



Vaccine Mandates v Individual Liberties

*Legal study on the dichotomy between public health and personal
autonomy.*

Authored by

Sabine Zaraket

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Abstract

The advent of the COVID-19 pandemic has changed the lives of many worldwide, and ended many others. This has caused pharmaceutical companies to rush and produce vaccines, which were then endorsed by governments worldwide. There exists today a political and legal discussion on this matter, more specifically, the matter of vaccine mandates. Vaccine mandates are government issued edicts to the effect of mass vaccinating the population. Some have encouraged this move, deeming it the State's responsibility to protect public health and lives from the dangers of the virus, and argue that it is within the State's prerogatives to sanction those who do not take the vaccine as it is a public danger to do so. Still others have argued quite the opposite, and have said that one's bodily autonomy and personal liberties cannot be overruled by state mandates and edicts for whatever reason. Taking the vaccine is as much a right as abstention, they argue. This article explores this dichotomy between public health and individual freedoms and personal autonomy from the perspective of international laws and conventions in addition to a multitude of national laws.



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Introduction

The WHO declared COVID-19 outbreak a global pandemic on March 11, 2020.¹ According to the WHO Globally, as of 10 September 2021, there have been 223,022,538 confirmed cases of COVID-19, including 4,602,882 deaths. The same source states that, as of 5 September 2021, 5,352,927,296 vaccine doses have been administered.

It would be an understatement to say the least that the consequences of the pandemic have been devastating on all counts, whether economically, socially and, most importantly, on the human death toll.

On December 31, 2020, the WHO listed the Comirnaty COVID-19 mRNA vaccine for emergency use, making the Pfizer/BioNTech vaccine the first to receive emergency validation from the WHO since the beginning of the outbreak.² Since then, the WHO has listed multiple vaccines, namely AstraZeneca, Janssen and more.

As the world is slowly recovering from the ravages of the pandemic, debates have begun emerging on whether or not “enforcing” vaccination in public and private spheres is considered a breach in human rights. In fact, the term “enforcing” implies that everyone must comply with the government policies of being vaccinated.

While there are many reasons as to why one might decide not to be vaccinated, this study will proceed with a case-by-case analysis of all arguments regarding compulsory vaccination, public health and human rights.

¹ (WHO, 2020).

² Ibid.

Law, Bodily Autonomy, and Medicine

With the increasing numbers of "*anti-vaxxers*" around the world, discussions regarding health mitigation risks concerning vaccines are not uncommon, as they are a primary concern for those who decide not to be vaccinated.

It is a reality that many medications come with side effects, especially when in the early stages of experimentation. The same can be said when it comes to vaccines and their related risks, whether that of allergies or side effects, especially in mRNA COVID-19 vaccines, as most use a chemical called polyethylene glycol (PEG) that has shown risks of allergic reactions, at times as severe as leading to asphyxiation.³

As a result, such a topic garnered international importance as the pandemic itself is of international interests. By referring to international law, one might assume that the Universal Declaration of Human Rights (UDHR) sets forth principles that could embody the right to bodily autonomy, but also the freedom of thought, conscience and religion, pursuant to Articles 18 and 19 of the UDHR.⁴ However, not only does the UDHR not express in any way the right to bodily autonomy, but even if it did, the declaration itself is not legally binding.

Nevertheless, the right to bodily autonomy has rarely been discussed in International Law explicitly as it has not been defined under the International Covenant on Civil and Political Rights (ICCPR) nor the International Covenant on Economic, Social and Cultural Rights (ICESCR).

³ (Sellaturay et al, 2021).

⁴ Art. 17-18; [1948] UDHR.

Despite the vagueness of this right in particular, one could argue that it falls under the umbrella of the right to life and the right to private life, as mentioned in Article 7 of the ICCPR,⁵ which states that:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

The EU Charter of Fundamental Rights also enshrined the right in Article 3, which states that:

"Everyone has the right to respect for his or her physical and mental integrity. In the fields of medicine and biology, the following must be respected in particular: the free and informed consent of the person concerned, according to the procedures laid down by law; [...]".⁶

Nevertheless, if the principles of bodily autonomy cannot be found within International Law, national laws, on the other hand, imply bodily autonomy in some way or another. Such is the case with the Irish Constitution, particularly in Article 40, section 4, which states that *"No citizen shall be deprived of his personal liberty save in accordance with law"*,⁷ or the US Constitution's fourth amendment, which is *"The right of the people to be secure in their persons [...]"*.⁸ Citing even the rules of precedents in cases such as *Re T* in 1992 where the English court stated that the legal right of choice *"is not limited to decisions which others might regard as sensible. It exists notwithstanding that the reasons for making the choice are rational, irrational unknown or even*

⁵ Art. 7; [1976] ICCPR.

⁶ Art. 3; [2000] Charter of Fundamental Rights of the European Union.

⁷ [1937] Constitution of Ireland.

⁸ Amend. IV; [1791] Bill of Rights.

non-existent".⁹ Therefore, the right to bodily autonomy in a healthcare context requires a right to give and or withhold informed consent.

