Vaccine Truth vs Alan Dershowitz: law and science is on our side¹

A Constitutional Lawyer Says What?

In mid May 2020, in an interview, the famous Harvard Law professor – once known as a defender of individual freedom – Alan Dershowitz, said the following:

“if you refuse to be vaccinated, the state has the power to literally [sic] take you to a doctor's office, and plunge a needle into your arm.”

To be fair, later in the interview, Dershowitz articulated what justice would look like under a mandatory vaccination regime. He opined, “they should give you an alternative, live in your home ... but never, ever, leave your home ...”  Thanks, Alan.

Dershowitz declared that the state of American law on bodily integrity, as stemming from Supreme Court precedent, namely Jacobson v. Massachusetts, 197 U.S. 11 (1905). But he also claimed, without any specific citations, that there are “cases, after cases, after cases, that the public health permits reasonable actions to prevent the spread of communicable diseases ...”

There is just one small problem with his analysis. Dershowitz is completely wrong.

Background and Context

We should have expected this. With the Covid plandemic, as Del Bigtree (2020) has shown, for months we have been bombarded with talk about the need for and the coming vaccine. But this mantra is not new. For years, Dr. Sherri Tenpenny has warned us about the plan to institute mandatory vaccine laws – not just for children, but for adults. The program is called Healthy People 2020.

Healthy People are Injected People?

Launched in 2010, Healthy People 2020 (HP2020) has laudable and unassailable goals including:

1) Attain high-quality, longer lives free of preventable disease ...

2) ... improve the health of all [social] groups; ... and

3) Promote quality of life ...

So what is the catch? It is the mechanism: Increase immunization rates.

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Of course, the blueprints offered in HP2020 only push so-called *immunizations* (those shots of liquid filled with formaldehyde, monkey kidneys, glyphosate, human tissue, aluminum, etc.) to help us. It is all announced in the name of reducing so-called vaccine-preventable [sic], infectious diseases. There is only one small problem, the data refutes the *scientism of vaccinology*.

For example, objective IID-12 reads: “Increase the percentage of children and adults who are vaccinated annually against seasonal influenza.” But the effect of increasing flu shots results in higher levels of production of *so-called viruses*. And when flu shots are *not killing the elderly*, or causing paralysis, they provide no benefit.

The other listed objectives are standard dogma about the need to reduce rates of hepatitis (in infants and toddlers), and reducing rates of *mumps, and measles, and meningitis, and pneumonia* – and the need to continue a program to administer multiple doses ... constant *re-vaccination*.

But we know that these ailments are common in teens and *college-age students who are getting re-vaccinated*. And or these infections are not contagious due to casual contact, *but for transfers of bodily fluids* – so most of us are not at risk.

**Vaccinology when embedded in law**

So let us take a step back and consider the assumptions in modern *vaccinology* – those which Dershowitz holds and is ready to argue before the U.S. Supreme Court.

Are all infections *diseases*? Are viruses exogenous contagions or are they endogenous exosomes which are essential for life? (*Andrew Kaufman, MD has an answer*).

Here is question for the authors of HP2020, “How much injected aluminum does it take to save you from Alzheimer’s, Parkinson’s, dementia, and autism?” (Prof. *Christopher Exley* (2018) might have an answer that the CDC, HHS, and big pharma have failed to discover).

Despite the lack of double-blind, placebo trials with vaccines, despite the fact that all vaccines are experiments ... Dershowitz is sure that the law of the U.S. holds that anyone and *everyone* can be imprisoned *for life* if they refuse to submit to a vaccine. And he is secure in his convictions as derived from a logic of a vaccine-science, articulated by a single man (Justice Harlan) in 1905.

**Mainstream Legal Opinion and Misreading Jacobson**

Professor Dershowitz is not alone in his mistaken belief (or policy preference). Even the editors at the *World Net Daily* want you to resign yourself – like cattle marching through the slaughterhouse – to the notion that one day, you and your children will be poisoned in the name of *freedom, science, and goodness*. 
A quick search online finds three prominent articles, all citing *Jacobson*, all insist that the only conclusion we can see is that the U.S. Constitution holds that the *State* (just group of men and women – often coercing us through violence) has every right to force you to be injected.

