased risk. Drunk driving, however, does significantly endanger non-consenting third parties. To be clear, I am not saying that activities like eating junk food, skiing, and smoking cigarettes never significantly endanger others. Sometimes they do. But when they do, we often outlaw them, as evidenced by laws that prohibit people from smoking in bars, planes, restaurants, and other enclosed workplaces.

This suggests that we can make the following, stronger argument for outlawing mask-less shopping:

(1) Drunk driving should be outlawed.
(2) Mask-less shopping is analogous to drunk driving.
(3) Therefore, mask-less shopping should be outlawed.

In support of (1), imagine that a man named Doug settles down one evening to have a few drinks and watch a baseball game. After a few minutes, he gets a craving for pizza. Doug calls his local pizza place and orders one for pickup. By the time it's ready, Doug has already had several beers. As he gets into his car to drive to the store, he realizes that he might be impaired. He considers having his pizza delivered but decides against it. He wants to save a few dollars and he thinks that people who get their pizzas delivered are lazy. He also thinks it's probably safe for him to drive. He starts his car, drives to his local pizza place, picks up his pizza, and pays the cashier. On his way home, a police officer pulls Doug over because one of his car's tail-lights is out. The officer smells alcohol on his breath and has him blow into a breathalyser. Doug's blood-alcohol level is 0.1 per cent.

Should Doug's behaviour be prohibited? Of course! That's why every state in the United States has outlawed drunk driving. Drunk driving significantly endangers non-consenting third parties for a trivial benefit. Doug could have killed someone. And for what? Just to save a few bucks on the delivery charge or to avoid feeling lazy. Even if Doug lives in a sparsely populated town, his interest in these things doesn't justify his decision to drive drunk.

In support of (2), notice that we can say similar things about Mason's behaviour. Like Doug's drunk driving, Mason's mask-less shopping significantly endangers non-consenting third parties for a trivial benefit. Like Doug, Mason could have killed someone. And for what? Just to

avoid mild discomfort or to avoid feeling cowardly. Even if the store Mason enters is relatively empty, his interest in these things doesn't justify his decision to shop mask-less.

If these premises are true, then states should outlaw mask-less shopping for the same reason they outlaw drunk driving, because it endangers non-consenting third parties for trivial benefits.

Some Differences between Mask-Less Shopping and Drunk Driving

Assuming that my opponent will grant (1), the only way for them to deny my conclusion is to deny (2), the claim that mask-less shopping is morally equivalent to drunk driving. While there are important similarities between the two activities, there are also some differences. My goal in this section, then, is to show that none of those differences justifies treating mask-less shopping differently from drunk driving.

Laws against Mask-Less Shopping Are Unfair

One difference between mask-less shopping and drunk driving is that whereas no one needs to drive drunk, some people (viz. children under two years old, people with respiratory conditions, and people with disabilities for whom it is difficult to remove a face covering without assistance) need to shop mask-less. Thus, whereas prohibitions on drunk driving wouldn't harm anyone, prohibitions on mask-less shopping would harm some people. My opponents might conclude from this that laws against mask-less shopping, unlike laws against drunk driving, are unfair.

The problem with this argument is that although it gives us a good reason to reject *exceptionless* prohibitions on mask-less shopping, it doesn't give us a good reason to reject prohibitions on mask-less shopping that allow for exceptions. Even if, for some reason, some people needed to drive drunk, that wouldn't justify states in letting everyone

drive drunk. Analogously, the fact that some people may need to shop mask-less doesn't justify states in letting everyone shop mask-less.

Laws against Mask-Less Shopping Are Overbroad

Another objection to my view notes that laws against drunk driving only prohibit drivers with high blood alcohol concentration (BAC) levels from driving drunk. They don't prohibit drivers with low BAC levels from driving drunk. This distinction between drivers whose BAC levels are relatively high (at or above .08 per cent) and drivers whose BAC levels are relatively low (below .08 per cent) is relevant because, in theory, only those whose BAC levels are relatively high significantly endanger others. Thus, only their behaviour should be outlawed. Those whose BAC levels are relatively low do not significantly endanger others, and therefore their behaviour should not be outlawed.

Analogously, my opponent can argue that only those mask-less shoppers who are infected with Covid-19 significantly endanger others. Thus, only their behaviour should be outlawed. Those mask-less shoppers who are not infected with Covid-19, however, do not endanger others. Thus, their behaviour should not be outlawed.

This objection to my argument grants that we should outlaw *infected* mask-less shopping, but it denies that we should outlaw *uninfected* mask-less shopping. Although I don't think this is the best policy, for reasons I will give shortly, note that it concedes that there are some individuals who should be prohibited from shopping mask-less. So, even if this objection is correct that we shouldn't outlaw all mask-less shopping, it must admit that some mask-less shopping should be outlawed. In fact, it must admit that some mask-less shopping should be outlawed even if it doesn't cause any infections. Drunk drivers, remember, are punished regardless of whether they cause an accident. The fact that they endanger others by driving drunk is enough to justify outlawing their behaviour.

