

## Opting Out: The Moral Right to Religious and Conscientious-Belief Exemptions to Vaccination

Written by Barbara Loe Fisher

Saturday, 01 June 2013 00:00 - Last Updated Friday, 27 April 2018 07:17

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The issue of “forced vaccination” is becoming one of the most widely discussed public health and civil liberty issues in America today. At the forefront of this public conversation stands the nonprofit charity known today as the National Vaccine Information Center (NVIC.org), which represents more than 50,000 parents, healthcare professionals and informed citizens in every state. NVIC was founded by parents of DPT vaccine–injured children, who launched the organized vaccine-safety and informed-consent movement in America in 1982. <sup>1</sup>

While NVIC continues to serve as a voice for families of children and adults who have suffered vaccine reactions, injuries or deaths, today a great many of our active supporters are healthcare consumers and providers who want to make informed healthcare choices, including vaccination choices, for themselves and their children. Many of those who support our work are not opposed to the concept of vaccination and do not object to every vaccine. However, they are opposed to doctors and government health officials having the power to intimidate, threaten and coerce them into violating their conscience or deeply held religious beliefs in the event they conclude that either vaccination in general or, more commonly, a particular vaccine is not appropriate for themselves or their children.

The vaccine choice advocates at the National Vaccine Information Center do not advise for or against the use of vaccines. However, we defend, without compromise, the individual’s human right to exercise informed consent to medical risk-taking as an overarching ethical principle in the practice of modern medicine for which voluntary use of vaccines should be no exception. NVIC advocates for the inclusion and protection of flexible medical, religious and conscientious-belief exemptions to vaccination in all public health policies and laws. <sup>2</sup>

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The moral right to religious and conscientious-belief exemptions to vaccination

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**An Increase in Vaccinations and Chronic Illness**  
 U.S. obstetricians are now giving women four vaccines during pregnancy and pediatricians are giving infants and children three times as many vaccinations as they were given in 1982, when federal recommendations were 23 doses of 7 vaccines between two months and 6 years old, versus today's child vaccine schedule of 69 doses of 16 vaccines between the day of birth and age 18, with 49 doses given before age 6.

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Parents and grandparents, along with a growing number of healthcare professionals, are asking legitimate questions about why so many highly vaccinated children in America are so sick. They are wondering why:

- 1 child in 6 is learning disabled or developmentally delayed;
- 1 in 10 is struggling with ADHD;
- 1 in 4 is suffering with asthma;
- 1 in 50 develops autism;
- 1 in 400 becomes diabetic.

Today, everybody knows somebody who was healthy, got vaccinated and was never healthy again.

### The Debate Over Vaccine Status

Vaccines are pharmaceutical products that carry two risks: a risk the vaccine will cause a serious health problem, and a risk the vaccine will fail to provide protection from the infection it is supposed to prevent. Although most Americans today voluntarily accept all government recommended vaccines for their children despite voicing more concerns about vaccine safety, others are choosing to decline one or more vaccines for health reasons or for religious or conscientiously held beliefs.

The debate about vaccination during the past decade has focused on how, and how often, vaccine cases harm, with public health agencies and medical-trade groups defending vaccine-safety science and parents of children who suffered into poor health after vaccination criticizing the quality and quantity of the science. Increased public awareness that we are not all the same and do not all respond the same way to vaccines — just as we do not all respond the same way to prescription drugs — has made us less willing to tolerate inflexible implementation of one-size-fits-all vaccine policies that fail to protect those individuals at greater risk for suffering harm from vaccination.

Today, almost no vaccine-related adverse event or existing health problem qualifies as an "official" reason for doctors to exercise caution and not vaccinate a child or adult. Adults and parents of children

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## An Increase in Vaccinations and Chronic Illness

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-

1 in 400 becomes diabetic. <sup>10</sup>

Today, everybody knows somebody who was healthy, got vaccinated and was never healthy again.

**The Debate Over Vaccine Risks** Vaccines are pharmaceutical products that carry two risks: a risk the vaccine will cause a serious health problem, <sup>11, 12</sup> and a risk the vaccine will fail to provide protection from the infection it is supposed to prevent. <sup>13, 14</sup>

Although most Americans today voluntarily accept all government-recommended vaccines for their children despite voicing more concerns about vaccine safety, <sup>15, 16</sup>

others are choosing to decline one or more vaccines for health reasons or for religious or conscientiously held beliefs. <sup>17, 18</sup>

The debate about vaccination during the past decade has focused on how, and how often, vaccines cause harm, with public health agencies and medical trade groups defending vaccine-safety science and parents of children who regressed into poor health after vaccination criticizing the quality and quantity of the science. Increased public awareness that we are not all the same and do not all respond the same way to vaccines—just as we do not all respond the same way to prescription drugs—has made us less willing to tolerate inflexible implementation

of one-size-fits-all vaccine policies that fail to protect those individuals at greater risk for suffering harm from vaccination.<sup>19</sup>