(A) 2006 – a medical doctor and then law student, Sarah Fujiwara, writing in the AMA *Journal of Ethics*, described a hypothetical circumstance where *SARS cases are found in Canada, centered on a college student (Joseph), who has not been exposed*. Dr. Fujiwara asks, ‘if the State of Illinois mandates a new experimental SARS vaccine, can Joseph refuse?’ Referencing case law and invoking abstract notions about her hypothetical unexposed Joseph somehow being both contagious and a risk to others, Fujiwara concludes:

(1) “Real liberty for all cannot exist if each individual is allowed to act without regard to the injury that his or her actions might cause others; liberty is constrained by law”;

(2) “it is immaterial whether ... the vaccine is actually effective, so long as it is the belief of state authorities that the mandatory vaccine will promote common welfare ... (drawing on the language of *Jacobson*, 197 at 35);

(3) “The only exception to a mandatory vaccination is an offer of apparent or reasonably certain proof, to the state board of health [*sic*], that the vaccination would seriously impair health or probably cause death” (she offers *Jacobson* at 38, but there is no language in the opinion that describes exceptions or appeals to the Board of Health); and

(4) Consequently, our student, Joseph, does not have a valid argument against the mandatory vaccination.

It is most apparent, from her brief review of *Jacobson*, that Dr. Fujiwara never read the case, does not know the pertinent facts, and or has no idea about the evolution of legal doctrines related to Constitutional law and due process *since* 1905.

(B) 2019 – a lawyer for the Congressional Research Service, Wen Shen, presented a memo titled: *An Overview of State and Federal Authority to Impose Vaccination Requirements*. Citing *Jacobson*, Shen finds that States have absolute power to require any and all vaccines.

Shen (2019) claims that:

“In 1905, the Supreme Court in *Jacobson v. Commonwealth of Massachusetts* upheld a state law that gave municipal boards of health the authority to require [*sic*] the vaccination, of persons over the age of 21, against smallpox.”

The case did not center on a forced injection – there was no force, and there would be no injections. Rather the challenge centered on the propriety and legality of imposing criminal penalties for those who refused to play a form of Russian Roulette.

In regards to the ruling of both the Supreme Judicial Court of Massachusetts and the U.S. Supreme Court, each upheld, as valid, a criminal law, which had express exemptions for unfit children, but none for unfit adults. *Jacobson, 197 U.S. at 17.*

**Children were exempted** from the fine upon showing a doctor’s note that they were unfit candidates for vaccination (and parents of such children were not liable for fines either). See R. L. c. 75, § 139 (1902). As for adults like Jacobson, the rule read like this: get a shot, lest you receive a $5 fine, or remain imprisoned until the fine is paid. See *Jacobson* at 14.

Please note, writing the opinion for the U.S. Supreme Court, Justice Harlan claimed that the Supreme Judicial Court of Massachusetts ruled that if Jacobson refused to pay a fine or refused to be vaccinated, that he could be imprisoned indefinitely. However, no statutory reference is cited to support the notion that sanctions included imprisonment. Still, at that time judges were permitted to issue incarceration orders against defendants who refused to pay fines. See, for example, Chapter 215 from the Public Statutes of Massachusetts of 1881.

All this aside, at a time when no laws could mandate quarantine of a healthy person, the particular text of the opinion from the Massachusetts high court omits any discussion of imprisonment (or even quarantine or home detention). See *Commonwealth vs. Pear* 183 Mass. 242 (1903). In siding against Jacobson, and explaining the extent of the penalties, Massachusetts Chief Justice Knowlton concluded:

> “If a person should deem it important that vaccination should not be performed in his case, and the authorities should think otherwise, *it is not in their power to vaccinate him by force*, and the worst that could happen to him under the statute would be the payment of the penalty of $5.” *Commonwealth vs. Pear,* 83 Mass. 242 at 248 (1903).

When the Supreme Judicial Court held that Jacobson could only be fined, and the U.S. Supreme Court upheld that ruling, why would Wen Shen announce that the courts have held that vaccination can be forced?

Because the current talk about mass vaccination is really a discussion about the drive for a national program, a federal mandate, Shen (2019) offers some discussion about federal versus state authority. Under the U.S. Constitution, matters of public health (general police power) are limited to state jurisdiction. At present, without an Amendment, neither Congress nor the President can impose a mandatory vaccine scheme for the nation. Furthermore, any federal law would be limited by the *Religious Freedom Restoration Act* (RFRA).
Shen (2019) shares:

“Under RFRA, the federal government is prohibited from substantially burdening a person’s sincere exercise of religion, unless the government demonstrates [that] the application of the burden to the person represents the least restrictive means of advancing a compelling government interest.”

But we know that, the least restrictive means for anything is never to inject you with an experimental and harmful substance, called vaccine. Furthermore, under the contagious germ theory, people who are neither carriers nor contagious pose no risk of harm to others – hence not even our confinement would be justified.

