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Vaccines and Religious Freedom

Abstract

"After the recent measles outbreak in the United States, here are the legal facts and opinions on the implications of refusing vaccinations."

Posting about vaccines and religious freedom from *In All Things* - an online hub committed to the claim that the life, death, and resurrection of Jesus Christ has implications for the entire world.

<http://inallthings.org/answering-your-question-vaccines-and-religious-freedom/>

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Disciplines

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In All Things is a publication of the [Andreas Center for Reformed Scholarship and Service at Dordt College](#).

Answering Your Question: Vaccines and Religious Freedom

 inallthings.org/answering-your-question-vaccines-and-religious-freedom/

Donald Roth

I'd like to know Professor Roth's take on the seasonal hysteria over the media-hyped "outbreak" of childhood diseases, supposedly due to ignorant and backward people exercising their lawful religious and/or philosophical rights to opt out of vaccinations for themselves or their children. Many people in the public and MSM are calling for these rights to be revoked. What rights, and what else are truly at stake?

My understanding is Americans have the right to refuse vaccinations and other medical treatment — this is protected in state and federal law, and also as the result of high court decisions. What is the relevant legal history, and where do you think it will go next?

Is this a patients' rights, consumers' rights, and/or first amendment issue? Is it a [sphere sovereignty](#) conflict between the authority of the state and the family? Is there a deeper conflict between a Judaeo-Christian view of the freedom and integrity of the person (body and soul) under God versus the modern state's idea of the individual body as subject to the state's authority, will, and representation of a collective public interest?

While this issue could be approached from the theological, philosophical, political, sociological and medical perspectives as well, I am most interested in the legal facts and opinions with reference to their implications in these other arenas.

It seems questions like this boil to the surface every year or so, and, given that the recent measles outbreak at Disneyland was tied to voluntary non-vaccination, many people wonder why society doesn't just force everyone to get vaccinated, regardless of how the unvaccinated feel about the issue. The short answer to that question is that we can, but this doesn't answer the question of whether we should.

I will try to answer the question by focusing primarily on explaining the "can" part of this equation, and I'll put out a few thoughts on the "should" side of things, but there simply isn't space to fairly treat all of the issues your question brings up in an article that would be read by anyone other than my mom (and even her only begrudgingly).

We Can, Since It's Primarily NOT a Constitutional Issue

One way of conceiving of the rights protected by the U.S. Constitution is to think of the core concerns which (at least ostensibly) drove its founding. The [Declaration of Independence](#) proclaims the "self-evident" truth that all people, created equal, are endowed with the right to "life, liberty, and the pursuit of happiness." These rights can be grouped into the idea of self-determination, and the core of this right is the freedom of thought. Radiating out from this, the right to free expression of thought (i.e. freedom of speech) is the most meticulously protected right of all rights explicitly granted by the Amendments to the U.S. Constitution.

However, U.S. Courts have long distinguished between the virtually absolute freedom to *think* what you want and the more limited right to *do* what you want. In line with a value of self-determination, privacy and the freedom to generally do what you will to yourself is largely protected. However, when someone's actions start to impact other people and society more generally, our freedom of action is weighed against the government's interests in preserving a safe and orderly society. At its greatest extent, when we avail ourselves of government benefits, particularly those funded by our fellow taxpayers, we do so largely on the government's terms.

In general, the countervailing government interest in this whole arena is a responsibility for public health. While we all acknowledge this interest, it's important to note that the goal of achieving *public* health may at times stand at odds with individual concerns for *private* well-being. The biggest complication here is that vaccinations are never 100% safe. Some people are allergic to them, and improper administration could lead to complications. At the same time, the concept of *herd immunity* says that a population where enough people are immune to a disease will provide so little fertile ground for that disease to grow that the disease will be essentially eradicated. In other words, not everyone has to be vaccinated for everyone to be protected. For this reason, individuals actually stand to benefit most if they personally choose not to be vaccinated while everyone else has to be. This incentive to want to benefit at everyone else's expense is known in economic circles as the *tragedy of the commons*.

With these general observations in place, let's look at how these ideas play out in the Supreme Court's answers to a few specific questions in this area:

Can I refuse to be vaccinated?

There was a significant outbreak of smallpox in 1902 in Cambridge, Massachusetts. This led the health board of that city to pass an ordinance providing free vaccinations for its citizens and mandating them to get vaccinated, even if they had previously done so. Henning Jacobson did not trust the Smallpox vaccine, claiming it made him sick as a child and that he did not want either himself or his son to take the vaccine. On the basis of his refusal, Jacobson was assessed a \$5 fine under the terms of the applicable state law.

