# Ethical Dilemmas Part 1

Ethics in a Time of Polarization

Osher Course

John Hooker, study leader

September-October 2021

#### **Outline**

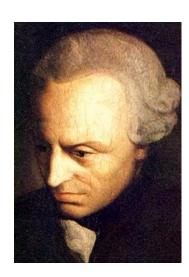
- Quick review
- Everyday dilemmas
  - Boarding the plane
  - The ambulance
  - A damaged car
  - Boss's expense account
- Vaccines and masks
  - Refusing MMR vaccine
  - Refusing Covid vaccine
  - Forcing Covid vaccine
  - Requiring Covid vaccine
  - Requiring masks
  - Vaccination for work

## **Approach**

- Stick to ethical principles adopted in advance.
  - Generalization, utilitarian, autonomy.
  - One can think up "arguments" for any position.
- Avoid public policy issues.
  - These require different conceptual tools.
  - No consensus on principles.
  - We will survey some "isms" in session 5.

# Generalization principle

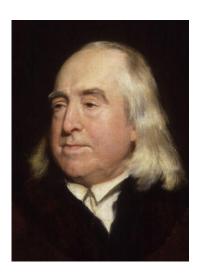
- It should be **rational** for me to believe...
  - that the reasons for my action are consistent with the assumption that everyone with the same reasons acts the same way.



# **Utilitarian principle**

- An act is ethical only if I can rationally believe that no other act...
  - creates more net expected utility\*...
  - and satisfies other ethical principles.

\*counting everyone's utility.



# **Autonomy principle**

- An act is unethical if I am rationally constrained to believe\* that...
  - it interferes with the **ethical action plans** of some collection of other agents **without informed or implied consent**.

<sup>\*</sup>it is irrational not to believe...

- The airline boards by zones...
  - To expedite boarding
    - Early zones are nearer the back and windows.
  - But the agent isn't checking zones.
  - So I board early.
  - Is this OK?



- Generalization test.
  - My reasons:
    - I want to be sure to find space for my bag.
    - Nobody is checking the zones.
  - This doesn't seem to be generalizable.
    - But exactly why?



- Generalization test, 1<sup>st</sup> attempt.
  - Fails, because I wouldn't want everyone else with a large carry-on to do the same.
    - Too many people would get ahead of me.
  - Wrong.
    - It doesn't matter what I "want."



- Generalization test, 2<sup>nd</sup> attempt.
  - Fails, because if everybody with a bag tried to board early...
    - It would defeat the purpose of expediting the boarding process.
  - Wrong.
    - It would defeat the airline's purpose.
    - What matters is my purpose finding space for my bag.



- Generalization test, 3<sup>rd</sup> attempt.
  - Fails, because if everybody with a bag tried to board early...
    - I would no longer be sure to find space for my bag, or...
    - The agents would always check zones..
  - Correct.
    - Boarding early, for these reasons, is not generalizable.



- Utilitarian test.
  - Boarding out of order marginally slows the boarding process...
    - There is no net effect on bag space.
    - But net reduction in utility.
  - Fails the test.



- Scorecard.
  - Generalization test: fail
  - Utilitarian test: **fail**
  - Autonomy test: not applied



- I am an emergency paramedic.
  - I have a meeting with my boss.
  - Heavy traffic will make me late.
  - So I use the siren and lights.
- Ethical?
  - It's not legal, but let's suppose it is.



- Generalization test.
  - My reasons:
    - Traffic will make me late for an appointment with the boss.
    - I won't be caught.
  - This is a rare circumstance for EMS workers.
    - Passes the test.



- Generalization test.
  - Problem:
    - The scope is too narrow.
    - Why wouldn't I use the siren if I were late for a job interview, a flight, etc. etc.?
    - Nothing in my rationale distinguishes these cases.
  - In effect,
    - I am using the siren because I really want to get there on time.
    - Not generalizable.



- Generalization test.
  - But I insist:
    - I would use the siren only in these particular circumstances.
  - Then why?
    - I don't have to **predict** what I would do.
    - I must have a rationale for singling out these particular circumstances.
    - I don't have one.
  - So I fail the test.



