What are the features of a just vaccination policy?

There is probably wide agreement that under a just vaccination policy, individuals whose medical condition puts them at exceptional risk of death or serious illness or injury if they are vaccinated should be exempt from mandatory vaccination. There may also be substantial agreement that when people are injured by being vaccinated under governmental mandate, they deserve compensation (see reference to the National Childhood Vaccine Injury Act of 1986, p. 323). But there is considerable disagreement about other matters. In particular:

1. Which means (such as incentive offers, or mandates enforced by penalties), can the state justly use to bring about the society-wide benefits of herd immunity?

2. When there is an epidemic (e.g. the outbreak of smallpox that prompted the Cambridge, Massachusetts vaccination mandate in Jacobson), does fairness require almost everyone (other than the medically exempt) to share in the burdens and risks attendant to vaccination to achieve herd immunity? (We consider this question further in the readings assigned for class #21 next Tuesday.) Is it fair because in an epidemic, the individual gets more expected benefit from being vaccinated than from not being vaccinated? Or is it fair more generally, as Justice Harlan writes for the Court in Jacobson, because “Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others” (p. 319)? Or because “a minority, residing or remaining in any city or town where smallpox is prevalent, and enjoying the general protection afforded by an organized local government, [may not] defy the will of its constituted authorities, acting in good faith for all, under the legislative sanction of the state” (pp. 320-321)?

3. When there is no epidemic, and an individual’s random risk of serious pain, illness or death resulting from vaccination exceeds his or her expected benefit (e.g. because society is already very near to or has exceeded the herd immunity threshold), can he or she justly be required to submit to vaccination (or pay a penalty)?

4. How should a just vaccination policy take account of significant differences across society in ability to pay? (It is probably widely accepted that if it is just for the state to require vaccination, then the state ought to subsidize vaccination for those otherwise unable to pay for it. But other distributive questions are harder. E.g., is it just for the well-off to avoid vaccination by purchasing an exemption at auction, or willingly paying a penalty that the less well-off could not afford to pay?)

5. Should exemptions from compulsory vaccination be provided to those who are conscientiously opposed to being vaccinated, or whose conscientious opposition is based on their religious faith? (While many states have provided such exemptions, in 2015 California became one of three states that provide only medical exemptions from its school-entry vaccination mandate. California enacted SB 277 because the rate of personal-belief exemptions had doubled since 2007, and the risk of losing statewide herd immunity had been brought home by a widely publicized measles outbreak at Disneyland.)
Nozick’s critique of utilitarian justifications for the coercive exercise of state power

We see that Nozick, a very influential 20th century moral and political philosopher, criticizes utilitarian justifications for exercises of coercive state power. For purposes of these criticisms, we can assume, and Nozick can assume, that mandatory vaccination to achieve herd immunity, and to protect the social opportunities of children with fragile health, actually DOES produce the greatest happiness of the greatest number. Stipulating that the policy DOES bring about the greatest happiness of the greatest number, Nozick nonetheless implies that such an exercise of coercive state power is unjust and illegitimate to the extent that it violates natural rights, that is, occasions unconsented-to crossings of inviolable personal boundaries.

Nozick’s argument goes like this:
1. Utilitarianism makes the false assumption that society is like a person. Admittedly, each of us as a person is free to trade off our own present risk of pain or injury for our own future happiness. But society is not a person, and society cannot justly trade off my present risk of pain or injury for someone else’s future happiness. (Indeed, it cannot make me trade off my own present pain for my own future happiness without my consent.)
2. Utilitarianism falsely reduces the good, or the worthwhile, to experiential states such as happiness. But no matter how sophisticated our conception of happiness – even if it includes not only the happiness attendant on eating a delicious meal but also the happiness attendant on inventing a cure for cancer or conducting the symphony orchestra in a performance of Beethoven – a human life is centrally concerned with doing and being. (Experience machine thought experiment.)
3. Morality is not exhausted by maximization of end-states. Nozick makes an argument that drives in the same direction as our scenario with the five married couples. (In that scenario, the obligation of each married person is not to make the decision that maximizes fidelity for all but instead to keep her binding promise to be faithful.) Morality also includes side-constraints – principles that limit what can justly be done in pursuit of otherwise legitimate goals.
4. Putting these ideas together, Nozick concludes that what we truly value, and ought to value, is an autonomous life in which each of us makes our own plans and acts on them in pursuit of our own life goals. This autonomous life is protected by what he calls rights as side-constraints that protect the inviolability of the person. A person, as protected by natural rights, is not to be used, even to produce the greatest happiness of the greatest number. Thus, even to the extent that pursuing greatest happiness of the greatest number is a valid goal, natural rights set constraints on how the coercive power of the state can be exercised in pursuit of that goal.