

Our Duty to Our American Community: When Responsibilities Prevail Over Rights

“Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.”

- Justice John Marshall Harlan

Ratified on June 21, 1788, the Constitution of the United States confers on the citizens of America extensive liberties, as well as important responsibilities. Regarding liberties, the Bill of Rights, as the first ten amendments to the Constitution are known, guarantees such rights as the freedom of worship, as well as “the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Since rights come with responsibilities, the Preamble to the Constitution sets forth duties that are incumbent on us to fulfill, when it states that “in Order to form a more perfect Union,” we must “promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”

Because the liberties presented in the Bill of Rights consist in essence of rights granted to each individual, while the responsibilities outlined in the Preamble constitute duties to the

community, there exists a natural tension between the desire to preserve these rights and the necessity to fulfill our duties. Such tension is never more apparent than in times when challenges of epic proportions present the community, as a whole, with an existential threat. Surviving the threat almost inevitably requires that individual rights temporarily take a back seat to the overall interest of the community, or at least that a balance be stricken between rights and responsibilities. The current COVID-19 pandemic is a case in point, where restrictive measures have limited some liberties but must be allowed in order to “promote the general Welfare.” Historically, the enforcement of measures enacted to protect public health has led individuals to resist and challenge state and local officials in courts, notably in cases such as *Jacobson v. Massachusetts* (1905) and *Zucht v. King* (1922).

In *Jacobson v. Massachusetts* (1905),¹ the Supreme Court of the United States upheld the prerogative of states to enforce mandatory vaccination orders, arguing that individual liberty was not absolute and was certainly subject to the power of the state. During the smallpox epidemic of the early 1900s, the state of Massachusetts enacted a compulsory vaccination law that carried a \$5 fine. Pastor Henning Jacobson, a resident of Cambridge, refused to be vaccinated and pay the fine on the grounds that he was injured by previous vaccination. Jacobson was arraigned and fined for his refusal to be vaccinated.

In court, Jacobson contended that the punitive actions taken against him were unconstitutional. Being a pastor, he believed that his religious freedom rights under the Free Exercise Clause of the First Amendment had been infringed. In addition, Jacobson argued that his liberties had been breached under the 14th amendment, which states that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

¹ *Jacobson v. Massachusetts*, 197 U.S. 12 (1905).

United States; nor shall any State deprive any person of life...". In a 7-2 ruling, the Court rejected Jacobson's arguments, opining that the mandatory vaccine regulations were "necessary in order to protect the public health and secure the public safety," as smallpox cases were on the rise in Cambridge. Writing the majority opinion, Justice John Marshall Harlan stated that: "The good and welfare of the Commonwealth, of which the legislature is primarily the judge, is the basis upon which the police power rests in Massachusetts ... upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."² However, the Court recognized that the vaccine could potentially be dangerous for people with certain health conditions, which would allow them to be exempted with the permission of a court. In this respect, Jacobson had failed to provide evidence that he was entitled to such an exemption, but rather brought up instances of cases where vaccines had caused damage to the health of others.

The Supreme Court later reasserted its decision that states had the right to enforce compulsory vaccination laws, as well as exclude unvaccinated persons from educational facilities in *Zucht v. King* (1922),³ a case where the petitioner questioned the constitutionality of prohibiting children from attending school until proof of their vaccination had been put forth. The Court has upheld this position throughout the years.

As Americans, when considering our individual freedoms, it is important that we also see the bigger picture. As Justice Harlan expressed in the introductory quote of this essay, there cannot be liberty and justice for all if we view our rights without considering the negative impacts that they may have on others. Our country has recorded more than 30 million

² *Jacobson v. Massachusetts*, 197 U.S. 14 (1905).

³ *Zucht v. King*, 260 U.S. 174 (1922).

COVID-19 cases and counting.⁴ Yet, some people still refuse to comply with social distancing regulations because of their right to “peaceably assemble.” Moreover, despite the fact that more than 545,000 U.S. citizens have lost their lives to the virus⁵, one out of every three Americans does not plan on being vaccinated,⁶ out of skepticism or individual preference. This will make it an uphill battle to achieve herd immunity through the vaccination of around 80% of the population, which will help to end the crisis.⁷

In the history of our country, when Americans came together in the face of a threat and accepted sacrifices for the common good, more often than not, the efforts were successful. During both World Wars, for example, our forerunners made a collective effort to support American troops by rationing, gathering supplies, and making other necessary sacrifices.⁸ To overcome challenges in times of crisis, we must follow their example and accept that, when necessary, our usual liberties be temporarily curtailed for the benefit of our community. This is what our American community asks of us and what is required to preserve our democracy.

⁴ “Coronavirus in the US.: Latest Map and Case Count.” *The New York Times*, 26 Mar. 2021, www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

⁵ “Coronavirus in the US.: Latest Map and Case Count.” *The New York Times*, 26 Mar. 2021, www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html.

⁶ Geske, Dawn. “The Anti-Vaxxer Problem: Why 1 in 3 Don’t Want The COVID Vaccine.” *International Business Times*, 11 Feb. 2021, www.ibtimes.com/anti-vaxxer-problem-why-1-3-dont-want-covid-vaccine-3143564.

⁷ Powell, Alvin. “Fauci says herd immunity possible by fall, ‘normality’ by end of 2021.” *The Harvard Gazette*. 10 Dec. 2020. news.harvard.edu/gazette/story/2020/12/anthony-fauci-offers-a-timeline-for-ending-covid-19-pandemic/

⁸ Schumm, Laura. “Food Rationing in Wartime America.” *History*, 31 Aug. 2018, www.history.com/news/food-rationing-in-wartime-america.

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