But as I've suggested, I think that we should outlaw *all* mask-less shopping, not just *infected* mask-less shopping. There are two reasons for this.

First, outlawing infected mask-less shopping wouldn't significantly discourage mask-less shopping and therefore wouldn't accomplish its goal (viz. reducing the Covid-19 infection rate). One reason we can discourage drunk driving without outlawing 'buzzed driving' (i.e. driving with a BAC level between .01 and .07 per cent) is that there are numerous outward signs (e.g. swerving, erratic braking, and abrupt turning) that enable law enforcement officers to distinguish *drunk* (and, therefore, dangerous) drivers from the larger population of *all* drivers. But there are few, if any, outward signs that would enable law enforcement officers to distinguish *infected* (and, therefore, dangerous) mask-less shoppers from among the larger population of *all* mask-less shoppers. Furthermore, testing someone's BAC level is both quick and inexpensive. Testing someone for Covid-19, however, is not.

If local governments had the manpower and the capacity to test a significant portion of mask-less shoppers, these disanalogies wouldn't matter. By testing a significant portion of mask-less shoppers, we could discourage infected mask-less shopping without outlawing uninfected mask-less shopping. But since few local governments have the capacity to do this, the likelihood of any particular shopper being convicted of infected mask-less shopping would be incredibly low. As a result, the law wouldn't deter anyone from shopping mask-less. One way to fix this would be to increase the punishment for those found guilty of infected mask-less shopping; however, there's some point at which increasing the punishment would be unjust.

The way to avoid these problems is to outlaw *all* mask-less shopping. Since it's easy to distinguish mask-less shoppers from masked ones, it would be easy to find and prosecute mask-less shoppers. Thus, it'd be easy to reduce the Covid-19 infection rate without punishing anyone unjustly.

Second, and relatedly, laws against *infected* mask-less shopping are more likely to encourage racial profiling than laws against *all* mask-less shopping. Since local governments have limited manpower and testing capacity, and because any particular shopper is unlikely to be infected with Covid-19, local governments will have to reserve tests for those mask-less shoppers whom they judge to be most dangerous. This could very well result in their targeting racial minorities. While all laws, including those that prohibit all mask-less shopping, can encourage racial profiling, laws prohibiting infected mask-less shopping seem especially likely to do so. If that's true, then laws against all mask-less shopping are more just than laws against infected mask-less shopping.

Laws against Mask-Less Shopping Are Too Intrusive

In the last few paragraphs, I have suggested that laws against *all* mask-less shopping would have better consequences and be more just than laws against *infected* mask-less shopping. But even if that's true, my opponents might argue that laws against mask-less shopping go too far, that they are too intrusive. To return to my central analogy, the worry is that outlawing all mask-less shopping isn't like outlawing drunk driving, it's like requiring every vehicle to be equipped with an ignition interlock device (or IID).

For those who are unfamiliar with IIDs, driving a vehicle equipped with an IID requires one to breathe into a breathalyser before starting it. If one's BAC level is not sufficiently low, then one's vehicle won't start. Although drivers can trick IIDs into allowing them to start their vehicles by, for example, having passengers blow into the IID, current models generally require drivers to blow into the breathalyser at random intervals while driving. As a result, they're hard to beat.

While all fifty states outlaw drunk driving, none of them require all drivers to have IIDs installed in their vehicles. This suggests that even if governments are justified in

punishing people who significantly endanger non-consent-ing third parties for trivial benefits, governments are not justified in preventing people from endangering non-consenting third parties unless they can show that those people are dangerous. The federal government's willing-ness to allow widespread gun ownership sends a similar message, that governments are not justified in preventing people from endangering others unless they can show that those people are dangerous. Analogously, maybe govern-ments are not justified in preventing shoppers from shop-ping mask-less unless they can show that those shoppers are dangerous. Maybe mask-less shoppers have been self-isolating for the last couple of weeks. Maybe they are fol-lowing social distancing recommendations. Maybe they've already contracted, recovered, and developed immunity to Covid-19.

There are two ways to respond to this objection. First, one could simply resist the suggestion that the government isn't justified in requiring vehicles to be equipped with IIDs. I am sympathetic to this move, and I suspect that many others, including those who have lost family members in drunk driving accidents, would be as well.

