

Children's Health Defense



Kennedy News & Views

Vaccine Mandates Results Don't Safeguard Children's Rights or Health: How Did We Get Here?

By the Children's Health Defense Team

For decades, the U.S. government has made compulsory childhood vaccination one of the [cornerstones](#) of its public health policy. Outside the U.S., countries' vaccination policies range from completely voluntary to "[aggressive](#)," with some nations promoting vaccination but leaving the decision up to the individual, and others pushing a little harder by financially incentivizing vaccination. Some of the countries with mandatory vaccination have "modest" policies that focus on a single vaccine such as polio, and some—with broader mandates on the books—choose not to enforce them.

Regardless of the policy, no other country [requires](#) as many childhood vaccines as the U.S., but the legal edifice shoring up the compulsory childhood vaccine program is surprisingly flimsy. As New York University legal scholar Mary Holland [explains](#) in a 2010 working paper, this edifice relies primarily on two century-old Supreme Court decisions—from [1905](#) and [1922](#)—and on the game-changing National Childhood Vaccine Injury Act (NCVIA) of [1986](#), which fundamentally altered the legal landscape for vaccination by exempting vaccine manufacturers and medical practitioners from liability for childhood vaccine injuries.

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The 1986 Act, in particular, resulted in an absence of legal protections for vaccinated children that is "striking compared to almost all other medical interventions." Examining the legal

trajectory of vaccine mandates since 1905, Holland argues that current childhood mandates are not only radically different from what the earlier courts and legislators envisioned but are "unreasonable and oppressive and have led to...perverse results" that do not safeguard children's rights and health.

From mandates for emergencies to mandates for "prevention"



The Supreme Court's 1905 *Jacobson v. Massachusetts* decision, as summarized by Holland, justified the imposition of one vaccine—smallpox—on adults "on an emergency basis" and under circumstances of "imminent danger." At the same time, the *Jacobson* decision established medical exemptions, reasoning that it "would be cruel and inhuman in the last degree" to vaccinate someone who was medically unfit. *Jacobson* also contained "robust cautionary language," calling attention to the potential for "arbitrary and oppressive" abuse of police power and warning against going "far beyond what was reasonably required for the safety of the public." *Jacobson* urged courts to be "vigilant to examine and thwart unreasonable assertions of state power."

Despite these words of warning, state-level courts did not wait long before broadening the judicial interpretation of *Jacobson* beyond the notion of imminent danger or necessity—although still within the context of just the smallpox vaccine:

◆ In 1916, Alabama and Kentucky courts affirmed states' right to mandate vaccination for *prevention* of smallpox epidemics, stating that state Boards of Health "are not required to wait until an epidemic actually exists before taking action." The Alabama court also broadened the rationale for mandates beyond adults to children.

- ◆ In 1922, the three-paragraph *Zucht v. King* Supreme Court decision sanctioned vaccine mandates as a condition for *public school attendance*. According to Holland, this decision further shifted *Jacobson's* “paradigm...by upholding a mandate exclusively for children and not for the entire population.”
- ◆ Decisions in Mississippi and Texas in the early 1930s granted public health authorities the leeway to *define public health emergencies* in whatever manner they saw fit.
- ◆ A New Jersey court in the late 1940s interpreted *Jacobson* as justifying *all vaccine mandates*, “disregarding its language to reject unreasonable, arbitrary or oppressive state actions.”
- ◆ An Arkansas court in the early 1950s suggested that anyone questioning vaccine safety or efficacy should “lodge [their] objections with the Board of Health rather than the court.”

Occasionally, legal officials expressed their disapproval of vaccine mandates outside of emergencies, as with the North Dakota judge who, in 1919, pronounced childhood vaccination in the absence of a smallpox epidemic an act of “barbarism.” The same judge also wrote presciently about the self-interest of the medical profession and vaccine manufacturers—“the class that reap a golden harvest from vaccination and the diseases caused by it.” In comments that bear repeating today, the judge stated,

“Every person of common sense and observation must know that it is not the welfare of the children that causes the vaccinators to preach their doctrines and to incur the expense of lobbying for vaccination statutes. ...And if anyone says to the contrary, he either does not know the facts, or he has no regard for the truth.”

