



Vaccine Exemptions: Individual Rights vs. Societal Good

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**United States citizens do not have a
constitutional right to exempt
themselves from vaccines**

United States Supreme Court

- ***Jacobson v. Massachusetts* (1905)**
 - Outbreak of smallpox in Boston
 - Cambridge Board of Health requires smallpox vaccine or \$5.00 fine
 - Henning Jacobson refused both

Justice John Marshall Harlan



United States Supreme Court

“The liberty secured by the Constitution of the United States...does not import an absolute right...to be wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good....Society based on the rule that each one is a law unto himself would soon be confronted with anarchy and disorder.”

United States Supreme Court

- ***Zucht v. King* (1922)**
 - Rosalyn Zucht was expelled from Brackenridge High School in San Antonio for refusing smallpox vaccine.
 - Unanimous decision granting states broad authority to impose health regulations

United States Supreme Court

- ***Prince v. Massachusetts* (1944)**
 - Jehovah’s Witness claims right to have young children distribute pamphlets.
 - Judge ruled against Prince, claiming religious freedom did not trump child labor laws.

Prince v. Massachusetts (1944)

“[A parent] cannot claim freedom from compulsory vaccination for the child any more than for himself on religious grounds. The right to practice religion freely does not include the liberty to expose the community to infectious disease. Parents may be free to become martyrs themselves; but it does not follow they are free...to make martyrs of their children.”

Although no constitutional right to refuse vaccines, states may allow exemptions

Religious Exemptions: State Courts

- Wright v. DeWitt High School, 1965
- McCartney v. Austin, 1968
- Avard v. Manchester Board of School Committee, et al., 1974
- Brown v. Stone, 1979
- Davis v. Maryland, 1982

New York State Assembly, June 20th, 1966



New York State, June 20th, 1966

- New York State considered a bill requiring polio vaccine for school entry.
- Passed by a vote of 150-2.
- Two dissenting votes because the bill excluded parents whose religion forbade vaccination. Direct result of lobbying efforts by Christian Scientists.

Mary Baker Eddy (1821-1910)



Christian Science

- Born in 1821 with Baker's publication, *Science and Health*.
- Believed that illness was a spiritual, not physical disorder. Diseases should be treated with prayer, not medicines or surgeries.
- "We have smallpox because others have it. But mortal mind, not matter contains and carries the infection."

Christian Science in 1875

- Before establishment of the germ theory (Koch's postulates in 1890).
- Before visualization of viruses by electron microscopy (1930s).
- Before anti-serum therapy (1894), insulin (1921), or antibiotics (1935).

Christian Science in 1966

- Diphtheria vaccine (1920s), tetanus vaccine (1940s), pertussis vaccine (1940s), polio vaccine (1955), and measles vaccine (1963).
- Polio vaccine had dramatically reduced the incidence of polio in the United States.

Joseph Margiotta (R), Nassau County



Joseph Margiotta

- "Suppose an exempted child was a polio carrier."
- Tribute to the wide berth given religion in the United States that we were willing to allow children to suffer polio because of a belief system grounded in faith healing.

The Daycroft School, Greenwich, CT



Daycroft School, 1972

- Outbreak of polio that paralyzed 11 children in a school of 128.
- At the time of the outbreak, there hadn't been a single case of polio in CT for more than three years.
- Polio didn't spread to the surrounding community.

Response to Daycroft Outbreak: NEJM

“I am deeply bothered that disease-prevention measures of documented benefit can be withheld by their parents in the name of religious freedoms, jeopardizing the health...of the community as well. The courts of this land have long since set precedent in the protection of children from the irresponsible acts of their parents.”

Maier v. Besser, 1972

- William Maier took advantage of the New York State decision, successfully claiming his First Amendment rights. Can't discriminate against me because I'm not a Christian Scientist.
- Maier claimed that he, like they, believed that “the sanctity of the human body cannot be violated by injection.”

Maier v. Besser, 1972

- Judge: “There does not appear to be any rational basis in requiring a person to be a registered member of an organized church to qualify for a religious exemption.”
- 48 states now have religious exemptions to vaccination.

Sherr v. Northport Union School, 1987

- Lewis Levy argued: “To us, religion is not a temple; religion is not something outside of ourselves.”
- Judge agreed: Vaccine exemptions granted “if beliefs were held with the strength of religious convictions” even if parents weren't members of a religious group. 21 states now have philosophical exemptions.

Effect of Vaccine Exemptions

Salmon et al, 1999

- Examined risk of measles in US between 1985 and 1992.
- For 5-19-year-olds, risk of measles was 35-fold greater if parents chose not to vaccinate. For 5-9-year-olds, the risk was 170-fold greater.

Salmon, D. A., et al. Health Consequences of Religious and Philosophical Exemptions from Immunization Laws: Individual and Societal Risks of Measles, JAMA 281 (1999): 47-53

Feiken et al, 2000

- Examined incidence of measles and pertussis in Colorado from 1987 to 1998.
- For 3-10-year-olds, risk of measles was 62-fold greater if parents chose not to vaccinate. For pertussis, the risk was 16-fold greater.

Feiken, D.R., et al. Individual and Community Risks of Measles and Pertussis Associated with Personal Exemptions to Immunization, JAMA (2000) 284: 3145-3150

Omer et al, 2006

- Between 1991 and 2004, the number of unvaccinated children in states with philosophical exemptions more than doubled.
- Communities with more vaccine exemptors suffered 2-fold higher rates of pertussis

Omer, S.B., et al, Nonmedical Exemptions to School Immunization Requirements : Secular Trends and Association of State Policies with Pertussis Incidence, JAMA (2006) 296: 1757-1763.

Glanz et al, 2009

- Examined U.S. children between 1996 and 2007.
- Unvaccinated children were 23 times more likely to suffer whooping cough if their parents chose not to vaccinate.

Glanz, J.M., et al. Parental Refusal of Pertussis Vaccination Is Associated with an Increased Risk of Pertussis Infection in Children, Pediatrics (2009) 123: 1446-1451.

Vaccine Exemptions, United States 2009

- Pertussis outbreaks among under-vaccinated communities.
- Measles outbreaks in 2008 larger than any in more than a decade.
- Four deaths from Hib meningitis in Minnesota and Pennsylvania.

Philosophical Exemptions

- Where is the wisdom that not getting a vaccine is better than getting one?
- Car-seat exemptions
- Right of parents to refuse blood transfusion for critical loss of blood or to refuse antibiotics for meningitis or pneumonia or to refuse vaccines largely a statistical argument

The Individual vs. Society

- Starting to hear the voices of society in the vaccine debate.
- Parents who ask about their rights regarding certain classrooms or choosing hospital personnel with flu vaccine
- Doctors choosing not to see unvaccinated patients in their practice

Solutions to Current Dilemma

- Let increased incidence of disease compel vaccination
- Return to the courts
- Change culture regarding who to trust (pharmaceutical companies, federal government)

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