- Utilitarian test.
  - Screaming through traffic without a patient does not maximize utility.
    - The risk of an accident outweighs any benefit to me.
  - It is different with a patient in the ambulance.
    - Expected benefit of prompt medical attention outweighs expected cost.
  - So I fail the test.



- Scorecard.
  - Generalization test: **fail**
  - Utilitarian test: **fail**
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- I want to buy a new car from a dealership.
  - And trade in my old car.
    - We negotiate a price for the new and old cars.
  - But I'm not sure I like the deal.
    - The salesman gives me a lunch voucher, so I can think about it over lunch.



- While driving the old car back from lunch,
  - I have a minor accident.
    - The damage is not conspicuous, but the bumper must be replaced..
  - I estimate the repair bill at \$1000.



- The dealer doesn't notice any damage.
  - The price he offered me for my old car was \$1000 below book value.
  - Should I go ahead with the deal...
    - Without mentioning the damage?



- Utilitarian test.
  - The utility cost is greater to me than to the dealer.
    - Partly because the repair cost to me is inflated.
  - So failure to mention the damage creates a net increase in utility.
    - It passes the test.



- Generalization test.
  - We have a sales agreement.
    - Violating an agreement merely for personal benefit is not generalizable.
  - The dealer offered to buy the old car in the condition he saw it...
    - Not in a wrecked condition.



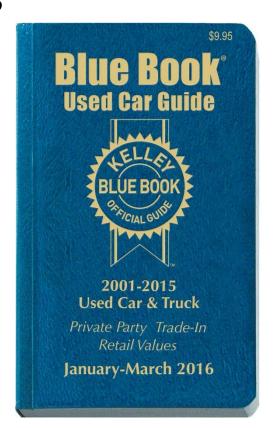
- Generalization test.
  - I might argue: if I had not damaged the car, it would have still suffered minor wear and tear.
    - It would not be the same car as the dealer saw, and this is consistent with the agreement.



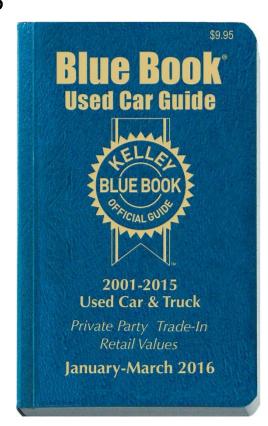
- Generalization test.
  - I might argue: if I had not damaged the car, it would have still suffered minor wear and tear.
    - It would not be the same car as the dealer saw, and this is consistent with the agreement.
    - But the dealer expects wear and tear on a lunch trip.
    - This much is part of the deal.
    - But selling a more seriously damaged car is a breach of contract.



- A "fair" price.
  - How about the book value of the car?
    - The dealer offered me \$1000 below book value.
    - The cost is \$1000 (less for him).
    - So we're even.



- A "fair" price.
  - How about the book value of the car?
    - The dealer offered me \$1000 below book value.
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    - So we're even.
  - What does "fair" mean?
    - The price (fair or not) is part of our agreement.
    - There was no fraud or deception.
    - If I don't like the price, I can renegotiate.



- Scorecard.
  - Generalization test: fail
  - Utilitarian test: **pass**
  - Autonomy test: not applied
- I have to pass all the tests.



- My boss asked me to accompany him on a trip to San Francisco.
  - I booked my flight through the company travel service.
    - I asked the agent to charge the trip to my boss's account.
  - The agent remarked that a 3<sup>rd</sup> party was going at company expense.
    - I recognized the name of my boss's wife (different surname than my boss)
- What to do?



- Two issues:
  - Is my boss's conduct unethical?.
  - If so, should I report it to the company?



- Is my boss's conduct unethical?
  - He deceived the company.
    - He represented his wife's expenses as a legitimate business expense.
    - Deception merely for convenience is not generalizable.



- Is my boss's conduct unethical?
  - He deceived the company.
    - He represented his wife's expenses as a legitimate business expense.
    - Deception merely for convenience is not generalizable.
  - He broke an agreement to follow company rules.
    - Also ungeneralizable.