But even if the government isn't justified in requiring all vehicles to be equipped with IIDs, there are two significant differences between doing that and requiring all shoppers to wear face coverings. First, requiring all shoppers to wear face coverings would be much less expensive than requir-ing all vehicles to be equipped with IIDs. According to Mothers Against Drunk Driving's website, an IID costs approximately $70–150 for installation and approximately $60–80 per month for monitoring and calibration.[4] Requiring all shoppers to wear face coverings, however, would cost almost nothing. Of course, face coverings might cost a few dollars in stores, but most people have every-thing they need to make their own masks for free.[5] Of course, even if equipping every vehicle with an IID were free, it would be inconvenient to have to blow into one before starting your car and then again while driving it. But

given that approximately twenty-nine people in the United States are killed in drunk driving accidents each day,[6] the inconvenience may be worth it. Analogously, given that, in the United States, hundreds of people die from Covid-19 each day, the inconvenience of masked shopping may be worth it.

Second, equipping all vehicles with IIDs would, theoretically, give the government access to an incredible amount of personal data (about what one has ingested), making it problematic on privacy-related grounds. Requiring shoppers to wear face coverings, however, would not give the government access to any personal data. In fact, requiring shoppers to wear face coverings would presumably give shoppers more privacy, not less.

In the end, the fact that laws against mask-less shopping would be similar to laws requiring all vehicles to be equipped with IIDs does not give us a good reason to reject such laws. The reason we do not require all vehicles to be equipped with IIDs is that we do not think that the costs of such a policy would justify the benefits. If we look solely at the financial costs, monitoring and calibrating IIDs in every passenger vehicle in the United States would cost approximately \$200–267 billion per year.[7] This is approximately \$19–25 million per life saved.[8]

As I suggested earlier, the scientific consensus is that outlawing mask-less shopping would reduce the transmission of Covid-19 and save lives. It's unclear, however, exactly how many lives it would save. Regardless, given how little it would cost, it would be significantly more cost-effective than requiring all vehicles to be equipped with IIDs. Even if every person in America would have to spend \$10 per year on face coverings, the total cost of laws requiring shoppers to wear face coverings would be approximately \$3.3 billion per year.[9] So, in order to be as cost-effective as laws requiring all vehicles to be equipped with IIDs, laws requiring shoppers to wear face coverings would have to save 132–174 lives per year.

The evidence suggests that they would save far more lives than that. As I'm writing this, the Institute for Health Metrics and Evaluation (IHME) estimates that near universal mask-wearing in public would save over 46,000 lives in the next twelve weeks.[10] But even if that number is too high, if laws requiring shoppers to wear face coverings could save even one-third of that number of lives per year (i.e. 15,333), they would be approximately one hundred times more cost-effective than laws requiring all vehicles to be equipped with IIDs. So, even if the government isn't justified in requiring all vehicles to be equipped with IIDs, it doesn't follow that the government isn't justified in outlawing mask-less shopping.

Mask-Less Shopping Is Worse than Drunk Driving

To this point, I have argued that mask-less shopping is analogous to drunk driving and, therefore, that insofar as states outlaw drunk driving, they should outlaw mask-less shopping as well. In this section, I want to present two reasons to think that mask-less shopping is even worse than drunk driving. It follows that even if states weren't justified in outlawing drunk driving, they could still be justified in outlawing mask-less shopping.

Mask-Less Shopping Primarily Endangers Others

The first morally relevant difference between mask-less shopping and drunk driving is a difference in *whom* they endanger. Earlier, I emphasized the fact that drunk drivers endanger non-consenting third parties. And while that's true, it's also true that drunk drivers *primarily* endanger themselves.

In 2018, 10,511 people in the United States died in alcohol-impaired-driving fatalities, and 61% of those people were drunk drivers.[11] This tells us that drunk drivers primarily endanger themselves. Mask-less shoppers are different. Mask-less shoppers don't primarily endanger themselves.

They primarily endanger non-consenting third parties. This is because, according to the CDC, cloth face coverings are not meant to protect the wearer from infection but rather 'to protect other people in case you are infected'.[12]

If that's right, then depending on things like how uncomfortable people find mask-wearing and how much protection masks offer mask-wearers, it could turn out that it's in most people's self-interest to shop mask-less. And in that case, the choice whether to wear a face covering has the same structure as the prisoner's dilemma. Even though it's in our collective interest for all shoppers to wear face coverings, it's in each individual shopper's self-interest not to wear a face covering. If this is the situation we're in, then it will be extremely difficult to get non-altruistic shoppers to wear face coverings unless we change the incentives, and the way to do this is to outlaw mask-less shopping.

Covid-19 Spreads Exponentially

The second morally relevant difference between mask-less shopping and drunk driving is a difference in *their potential for harm*. Each drunk driver has the potential to cause significant harm. For example, a single drunk driver could easily cause an accident that kills several people, which in turn causes psychological harm to each of their loved ones. This is a lot of harm to a lot of people. And it could be worse. In principle, a single drunk driver could cause a pile-up that kills hundreds of people.