(C) 2020 – the third article, is from The Hill. Writer Merrill Matthews addresses the spectre of a Covid-19 vaccine and laws that would compel us to receive a shot.

Through his puff-piece, which ignores the data and serves as little more than native advertising for various pharmaceutical companies, Matthews (2020) advocates for flu shots, and promotes the false concept of vaccine-induced, herd immunity.

Matthews first assures us that he is a willing cult member. He writes, “When a COVID-19 vaccine becomes available, I will be one of the first in line.” Then he opines on the legal question:

... If the government [sic] determines that vaccinations are essential to stemming the spread of the disease [sic] ... could it – mandate vaccination compliance? Apparently, it can — and it might.”

In a twisted and misreading of Shen (2019), Matthews (2020) insists that: Congress ... has some authority over public health matters, including regulation of vaccination.”

Of course, Congress can regulate vaccines – see the National Childhood Vaccine Injury Act. And Congress mandates injections for military personnel. But the Constitution grants Congress no power to create laws that would authorize our imprisonment and compel the population to submit to forced injections.

More about Jacobson and the Law

As a former professor of constitutional law; one who has read nearly all the case law on vaccination policies and practices in the United States; and as a person who has analyzed the history and science of vaccines (since the 18th century to the present), I insist that Dershowitz (2020), Matthews (2020), and all the other vaccine zealots, are completely wrong. As noted above from Jacobson, there is no legal opinion which supports the idea that government can compel injections – and certainly nothing in the text of the U.S. Constitution addresses the idea.
Before I detail and explain more about the holding of *Jacobson*, let me recount the tangible result of the case: Mr. Henning Jacobson was neither vaccinated, nor jailed.

After his final appeal was rejected by the U.S. Supreme Court, though there was no outbreak at the time, and though it were three years after health officials in Boston declared a smallpox epidemic – long-gone by 1905, Jacobson paid a one-time fine of $5. (That amount was roughly 50% of the average weekly income of a working-class laborer). See *Willrich (2011), chapter 8*.

Let that sink in. During an era of a supposedly highly contagious and deadly disease, despite an order from the local health board for mandatory vaccination, people could just pay a fine and go about their business. No lockdown, no quarantine.

In ruling against him, the U.S. Supreme Court did *not* rule that Jacobson could be forced to receive the shot. Nor did the court rule that Jacobson could be detained, indefinitely.

I have edited and parsed the exact text of the holding in *Jacobson* as follows:

> “The highest court of Massachusetts, *not* having held that the compulsory vaccination law ... establishes the *absolute rule*, that an adult must be vaccinated, even if: (i) he is [unfit] at the time; or (ii) [the] vaccination would seriously injure his health or cause his death, *this* court holds that:

> as to an adult, residing in the community, and a fit subject of vaccination, the statute [does not violate] the Fourteenth Amendment.” *Jacobson* at 12.

Near the end of his opinion, Harlan added a significant caveat. He explained that: (A) vaccination laws are never to be applied to all people regardless of circumstance; and (B) Courts may issue injunctions to prevent harm or injury that could be caused by a vaccine. As demonstrated by his declarations, Prof. Dershowitz, is either woefully ignorant of the full opinion or cannot comprehend the breadth of the following:

> “It is easy, for instance, to suppose the case of an adult [for whom] vaccination in a particular condition of his health or body, would be cruel and inhuman .... We are not to be understood as holding that the statute was intended to be applied to such a case, or ... that the judiciary [could not] interfere and protect the health and life of the individual concerned.” (*Jacobson* at 38-39).

I think that we can best paraphrase the rule from *Jacobson* like this:

> ‘A local jurisdiction, may impose a fine upon any *fit* adult, who refuses a free vaccine, administered by the government, when there is an *epidemic*, unless, the person can show, by a preponderance of the evidence, that they are likely to be harmed by the shot.’
Jacobson had been vaccinated. But so what?

As a factual matter, both Jacobson and his son *had been* vaccinated – it is just that such occurred prior to March 1897. I will repeat that. The *Jacobson* case was not about an anti-vaxxer who just refused ... because of ... uh, reasons. Rather, as applied to Jacobson and his son, the criminal law demanded that these two, who had previously been injected, and suffered vaccine injuries, get *re*-vaccinated. (And there was no Vaccine Court. As stated by his lawyers: “If injured, the person vaccinated is damaged *without* compensation.” *Jacobson*, 197 U.S. at 17).