- Is it OK if I keep quiet about this?
  - Utilitarian outcome is unclear.
    - Whistle-blowing cases can be very unclear.

- Is it OK if I keep quiet about this?
  - Utilitarian outcome is unclear.
    - Whistle-blowing cases can be very unclear.
  - Generalizable?
    - **No,** if I have oversight responsibilities (I don't).
    - No, if reporting this is part of company code of conduct (it isn't).
    - Yes, because small irregularities are frequently caught by control mechanisms. I could still accomplish my purpose if act is generalized.

- Scorecard.
  - Generalization test: pass
  - Utilitarian test: pass (because outcome unpredictable)
  - Autonomy test: not applied
- OK to keep quiet.
  - Reporting would also probably pass the tests.



## Whistle blowing

- Can be internal or external.
  - In-house or public.
    - Whistle-blowing cases can be very unclear.
- Substantial risk to whistle-blower.
  - Company may ignore it (e.g., Boeing 737 Max)
    - "Anonymous" hot line?
  - Retaliation possible.
    - External whistle-blower may suffer mental and physical health consequences.
    - E.g., Roger Boisjoly.



- Safety of MMR (measles/mumps/rubella) vaccine questioned
  - A 1998 Lancet article claimed link between MMR and autism/colitis.
    - Based on 12 children.
    - Later studies show no connection, including a 2002
       Danish study of half a million children.
    - Article not retracted until 2010.
    - Author eventually lost license to practice medicine.



- This boosted the anti-vaxxer movement
  - In Europe and US.
  - Measles had been eliminated in the US by 2000.
    - Resurfaced in an outbreak at Disneyland in 2014.
    - Unvaccinated children affected.
    - US vaccination rate had dropped to 92%.
    - 2017 outbreak in Italy infected 4000, 88% unvaccinated.
  - Anti-vaxxer parents often refuse MMT for their kids on grounds of safety.
    - They also claim measles is a "natural" part of growing up (a taste of the naturalistic fallacy).



- Some data
  - Side effects of MMR vaccines (2016 CDC data):
    - 16% get a mild fever.
    - 5% faint rash.
    - 1.3% swelling of salivary glands.
    - 0.03% temporary fever-induced seizure.
    - 0.003% bleeding disorders.
  - Side effects of getting measles (2016 CDC data):
    - 10% get an ear infection.
    - 10% diarrhea.
    - 5% pneumonia (fatal in severe cases).
    - 0.1% encephalitis (can lead to convulsions, deafness)
    - 0.1-0.2% death.

- Some data
  - Effects of Italian measles outbreak:\*
    - 5% got ear infection.
    - 16% diarrhea.
    - 14% stomatitis.
    - 9% conjunctivitis.
    - 9% hepatitis.
    - 8% pneumonia.
    - 6% respiratory insufficiency.
    - 3% bleeding disorders.
    - 0.2% seizures.
    - 2 of 4000 got encephalitis.
    - 3 of 4000 **died** (all unvaccinated).

\*Filia et al., Eurosurveillance, Sep 2017.



- Utilitarian test
  - This considers only the consequences of **one person's** vaccination.
    - MMR is 93% effective against measles.
  - Potential consequences of measles are far **worse**, and much **more likely**, than side effects of vaccination.
    - Measles is easier to catch than flu (altho not Covid-delta)
    - A measles case exposes others (including immunocompromised) and is disruptive for other reasons.



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    - Measles is easier to catch than flu (altho not Covid-delta)
    - A measles case exposes others (including immunocompromised) and is disruptive for other reasons.
  - Yet if **nearly everyone** is vaccinated, the chance of contracting measles may be **small**.
    - This may allow one to pass utilitarian test.
    - But we have a **free rider problem**, so we move to the generalization test.

- Generalization test
  - We are not asking whether the government should mandate MMR vaccines.
    - Only whether parents should allow it for their kids.



- Generalization test
  - We are not asking whether the government should mandate MMR vaccines.
    - Only whether parents should allow it for their kids.
  - Possible reasons for refusing MMR:
    - Vaccination is inconvenient and poses some risk.
    - Almost all kids (92%) are vaccinated, and this will largely protect my kids.
  - This rationale is clearly **not generalizable**.
    - If all parents acted on it, the second reason would no longer apply.