Today, almost no vaccine-related adverse event or existing health problem qualifies as an “official” medical reason for doctors to exercise caution and not vaccinate a child or adult.<sup>20, 21, 22, 23</sup>

Adults and parents of children who have suffered reactions and serious health problems following vaccination are being pressured to receive more vaccines by doctors who deny an association between vaccination and chronic disease and disability.<sup>24, 25</sup>

## It's About Choice

At the heart of this contentious debate about vaccine safety is a larger ethical issue: Do individuals have the moral right—and should they have the legal right—to make voluntary choices about whether to use all government-recommended and -mandated vaccines?<sup>26, 27, 28</sup>

Even though the majority of Americans continue to voluntarily use vaccines recommended and mandated by the government, there is rising opposition to doctors and public health officials using intimidation, threats and sanctions against citizens if they adopt alternative vaccination schedules, refuse to accept all recommended vaccines or exercise religious and conscientiousbelief exemptions to vaccination.<sup>29, 30, 31</sup>

## No Guarantees

There are compelling reasons to defend the ethical principle of informed consent and flexible vaccine exemptions in public health policies and laws. Vaccination is a medical intervention performed on a healthy person using a pharmaceutical product which has the inherent ability to result in the injury or death of that person. There is no guarantee that the introduction of

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labeltered killed or live microorganisms and other vaccine ingredients 32 into the body of a healthy person will not compromise the health or cause the death of that person either immediately or in the future.

There are very few predictors that have been identified by medical science to give advance warning that an individual will suffer an injury or death after vaccination. <sup>33, 34</sup>

The U.S. recommended child vaccine schedule has not been fully scientifically evaluated. <sup>35</sup>

Most vaccine injuries are not compensated and vaccine reactions are not reported in the U.S. <sup>36</sup>, <sup>37, 38, 39, 40</sup>

There is no guarantee that a vaccine will protect a person from contracting or transmitting an infectious disease. <sup>41, 42</sup>

The FDA and CDC openly state that the numbers of human subjects tested in clinical trials are too small to detect all serious vaccine-adverse events before licensure and widespread use. <sup>43, 44</sup>

The significant gaps in scientific knowledge about vaccine risks and failures and who is more vulnerable to suffering harm from vaccine use makes vaccination a medical procedure that could be viewed as experimental each time it is performed on an individual or released for widespread use in a population after licensure. This makes the legal right to informed consent to vaccination an even more important human right.

## Medical Paternalism vs. Individual Autonomy

Since World War II, informed consent has been increasingly adopted as the ethical principle

governing rules for conducting medical experiments on humans, as well as for guiding the ethical practice of medicine.<sup>45</sup> The informed consent principle is reforming the authoritarian, paternalistic medical model, which allows the physician—and the physician alone—to determine what kind of medical treatment a patient will receive.

Healthcare consumers today are more interested in engaging in critical thinking and empowering themselves with information about the benefits and risks of medical interventions and pharmaceutical products. They are demanding a new relationship with doctors based on mutual respect, truth-telling and a more equal decision-making partnership.

Along with a challenge to medical paternalism is also a historic challenge to the dominance of the medical model, which relies almost exclusively on prescription drugs, vaccines and surgery as the primary way to prevent and cure illness. The holistic health movement that took root in America in the late 20th century is moving toward more a diversified, multi-dimensional health and wellness model in the 21st century as significant numbers of people in the U.S. and other developed countries choose to eat organic, exercise, meditate, limit their pharmaceutical intake, and seek out doctors practicing chiropractic, naturopathy, homeopathy and acupuncture.<sup>46, 47, 48</sup>

This paradigm shift and historic public discussion about science, values, beliefs and how to heal and stay well involves ethical and political issues related to autonomy and the power of the state. The outcome will determine whether the ethical principle of informed consent will survive as the single most important ethic shaping the practice of medicine.

### **Ethics in Philosophy and Religion**

In the centuries before World War II, religious scriptures, as well as some of the greatest philosophers in history, from Aristotle to Thomas Aquinas and Immanuel Kant,<sup>49</sup> have acknowledged that the very meaning of life itself in great part hinges on the ability of the individual to choose his own fate. But British legal reformer Jeremy Bentham, a contemporary of smallpox vaccine creator Edward Jenner, disagreed and developed a political doctrine in the 19th century known as utilitarianism, which judges the rightness or wrongness of an action by its consequences.