The law was applied arbitrarily. Jacobson was not allowed to offer a defense (*Jacobson*, 197 U.S. at 17). The Board of Health was not required to show any evidence that these men were at risk of contracting smallpox or were contagious or could harm others. Here is what Jacobson faced:

“[the] requirement of the board of health of Cambridge, made on February 27, 1902, [ordered] that all the inhabitants of the city, who had not been *successfully* [sic] vaccinated since March 1, 1897, be vaccinated or *revaccinated.*” *Jacobson* at 12-13.

I want to focus in on two concepts here. Note that the local order called for *revaccination*; and invoked the idea of *successful* vaccination.

“It must be admitted that small-pox has occurred after the most perfect vaccination. The number of cases [however] is not greater than that of small-pox *after* small-pox.”

Edward Jenner 1811, in *Baron* (1838: 245).

We know that in 1902, given the scientific knowledge at the time, the order from the Cambridge board of health, establishing the five-year window for exemption from *re-vaccination* was arbitrary. No one even knew what caused smallpox. No one had seen or defined the concept of *antibodies*. There were no electron microscopes. No one had any certain means to determine if a previously vaccinated person were immune to smallpox. Jenner saw with his own eyes that even a bout of natural smallpox was no guarantee of immunity from future smallpox illness. Speaking about a patient of his, Jenner said, “lady of Mr. Gwinnett, had the small-pox five times” (*Baron* 1838: 265).

Beyond this, there was no quality control on the production of vaccines. No health department official could point to the efficacy of vaccination. To the contrary, large data sets showed that mass vaccination was neither associated with lower death rates nor significant drops in rates of smallpox infection. See White (1885), *The Story of a Great Delusion*.

By the start of the 20th century, mass vaccination was largely opposed. As detailed by the lawyers for Jacobson, as of 1905, 34 of the 45 U.S. states had no compulsory vaccination laws – and or like Wisconsin, some jurisdictions had specifically repealed vaccine requirements.

And what was a virus circa 1902? Back then, the word virus was a collective noun and defined the result of a disease (e.g., pus), not its cause. If a person had pustules, such were said to be filled with virus, and that was a good thing. The logic of the time held that if a person had expelled virus, the disease had run its course and the infected person was no longer contagious. (See Jenner 1798, paragraph 73; Jenner 1799, paragraphs 26, 49, 50, 95). But without any concept of antibodies, in 1902, what did a Board of Health, and hence the law, call a successful vaccination?

Edward Jenner, defined successful vaccination as: fever, malaise, and blisters filled with pus. Sometimes, despite the success, the child (or adult) would die within a few days of the vaccination – or a few months (due to tuberculosis, then called consumption, phthisis, or scrofula). See Baron (1838), Life of Jenner, volume II, page 252. About 1% of the time, the successfully vaccinated person would later fall ill with smallpox or even cowpox. See Jenner (1798), paragraph 26; Baron (1838: 245).

In a letter of 1804, Jenner expressed his idea about successful vaccination and whether it could confer immunity.

“I have said fifty times before, ‘If the vaccine pustule goes through its stages correctly, the patient is secure from the small-pox; if not, security cannot be [assured].’ ... ‘When a deviation arises in the character of the vaccine pustule ... common prudence [calls for] re-inoculation.” (Baron 1838: 343).

**Hey Harvard Law faculty, will you rebuke Dershowitz for his ignorance of the law?**

Putting together what was known at the time about vaccine-science and practice, in the Jacobson-era, an order from any local the Board of Health could demand that a person get injected – with unknown material – fall ill, and if the pustules were not to the liking of some doctor, the person could be subjected to the process again and again. The mass vaccinations could even spread more illness – but according to Dershowitz – none of that would be legal cause to prevent tragedy.

Thankfully, the scientific evidence of the harm of vaccines is now well-documented. And unlike the rules of 1900, present-day American jurisprudence allows a legal defense whereby one could offer testimony or expert opinion to show how a vaccine – especially an experimental vaccine – is unsafe, or not proven to confer health benefits. (And didn’t Harlan imply that one could offer a defense? Why has that part of the opinion been ignored by legal scholars?)

No American court has ever ruled that we can be vaccinated against our will. Plenty of cases have upheld the “no vaxx, no school” rule, but those cases never include orders to arrest parents
or inject kids by force. Still, for the foreseeable future, the Pharma shills (aka American media) will tell us that we need a Covid vaccine, and that lawful orders can compel us to get the shots.

Stay aware – tell your friends and family. Resist.