In light of the situation at hand, an objective point of view is required. Given the conflicting interests, it is certainly arguable that mandatory vaccines do indeed infringe on some rights. For example, one's right to freedom of religion can be prejudiced; if there is grounds for an explicit religious prohibition and not that of a personal preference. One could go as far as claim it would be punishing for said individual, as it would exclude them from daily activities such as access to education or the workplace in some instances. Nevertheless, one should note that Roman Catholic and other Christian, Jewish and Muslim leaders have advised followers to get the shots.¹⁰

Additionally, mandatory vaccines most definitely infringe on the right to bodily integrity and autonomy one has, indeed, human rights protects one's ability to determine on how to dispose of his body which includes the right to determine one's medical treatment. Subjecting individuals to a vaccine that they have not agreed upon taking interferes with that right.¹¹

Consequently, the sanctity of one's body is enshrined in national laws and subject to the individual's consent. However, that position could waver in the face of the right to health and public interest, when the greater good demands that bodily autonomy be sacrificed in order to save the lives of others.

Weighing in Public Health

While bodily autonomy is subject to an individual's consent, such consent may be encroached when facing a worldwide pandemic that is threatening the lives of citizens. Through

⁹ [1992/4 All ER 649] EWCA; Re T.

¹⁰ (Watkins, 2021; Sano, 2021).

¹¹ (Moody, 1991, pp.147).

this lens, vaccination mandates would not seem as invasive and violating but rather as a social solution that the individual must endure to ensure the survival of the whole.

Moreover, the European Union has set forth the right to health as a positive obligation incumbent upon the States that ratified the ECHR convention. Indeed, according to Article 2 of the ECHR,

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".¹²

To reiterate, the ECHR disclosed that States have an obligation to protect the lives under their jurisdiction. As such, one can come to the conclusion that vaccines do in fact save lives and that the positive obligations of these States do not allow them to maintain a neutral stance, especially if the necessary precautions are taken for those deemed at risk of having side-effects from the deployed vaccines at hand. In fact, statistics show that taking vaccines saves much more lives than putting them at risk or even death. A 2021 study led by the WHO mentions that it is through vaccination that around 2-3 million lives are spared every year.¹³ In comparison, according to the American Journal of Preventative Medicine, 0.11% of death occurs due to vaccination.¹⁴

History already provides examples in which the right to health and bodily autonomy clashed, which is why it is important to call on the rule of precedents. Indeed, multiple cases have arisen surrounding that topic. For example, one can cite the case of *Jacobson v. Massachusetts*¹⁵ that concerns Henning Jacobson who was fined for refusing to be injected with the smallpox

¹² Art. 12; [1953] ECHR.

¹³ (WHO, 2021).

¹⁴ (McCarthy et al., 2013).

¹⁵ [1905/70] U.S. Supreme Court.

vaccine. The court ruled that a State has the power and responsibility to protect the health of the broader public during an epidemic. The case of *Vavříčka And Others v. The Czech Republic* is more recent, where Mr Vavříčka was fined for refusing to have his two adolescent children vaccinated against three diseases included in the compulsory vaccination program.¹⁶ The judges in this case were clear in that they considered vaccines to be an obligation and not a recommendation.

In reality, the right to health includes an obligation to prevent and control epidemic diseases, for which widespread vaccination is an important tool and is a concept discussed in International Law. Both of the aforementioned cases play an important part in broadening the notion of the social contract. The latter could be defined as an agreement that establishes moral and political rules of behavior enabling individuals to live together in society.

In this sense, it is accepting to be rid of one's self from some freedoms in order to integrate and become functioning members of society. Within that context, individual citizens are all inter-related and bound to one another. Article 22 of UDHR even states that "*Everyone, as a member of society, has the right to social security [...]*",¹⁷ which, in other words, could mean that States must guarantee protection to everyone, thus public health is of the utmost priority and should be considered as such.

¹⁶ [2021/ 47621/13] The European Court of Human Rights.

¹⁷ Art.22; [1948] UDHR.

Conclusion

Hobbes and Rousseau put forth the notion of a social contract in which the State exists to protect and serve the people. This protection must not come at the cost of natural laws such as the right to life, the latter being one of the main three pillars in Locke's philosophy of a social contract wherein the role of the government is to protect the right to life, liberty and private property. To some extent, there are varying degrees to which States can protect the right to life, not least of which is the elimination of smoking in closed areas so that non-smokers would not be affected by any potential and harmful side effects. However, this may compromise on the right to liberty.

This is a prime example of the dichotomy of public interest and its prevalence over individual liberties. As such, concessions that might temporarily hinder one's freedom have been adopted in order to protect the population as an entity. After all, one cannot have liberty without being alive first, and so there lies the State's priority within the social contract.

Today, the COVID-19 pandemic and the currently gathered data establish undoubtedly that vaccines save lives. While one must concede for those that are too frail to take it, others that have the ability to do so must assume their social duty. As long as governments are mitigating risks caused by vaccines, the importance of the latter in restoring what is left of normalcy is too substantial not to endorse, as it could be the difference between life and death for many.

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