### Jacobsen v. Massachusetts (1905): A Utilitarian U.S. Supreme Court Ruling

Utilitarianism, which adopted a mathematical model for creating public policy and law based on the “greater good” argument, influenced reform of both British and U.S. law in the 19th century, as well as modern cost benefit analyses.<sup>50, 51</sup> In 1905, attorneys representing medical doctors and government health officials in the historic Jacobsen v. Massachusetts case

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convinced the U.S. Supreme Court that states should be allowed to legally require all citizens to use the smallpox vaccine. Using a utilitarian rationale, the Court declared that states could force the use of smallpox vaccine because it is:

*“...the duty of the constituted authorities to keep in view the welfare, comfort and safety of the many, and not permit the interests of the many to be subordinated to the wishes and convenience of the few.”*

Attorneys representing state public health officials argued that doctors could predict ahead of time who will be injured or die from vaccination, and so the 1905 Supreme Court stated in its majority opinion:

*“The matured opinions of medical men everywhere, and the experience of mankind, as all must know, negative the suggestion that it is not possible in any case to determine whether vaccination is safe.”*

However, the Supreme Court justices also warned that smallpox vaccination must not be forced on a person whose physical condition would make vaccination “cruel and inhuman to the last degree.” In a prophetic and largely ignored caveat, the Court warned:

*“All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of that character. The reason of the law in such cases should prevail over its letter.”*

One of the most tragic legacies of *Jacobsen v. Massachusetts*, which has served as the legal foundation for state vaccine mandates for more than a century in the U.S., is how the Supreme Court used it in 1927 to justify state-enforced sterilization.

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### **Buck v. Bell (1927): A Eugenic U.S. Supreme Court Ruling**

In *Buck v. Bell*,<sup>53</sup> attorneys representing Virginia state social workers and doctors convinced the Supreme Court in 1927 that a young woman, Carrie Buck, was “feeble minded” like her mother and should be sterilized.

In a stunning conclusion that endorsed eugenics, Supreme Court Justice Oliver Wendall Holmes revealed the morally corrupt core of the utilitarian “greater good” rationale anchoring medical policies and public health laws lacking strong informed consent protections. Justice Holmes proclaimed:

*“It is better for all the world, if instead of waiting to execute degenerate offspring of crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the fallopian tubes. Jacobsen v. Massachusetts, 197 U.S. 11. Three generations of imbeciles are enough.”*

Carrie Buck, it turns out, was not mentally retarded after all.<sup>54, 55</sup>

However, the U.S. Supreme Court’s judicial attack on the human right to individual inviolability and protection of bodily integrity in *Jacobsen v. Massachusetts* and *Buck v. Bell* remains part of U.S. law.

## Utilitarianism on Trial at Nuremberg

A decade after the ruling in *Buck v. Bell* that endorsed eugenics, utilitarianism was implemented in its most extreme and tragic form by those in control of the German state during World War II. In a remarkable series of articles written by physician bioethicists and lawyers (and published in a 1996 issue of the *Journal of the American Medical Association*), there is a description of how physicians in obedient service to a totalitarian state employed the utilitarian rationale to justify committing and defending crimes against humanity. <sup>56, 57, 58, 59</sup>

The Doctors' Trial at Nuremberg, conducted in 1946,<sup>60</sup> revealed how medical doctors and government health officials played a leading role in endorsing public policies they believed would cleanse society of individuals the government had decided harmed the public good, including euthanizing physically and mentally handicapped children and adults and those suffering from serious diseases, and conducting experiments on children and adults to advance scientific knowledge for the "greater good" of humanity.

<sup>61, 62</sup>

## The Nuremberg Code (1946)

Out of the Doctors' Trial in Nuremberg came the Nuremberg Code, of which the late renowned Yale law professor, physician and ethicist Jay Katz has said, "if not explicitly then at least implicitly, commanded that the principle of the advancement of science bow to a higher principle: protection of individual inviolability. The rights of individuals to thoroughgoing self-determination and autonomy must come first. Scientific advances may be impeded, perhaps even become impossible at times, but this is a price worth paying." <sup>63</sup>

In another article, Dr. Katz said that the judges of the Nuremberg tribunal, overwhelmed by what they had learned, "envisioned a world in which free women and men, after careful explanation, could make their own good or bad decisions, but not decisions unknowingly imposed on them by the authority of the state, science, or medicine."

The first principle of the Nuremberg Code is:

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*“The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.”*<sup>64</sup>

The Nuremberg Code, which was followed by the Declaration of Helsinki in 1964,<sup>65</sup> speaks specifically to the use of human beings in medical experiments that may or may not benefit the individual patient, advancement of scientific knowledge or humanity. However, the informed consent ethic it defines has been adopted by bioethicists, international and U.S. courts, and medical organizations as the basis for the legal right of patients and guardians of minor children to exercise voluntary informed consent to medical procedures that involve a risk of injury or death.