The legal sea change in 1986

Although vaccination mandates had become legally “well-entrenched” by the mid-1950s—regardless of emergency and “all but erasing” *Jacobson's* cautionary language—Holland emphasizes that this legal framework arose in the context of a single vaccine for a contagious disease considered to be life-threatening. Even when the polio vaccine subsequently came on the scene, the nonprofit organization that helped develop and distribute the vaccine “opposed compulsion on principle.”

According to Holland, the creation of the Centers for Disease Control and Prevention’s (CDC’s) Advisory Committee on Immunization Practices (ACIP)—“a federal advisory body with little public participation and no direct accountability to voters”—laid the groundwork for far more coercive vaccine policies. In fact, ACIP has become, over time, the “driving force” behind vaccine mandates. Whereas *Jacobson* justified mandates under specific and rare circumstances, ACIP has created an “infrastructure” that pushes mandates for any vaccine-preventable illness.

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By 1981, after ACIP helped ensure that multiple vaccines were obligatory for school attendance in all 50 states, the number of vaccine injuries began increasing. Against this backdrop, Congress enacted the NCVIA in 1986. Although some legislators may have been well-intentioned when they passed the Act, Holland makes it clear that it has been nothing short of a disaster. In essence, the Act located “vaccine promotion, safety and compensation under one [government] umbrella,” thereby creating “the risk of trade-offs among competing goals.” The rather predictable result is that “revenue-generating vaccine development and promotion have enjoyed priority over vaccine safety science and injury compensation since the Law’s inception.”



Holland identifies the paradox at the core of the 1986 Law. On the one hand, the legislation “for the first time publicly acknowledged that universal compulsory vaccination is likely to cause permanent injury and death to some infants and children”; on the other hand, it forces healthy children to give up ordinary legal protections, including informed consent, and takes away from injured children the right to sue manufacturers directly.

Meanwhile, ACIP has continued to promote a shift away from “necessity” as the rationale for vaccine mandates. A number of the vaccines that ACIP now calls for American children to get to attend school—70 doses of 16 vaccines by age 18—are for rarely fatal illnesses and for conditions “not contagious through ordinary social contact.” Holland’s conclusion is that:

“Necessity no longer determines the validity of state childhood vaccination mandates.... New vaccine mandates are guided by financial returns on low prevalence diseases, not protection of the entire population against imminent harm.”

“Ravenous corporate greed and mindless bureaucracy”

Some of the most troubling facts come at the end of Holland’s impressive legal review and concern the power of the pharmaceutical industry. She notes:

- ◆ The pharmaceutical industry has been the most profitable industry in the U.S. since the 1980s.
- ◆ In a single year in the early 2000s, “the combined profits of the ten largest drug companies in the Fortune 500 had higher net profits...than all the other 490 companies [in the Fortune 500] combined.”
- ◆ There are more full-time pharmaceutical industry lobbyists on Capitol Hill than there are legislators in both Houses of Congress.

- ◆ The leading manufacturers of childhood vaccines in the U.S. (Merck, Pfizer, GlaxoSmithKline and Sanofi Pasteur) have records of documented fraud and criminal/ethical misconduct.

Holland also tackles the extensive collusion between the pharmaceutical industry and government regulators, including a quote about “ravenous corporate greed and mindless bureaucracy” in a related [article](#). Whereas “demonstrably predatory corporations selling compulsory products to a vulnerable population should lead to a high level of government scrutiny and skepticism,” Holland observes that “government appears to [ally its interests with industry](#) in the arena of vaccines.”

Coercion is backfiring

Fortunately, the public and even some health professionals are growing increasingly wise to this industry-government shell game. In one [community](#), opposition to human papillomavirus (HPV) vaccine mandates recently put public health authorities on the defensive about the epidemic of autoimmunity in today’s youth, the “exorbitant” amount of neurotoxic aluminum in vaccines and the requirement to “get a vaccine for something that can’t be caught in a classroom.” A parent responding to the news article stated, “Why should I as a mother trust the Public Information Officer for the state Department of Health when he



Italians protest mandatory vaccinations on July 22, 2017

cannot even name the amount of aluminum in the vaccine?” Thus, it is up to the public—and ethical professionals—to engage in the “scrutiny and skepticism” that the U.S. government has unconscionably failed to exercise.

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