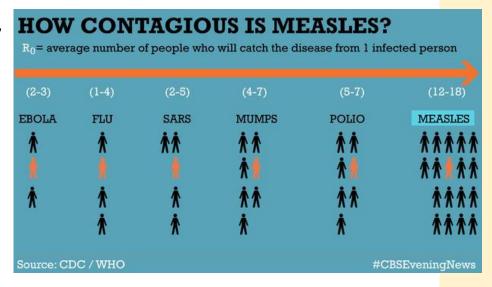
- Generalization test
  - But consider a different set of reasons.
    - Vaccination is inconvenient and poses some risk.
    - Getting measles is a natural part of growing up (i.e., we don't care if other kids are not vaccinated).



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    - Vaccination is inconvenient and poses some risk.
    - Getting measles is a natural part of growing up (i.e., we don't care if other kids are not vaccinated).
  - This is generalizable, but the scope of the rationale is wrong.
    - What if measles posed a 50% chance of death?
    - Measles would no longer been seen as "a natural part of growing up."

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    - Vaccination is inconvenient and poses some risk.
    - Getting measles is a natural part of growing up (i.e., we don't care if other kids are not vaccinated).
  - This is generalizable, but the scope of the rationale is wrong.
    - What if measles posed a 50% chance of death?
    - Measles would no longer been seen as "a natural part of growing up."
  - The real reason:
    - Vaccination poses more risk than measles.
  - We have seen this rationale is clearly not generalizable.
    - Universal measles is much riskier than universal vaccination.

- Autonomy test
  - One is not **rationally constrained** to believe that foregoing MMR vaccine results in illness.
    - Causing illness is normally a violation of autonomy, but illness here is only a possibility or probability.
    - However, if parents **know** that their kids will be
      - exposed to measles, we have an autonomy violation.
    - Because measles is extremely contagious.



- Scorecard for refusing MMR.
  - Generalization test: fail
  - Utilitarian test: may pass if vaccination rate is high
  - Autonomy test: pass unless one knows kids will be exposed.



#### **Covid vaccine**

- Before proceeding...
  - We recognize 2 people who did something very ethical.

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  - We recognize 2 people who did something very ethical.



Drew Weissman and Katalin Karikó

Developers of messenger RNA technology
behind Pfizer/BioNTech and Moderna vaccines

Received Friday the Lasker Clinical Medical Research Award Previous recipients include Jonas Salk and Anthony Fauci Karikó, Hungarian immigrant, persisted despite rejection & demotion

- Utilitarian test
  - Unlike MMR, there is a **clear and overwhelming** utilitarian obligation to get vaccinated for Covid.
    - Unless one has a specific risk of allergic reaction.
    - Unless one has very limited contact with other people.

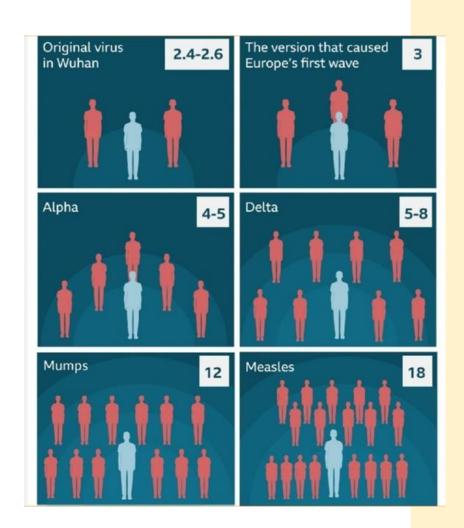


- Utilitarian test
  - Unlike MMR, there is a **clear and overwhelming** utilitarian obligation to get vaccinated for Covid.
    - Unless one has a specific risk of allergic reaction.
    - Unless one has very limited contact with other people.
  - Lack of vaccination poses several risks:
    - Significant probability of contracting a serious case, especially if one is older or has underlying conditions.
    - Consequent risk to others, including **hospital staff** and patients denied proper treatment due to lack of resources.
    - Cost imposed on medical system (average of \$24,000 per patient hospitalized)
    - Risk of **infecting family and others**, even if one is not personally vulnerable.

