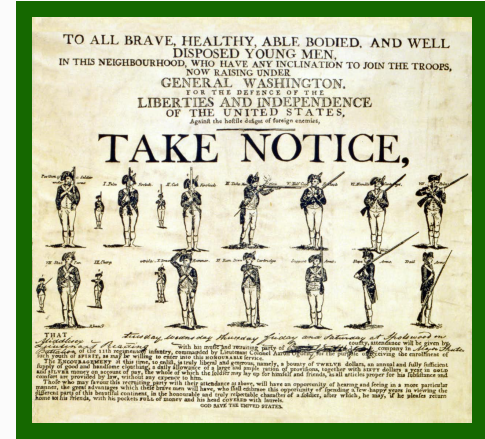


Civics is all around us. There is a lot to know about the government and how "We the People" interact with the government and each other. Let's help each other expand our civic literacy.

Recently, President Joe Biden issued an [executive order](#) that mandates all federal government workers get the COVID-19 vaccine or risk losing their jobs. Perhaps not surprisingly, there is a great deal of [divided opinion](#) on whether this is an appropriate use of executive power. Although over 50% of the adult U.S. population is vaccinated, there is hesitancy and refusal from some to not get the vaccination. Opponents of the vaccine cite personal autonomy, distrust in the vaccine itself and religious opposition as some reasons to not get the vaccine. But, interestingly enough, vaccine mandates have a long history in the United States.

By early 1777, as the newly independent United States was fighting for its survival against the British Empire, its soldiers were dying not just on the battlefield but in their beds, from the disease of smallpox. General George Washington, however, had a plan. He mandated that all his troops be inoculated against smallpox. Inoculation at the time was a primitive form of vaccination that required taking pus from an infected person and exposing healthy individuals to the disease. They would generally catch a milder case



and then be immune to that disease since they had developed antibodies against it. By the end of the year, smallpox was no longer an issue for Washington's troops, and all newly recruited soldiers were required to be inoculated against smallpox before they were allowed near the battlefield.

"I have determined that the troops shall be inoculated ... Necessity not only authorizes but seems to require the measure, for should the disorder infect the Army in the natural way and rage with its usual virulence we should have more to dread from it than from the Sword of the Enemy."--George Washington, 1777

More than a century later, smallpox was once again a problem, this time for Cambridge, Massachusetts. In 1902, the city's Board of Health required that everyone living in the city over age 21 be vaccinated against smallpox to deal with an outbreak. State law in Massachusetts allowed local communities to mandate freely available vaccinations if they were necessary for the safety and health of the community. Those that refused could be fined the equivalent of \$150.00 in today's dollars. Henning Jacobson, who refused the

vaccination and was fined, believed that both the mandate and the fine violated his liberty and his 14th Amendment rights. [The case made it all the way to the U.S. Supreme Court.](#)

Associate Justice John Marshall Harlan, writing for the majority, rejected Jacobson's claim that vaccine mandates violated his liberty or the 14th Amendment. The state of Massachusetts, he wrote, has the right to protect the public health and safety of its citizens.

"But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good." --Associate Justice John Marshall Harlan, Jacobson v. Massachusetts (1905)

While the Court ruled in favor of mandatory vaccinations in the Jacobson case, [opposition to vaccine mandates](#) has never gone away. It remains an open question whether the decision in that case is applicable today, and it may be that sooner or later, the current US Supreme Court will be forced to address the constitutionality of vaccine mandates at the state or federal level.

To Think and To Do:

"We are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination or that vaccination, by reason of his then condition, would seriously impair his health or probably cause his death." - Associate Justice John Marshall Harlan

What does the decision in Jacobson v Massachusetts (1905) suggest about balancing the rights of the individual with the needs of the common good?

Learn more:

- [Washington Inoculates an Army](#), from the American Battlefield Trust
- [Are Vaccine Mandates Constitutional?](#), from the National Constitution Center
- [State School Vaccination Requirements](#), from the National Conference of State Legislatures



Lou Frey Institute