In [Jacobson v. Massachusetts](#), the Supreme Court roundly rejected Jacobson's objections to vaccination. It did not hold that Jacobson's concerns were invalid (although it did question them), rather, the Court said that the State's interest in public health and safety overrode personal concerns. Although this case was decided over 100 years ago, it stands as more or less undisturbed precedent for the idea that the government can mandate vaccinations in times of need.

Can I refuse to vaccinate my children?

This question is largely answered by the issue above, but there are a few other governmental interests at stake here. First, while parents have extensive latitude to determine how they would like to raise their children, the ancient concept of *parens patriae* ("parenthood of the state") says that the state's overarching obligation to protect its citizens can allow it to step in and prevent parents from harming their children.

This concept has been applied in numerous contexts, even overriding a parent's religious prerogatives in the case of [Prince v. Massachusetts](#), where the Supreme Court in 1944 applied child labor laws to prevent a Jehovah's Witness from having her child preach on the street corner. In that same case, the Court referred to Jacobson and also cited a decision from New York's highest state court ([People v. Pierson](#)) which said, "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."

Going further, the government's interest in public health and child welfare give it broad latitude to condition the receipt of a public benefit on complying with things like vaccination laws. This issue was addressed in

part by the Supreme Court in 1922 in [Zucht v. King](#), where the Court dismissed a challenge to a San Antonio, Texas city ordinance that prohibited admission to public or private schools without proof of vaccination. That is, the Court supported the idea that the individual right to education does not trump the state's interest in public health.

What about my personal religious rights?

At this point, we may see why personal preference in a time of emergency and parental interests might be overridden in certain circumstances, but what about personal religious freedom? The Court's answer to this is also why this area of law is primarily a state-by-state concern, and I'll discuss it below.

We Can, But It's Primarily an Issue of State Law

In 1990's [Employment Division v. Smith](#), the Supreme Court determined that the Constitution's guarantee of free exercise of religion could not create exceptions to "neutral laws of general applicability." Specifically, this meant that laws banning the use of peyote did not have to make an exception for the sacramental use of the drug by Native Americans because the law was concerned with the dangers of the drug trade generally and not with suppressing religious belief. This would surely mean that laws concerned with public health generally, and achieving herd immunity specifically, would not be required by the Constitution to carve out exceptions for religious objectors.

However, as you may well imagine, this decision by the Supreme Court was not universally well-received. In response, Congress passed the Religious Freedom Restoration Act, which, although limited by later ruling to apply only to the federal government (which has no vaccination laws), has been passed in similar forms by 19 of the states. (see this [link](#) for a list of the relevant states) This law requires that states only restrict free exercise when absolutely necessary and that they do so only in the least restrictive manner possible.

What this really means, though, is that it's up to the States to determine exactly how much latitude they are willing to give to religious or personal philosophical beliefs with regard to vaccination. While the [vast majority of states do permit religious exemptions](#) from mandatory vaccinations, and almost half permit personal belief exemptions, the States are not required to do so.

We Can, But Should We?

This is where I venture out into dangerous water, leaving what the law says and addressing what it should say. As pointed out in [several places](#), few, if any, world religions on the whole promote abstention from vaccination, even where it presses up against that group's concerns with blood (Jehovah's Witnesses), vegetarianism (Hindu and Buddhists), ceremonial purity (Judaism/Islam), and the use of fetal tissue in research and development (Catholics and many Protestants).

However, I'm uncomfortable with the idea of using a general consensus, even within a religious group, to define which beliefs are truly "religious" for all members of that group. For instance, there are a significant number of folks who share the Dutch Reformed tradition (esp. in [Canada](#) and the [Netherlands](#)) who object to vaccination on the grounds that it interferes with humankind's reliance on God for provision and protection. Although I do not share their concern, I find it difficult to push the conclusion that these are just irrational fears or ignorance masquerading as religious conviction as defined by some objective measure.

I think the underlying concern in the United States that we allow people to think freely dictates that we be very careful about cataloging and then running roughshod over practices that reflect beliefs that we disagree with. Of course, that shouldn't cave to the tyranny of the minority, especially when it might threaten all of our health, but in this arena, the tiny size of the minority may actually argue for its protection. For [many diseases](#), herd immunity can be achieved with as much as 10% of the population abstaining.

While the number of objectors remains low, I don't think it costs us much to respect their freedom.

At the same time, with diseases like measles and whooping cough, which are much more difficult to eradicate, I believe it's fair to push for greater vaccination. Achieving true herd immunity might not be possible without strapping objectors down to gurneys and forcibly immunizing them, and I'm not sure anyone advocates that, but current strategies of requiring education classes for objectors and even fining people for noncompliance seem appropriate to me.

I know I couldn't get to all the nuances of the question, but hopefully this identifies the primary rights at issue, along with the relevant legal precedent related to those rights. We certainly can enforce vaccination, but I think we should do so carefully and with as much respect for people's beliefs as we can reasonably offer.