- Generalization test
  - Reason for refusing vaccine (same as MMR):
    - Risk of vaccination exceeds risk from Covid.
  - This isn't a rational belief even before generalizing
    - Unless one can expect allergic reaction, or has very limited contact with others.
    - It is obviously false after generalizing, because we have seen how fast Covid can grow without vaccines, even when lockdown and masking policies were in effect.

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    - It is obviously false after generalizing, because we have seen how fast Covid can grow without vaccines, even when lockdown and masking policies were in effect.
  - Ethics doesn't prevent people from being irrational!
    - Of course it doesn't.
    - Medical science doesn't prevent people from refusing vaccines. Physics doesn't prevent people from driving too fast on a slippery road, etc.
    - We don't reject the theory on that basis.

- Autonomy principle
  - There may be cases in which vaccine refusal violates autonomy.
    - For example, one is certain to become contagious (if not ill), due perhaps to working closely with an unvaccinated public...
    - ...and one is caring for a high-risk individual at home.



- Scorecard for refusing the vaccine.
  - Generalization test: fail
  - Utilitarian test: **fail**
  - Autonomy test: may fail in a few cases.



## **Forcing Covid vaccine**

- Another question
  - Is it ethical to force a vaccine on someone physically?
    - Isn't refusing the vaccine unethical, so that we have no violation of autonomy?



#### **Forcing Covid vaccine**

- Another question
  - Is it ethical to force a vaccine on someone physically?
    - Isn't refusing the vaccine unethical, so that we have no violation of autonomy?
  - The autonomy principle requires **minimal coercion**.
    - No matter how one might force another to submit to a jab, it would interfere with something ethical that person is doing at the time.
    - ...unless the person is, say, robbing a bank, in which case coercion is consistent with the autonomy principle...
    - ...but only to stop the theft, not to give a shot.
  - Requiring vaccination **to receive service** (e.g. at a restaurant) is another matter...

#### Requiring Covid vaccine

- Is it ethical to require Covid vaccination for service in a restaurant or admission to a theater?
  - It is no violation of autonomy.
    - One cannot have an action plan of being served in a
      - restaurant or entertained in a theater, with or without vaccination.
    - Refusal of service therefore violates no action plan.



#### Requiring Covid vaccine

- Is it ethical to require Covid vaccination for service in a restaurant or admission to a theater?
  - It is probably no violation of the utilitarian principle.
    - In fact, it is probably
       obligatory, because requiring
       vaccination reduces spread
       of disease at a small cost
       to the patron (who can eat
       or watch TV at home).
    - If there is a significant probability that the patron will attack the maître d' or usher, the calculation changes.



No evident reason it violates generalizability.

#### Requiring Covid vaccine

- Scorecard for requiring the vaccine.
  - Generalization test: **pass**
  - Utilitarian test: **pass** unless risk of significant backlash
  - Autonomy test: pass



- Is it ethical to require a mask for entry into a store?
  - It is no violation of autonomy.
    - For reasons already noted.
  - It could violate the utilitarian principle.
    - If there is a chance of a violent reaction from patrons, which has repeatedly occurred.
    - An alternative is to offer a mask politely or simply to post a sign requesting masks.



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    - For reasons already noted.
  - It could violate the **utilitarian** principle.
    - If there is a chance of a violent reaction from patrons, which has repeatedly occurred.
    - An alternative is to offer a mask politely or simply to post a sign requesting masks.
  - No reason it violates generalizability.



- Isn't this supposed to be a **free country**?
  - We are not asking whether the **government** should have a mask mandate.



- Scorecard for requiring masks.
  - Generalization test: **pass**
  - Utilitarian test: **pass** unless risk of significant backlash
  - Autonomy test: **pass**



- Is it ethical for firms to require employees to get vaccinated or be fired?
  - OSHA is expected to issue regulations mandating that all firms that employ at least 100 people must require vaccination or regular testing.
    - Vaccines specifically required for Federal employees and contractors, as well as most health care employees.
  - We are asking whether a private business can ethically impose some kind of vaccine requirement.
    - We assume that no law requires or prohibits such a policy.