But while drunk driving's potential to cause harm shouldn't be understated, mask-less shopping's potential for harm is even greater. This is because when mask-less shoppers infect others, those who are infected can go on to infect other people, and so on. Imagine, for example, a world in which those who are injured by drunk drivers (and/or the healthcare workers who treat them) regularly contract a disease that turns them into drunk drivers. In that world, a single drunk driver could easily kill hundreds or even thousands of people. Imagining that world gives us a better sense of the kind of threat that mask-less shoppers

pose and helps us see why it is even more important to outlaw mask-less shopping than it is to outlaw drunk driving.

Conclusion

It's natural to think that the purpose of wearing a face covering is to protect oneself from becoming infected with Covid-19. Accordingly, it's natural to think that laws against mask-less shopping are analogous to laws that prohibit people from eating junk food, skiing, or smoking cigarettes. But the purpose of wearing a face covering isn't so much to protect oneself from becoming infected with Covid-19 as it is to prevent one from infecting others with Covid-19. Accordingly, the same reasons that lead states to outlaw drunk driving should lead them to outlaw mask-less shopping, at least for now. If we develop quick and inexpensive ways to test shoppers for Covid-19, develop effective and widely available vaccines, or reach herd immunity, things might be different. Until then, however, every state should prohibit people from shopping mask-less.

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Notes

[1] Ohio Department of Health, 'Governor DeWine Issues Statewide Mask Order, Travel Warning', 22 July 2020, <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/gov-dewine-issues-statewide-mask-order-travel-warning> [accessed 11 October 2020]. Ohio's mask mandate also requires people to wear face coverings if they're waiting for, riding in, or driving a vehicle used for public transport or if they're outdoors and are unable to stay six feet away from non-household members. Although I believe that these further requirements are also justified, I'll focus my attention on whether face coverings should be required in indoor, non-residential locations.

[2] Centers for Disease Control and Prevention (US), 'Scientific Brief: SARS-CoV-2 and Potential Airborne Transmission', 5

October 2020, <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html> [accessed 11 October 2020].

[3] W. Lyu and G. L. Wehby, 'Community Use of Face Masks and COVID-19: Evidence from a Natural Experiment of State Mandates in the US', *Health Affairs* 39.8 (2020), 1419–25, at p. 1424.

[4] Mothers Against Drunk Driving, 'Sober to Start', <https://www.madd.org/the-solution/drunk-driving/ignition-interlocks/> [accessed 11 October 2020].

[5] Centers for Disease Control and Prevention (US), 'How to Make Masks', 6 July 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html> [accessed 11 October 2020].

[6] Centers for Disease Control and Prevention (US), 'Impaired Driving: Get the Facts', 22 March 2019, <https://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-drv_factsheet.html> [accessed 11 October 2020].

[7] To get this number, I multiplied $60–80, Mothers Against Drunk Driving's estimate of the monthly cost for IID monitoring and calibration, by 278 million, IHS Markit's estimate of the number of vehicles on the road in the U.S. in 2019; see Business Wire, 'Average Age of Cars and Light Trucks in U.S. Rises Again in 2019 to 11.8 years, IHS Markit Says', 27 June 2019, <https://www.businesswire.com/news/home/20190627005234/en/Average-Age-Cars-Light-Trucks-U.S.-Rises> [accessed 11 October 2020].

[8] To get this number, I divided the estimated cost of monitoring and calibrating IIDs in every passenger vehicle in the U.S. by 10,511, which is the number of U.S. alcohol-impaired-driving fatalities in 2018; see National Center for Statistics and Analysis (2019, December), *Alcohol Impaired Driving: 2018 Data (Traffic Safety Facts. Report No. DOT HS 812 864)* (Washington, DC: National Highway Traffic Safety Administration). I ignored the cost of IID installation, which would be relatively insignificant since it's a one-time cost.

[9] This number is based on an estimated U.S. population of 330 million people.

[10] As of October 9, 2020, the IHME predicts that if 95% mask usage is adopted in public, there will be 277,127.2 U.S. Covid-19 deaths by 1 January 2020 compared to 323,337.8 U.S. Covid-19 deaths by that date if mask usage does not increase; see Institute for Health Metrics and Evaluation, 'COVID-19 Projections', 9 October 2020, <https://covid19.healthdata.org/united-states-of-america?view=total-deaths&tab=trend> [accessed 9 October 2020].

[11] National Center for Statistics and Analysis (US), 'Alcohol-impaired Driving: 2018 Data'.

[12] Centers for Disease Control and Prevention (US), 'How to Protect Yourself and Others', 11 September 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> [accessed 11 October 2020].