<sup>66, 67,</sup>

<sup>68</sup>

## Religious Faith and Conscience vs. Utilitarianism

Even if the Nuremberg Code had not reminded us of the need to respect autonomy, there is a strong Judeo- Christian moral tradition that affirms the sacred right to exercise freedom of conscience even if it conflicts with a secular law of the state. The need for the faithful to listen to the “voice of conscience” is a central part of the Protestant religion, with theologians Martin Luther and Soren Kierkegaard affirming freedom of conscience.<sup>69</sup>

Conscience is considered so inviolable in Catholic canon that the definition of moral conscience is discussed in detail in the Catechism of the Catholic Church, which holds that:

*“Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescription of the divine law.”*<sup>70</sup>

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In even stronger terms, canon law warns that “a human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself.”

George Annas and Michael Grodin, both bioethicists,

wrote, “Whenever war, politics or ideology treat humans as objects, we all lose our humanity.” Or, as humanitarian and Holocaust survivor Elie Weisel observed, “When you take an idea or a concept and turn it into an abstraction, that opens the way to take human beings and turn them, also, into abstractions.”<sup>71</sup>

In any war, whether it be a war using humans armed with guns in an attempt to defeat other humans, or a war using humans injected with vaccines in an attempt to eliminate microorganisms, it is easy for those in charge to view the instruments of that war—human beings— as objects and a means to an end. But the guiding moral tenets of major religions, the teachings of the great philosophers and the most painful lessons of history do not support the dangerous utilitarian approach to implementation of government policy and law.

### **Autonomy and Protection of Bodily Integrity: A Human Right**

Respect for individual autonomy and bodily integrity, which is embodied in the informed consent ethic, is being eroded in America, and it is compromising the once-sacred trust between doctors, patients and parents. It is not in the best interest of Americans for doctors and public health officials in positions of authority to use the heel of the boot of the state to crush all dissent to mandatory vaccination laws and force individuals to jeopardize their health or violate their conscience and deeply held religious beliefs. It also is not in the best interest of those who deeply believe in the utility of using vaccines to be distrusted and feared by those being forced to vaccinate themselves or their children against their will.

It is very hard for people to trust government officials who track and hunt parents and children down to ensure compliance with mandatory vaccination laws that equate chicken pox with smallpox, and hepatitis B with polio.<sup>72</sup> It is terrible when nurses live in fear of doctors who fire

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them for refusing to get a flu shot; <sup>73</sup> who deny children medical care if their parents don't give them every government-recommended vaccine on schedule; <sup>74</sup> who threaten parents for refusing to vaccinate their surviving children with the same vaccine that injured or killed another one of their children; and deny prescription medications or Medicare benefits to adults if they refuse recommended vaccines.

<sup>75, 76</sup>

How can the people believe or want to do what doctors and public health officials say when they live in fear of them?

We, as parents, who know and love our children better than anyone else—we, by U.S. law and a larger moral imperative, are the guardians of our children until they are old enough to make life and death decisions for themselves. We are responsible for their welfare and we are the ones who bear the grief and the burden when they are injured or die from any cause. We are their voice, and by all that is right in this great country and in the moral universe, we should be allowed to make a rational, informed, voluntary decision about which diseases and which vaccines we are willing to risk their lives for, without fearing retribution from physicians employed by the state.

Argue with us. Educate us. Persuade us. But don't track us down and force us to jeopardize our health or violate our conscience or religious beliefs.

The National Vaccine Information Center will continue to defend, without compromise, the ethical principle of informed consent to medical risk-taking and inclusion of legal exemptions to vaccination for health reasons and for religious and conscientious beliefs in all public health policies and laws.

## Preventing Vaccine Reactions and Injuries

To learn more about diseases and vaccines and subscribe to NVIC's vaccine newsletter, visit [NVIC.org](http://NVIC.org)

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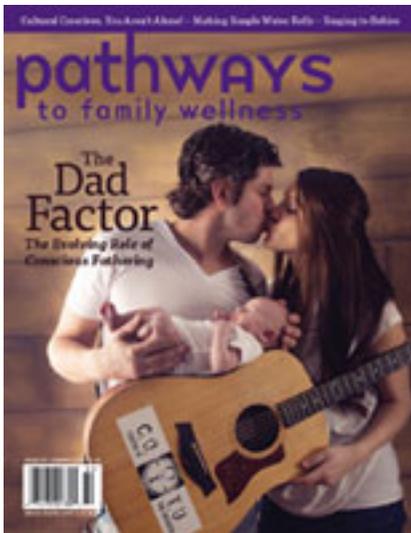
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. To become a vaccine choice advocate in your state and work to protect vaccine exemptions from being eliminated from public health laws, become a user of the free online NVIC Advocacy Portal.

It's your health. Your family. Your choice.



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