#### Article in *The Hill* See my ethics blog for more detailed arguments.



#### Instead of ethically dubious mandates, employers can try 'soft' vaccine policies

BY JOHN HOOKER, OPINION CONTRIBUTOR — 08/07/21 01:01 PM EDT
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

#### Just In...

Pressure grows to cut diplomatic red tape for Afghans left behind

ADMINISTRATION - 52M 39S AGO

Cheney on same-sex marriage opposition: 'I was wrong'

HOUSE - 56M 598 AGO

News anchor suspended over request to cover 'missing white woman syndrome'

NEWS - 1H 11M AGO

Cheney says a lot of GOP lawmakers have privately encouraged her fight against Trump

HOUSE - 1H 13M AGO

Mourners gather in person and online for Gabby Petito's funeral

STATE WATCH - 1H 24M AGO

Date - Henrie Landell

2 SHARES

SHARE

TWEET



It is frustrating when so many people refuse the wonderful vaccines that can put COVID-19 behind us. This has led to calls for <a href="mailto:employers">employers</a> and schools to mandate vaccines.

While an outright vaccine requirement — get vaccinated or be fired — is ethically problematic for most employers, there are a number of other options that are ethical and perhaps equally effective. They include incentives and such "soft" vaccine requirements as shots-or-tests. As for schools, an age-appropriate vaccine requirement is perfectly ethical.

- Autonomy test.
  - This one is easy.
    - An employee cannot have an action plan of being employed, with or without vaccination.
    - Thus, requiring vaccination is inconsistent with no action plan.
    - And there is no violation of autonomy



- Generalization test.
  - This one is harder.
  - When one takes a job, there is an **implied agreement** about what will be required.
    - Requiring an Amazon warehouse worker to babysit the boss's kids is a breach of the implied agreement.
    - Requiring an invasive medical procedure could fall into the same category.
    - Except for occupations where such a requirement could be expected, due to prior practice or a sensitive health situation (hospital, nursing home, school).



- Generalization test.
  - Isn't there an understanding that an employee will not create a safety hazard?
    - Yes. A vaccine mandate is OK if an individual employee poses a significant risk that is not mitigated by masks, testing, or distancing.
    - For example, employees recently exposed to Covid or who are likely to be exposed.
    - But it is not enough that unvaccinated employees as a group pose a hazard even with masks, etc
    - The employment **agreement** is between the company and an **individual**, not the whole work force.

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    - For example, employees recently exposed to Covid or who are likely to be exposed.
    - But it is not enough that unvaccinated employees as a group pose a hazard even with masks, etc.
    - The employment **agreement** is between the company and an **individual**, not the whole work force.
  - However, a union member implicitly agrees to abide by result of collective bargaining.
    - So a vaccine mandate is OK if the union agrees.

- Generalization test.
  - Meanwhile, a vaccine-or-test policy is generalizable.
    - Could be nearly as effective as vaccine mandate.
    - Employers frequently require noninvasive medical tests (e.g., drug tests).
    - A mask requirement is also OK. A mask can be viewed as part of the uniform.
    - A work-at-home requirement is OK. Employers regularly specify the work location.

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    - A work-at-home requirement is OK. Employers regularly specify the work location.
  - It is OK to require vaccination of new employees.
    - There is not yet an agreement.
    - They know what they are getting into.
  - It is OK to require vaccination of temporary workers
    - Same reason.

Utilitarian test.

• This **could fail** even when a vaccine or vaccine-or-test policy is generalizable..

 A requirement could create resistance and lead to large-scale resignations.

- The resulting harm may outweigh the benefits of vaccination and/or testing.
- This is an especially hard dilemma for small business, which often lacks the resources to require testing.



- Scorecard for employer vaccine requirement.
  - Generalization test: **fail** at some businesses
    - Pass at hospitals, schools, other sensitive environments
    - Pass for new employees, temporary workers, union members
    - Vaccine-or-test is OK anywhere
  - Utilitarian test: depends on employee reaction
  - Autonomy test: pass.

