

*“Jacobson v. Massachusetts and Public Health Law:
Perspectives in 2005”*

Note: This teaching guide has been designed for use in public health schools and programs and in public health practice settings. A companion teaching guide is available for use in schools of law.

Table of Contents

Introduction	3
Rights in Collision The Historical Setting	
About This Resource	4
Origins Organization and Faculty Learning Objectives	
Using This Guide	6
Educational Content	7
Overview of “ <i>Jacobson v. Massachusetts</i> ” Core Theme: Public Health and the Police Powers Core Theme: Balancing Individual Rights with Societal Protection Core Theme: Legal Coordination across Sectors and Jurisdictions	
Supporting Materials	21
Faculty Presentations – Key Points Annotated References	

INTRODUCTION

Rights in Collision

In 1905, the United States Supreme Court handed down a landmark ruling on an issue of central importance then and today: the balance between the rights of individual Americans and those of society as a whole.

The specific question before the Court was whether the state of Massachusetts could compel citizens to be vaccinated against smallpox. The Court's ruling established foundational law with important implications for the protection of Americans' legal rights and, equally, for government's ability to protect all citizens against infectious disease epidemics and many other potentially catastrophic health threats.

The goal of “*Jacobson v. Massachusetts and Public Health Law: Perspectives in 2005*” is to use the 1905 ruling to explore public health and legal issues at the heart of the relationship between the citizen and society.

These issues are enduring because they arise from the fabric of American democracy and our Constitution. Understanding the Court's reasoning illuminates not only its 1905 decision but, perhaps even more important, how we address the same issues today, whether as public health practitioners and policy makers, as attorneys or judges, or as students preparing for careers in these and related professions.

The Historical Setting

Infectious disease epidemics were a scourge of the American colonies and of the United States until the early 1900s. Smallpox and yellow fever were endemic. Smallpox outbreaks were common, causing many deaths, long illnesses, and pervasive dread.

Dr. Zabdiel Boylston of Boston, Massachusetts, administered variolation (a precursor to smallpox vaccination) as early as 1721. Vaccination was widely adopted by the middle of the 19th century. Health authorities promoted it as a protective measure and laws were passed authorizing public health departments to compel vaccination if officials deemed it necessary.

Vaccination against smallpox had many detractors, however, some doubtful of its effectiveness, others fearful of harmful side effects, and still others opposed on the basis of religious or philosophical beliefs.

It was against this background, and in the immediate context of recurrent smallpox outbreaks in the late 19th century, that the board of health of the city of Cambridge, Massachusetts, issued an ordinance compelling vaccination and imposing a fine of \$5 for noncompliance.

Reverend Henning Jacobson resisted, challenging the ordinance as in violation of the due process protections of the 14th Amendment to the U.S. Constitution. Failing in the lower courts, he ultimately took his case to the U.S. Supreme Court in 1904. The Court ruled against him one year later. Northeastern University law professor Wendy Parmet has noted the significance of the decision:

Setting historical precedent, the Supreme Court affirmed that states may limit individual liberty in order to carry out warranted, well-established public health interventions. For 100 years this seminal opinion has served as the constitutional foundation for state actions which limit liberty in the name of public health. (Parmet, et. al., 2005, p. 652)

The central issue that brought the case to the Court remains alive and relevant: the tension between individual rights and protection of the community. Many of the social forces at work then are equally vibrant today. *Jacobson v. Massachusetts* thus is a powerful lens through which we can examine and take measure of some of the most important social and legal issues and controversies in contemporary public health.

ABOUT THIS RESOURCE

Origins

In 2005 ~ the centennial of the 1905 *Jacobson* ruling--a distinguished, multidisciplinary panel met to explore the implications of the decision for the health of the American public and for public health policy makers and practitioners at the community, state, and national levels.

The setting for the dialogue was the fourth annual partnership conference *The Public's Health and the Law in the 21st Century* held in Atlanta, Georgia, and co-sponsored by the Public Health Law Program of the U.S. Centers for Disease Control and Prevention (CDC) and the American Society of Law, Medicine & Ethics (ASLME).

The discussion was rich and illuminating, reflecting the faculty members' diverse professional experiences in public health and law. The discussion and the panelists' presentations were recorded for translation into "*Jacobson v. Massachusetts* and Public Health Law: Perspectives in 2005"--an educational resource that can be used in schools of public health and law, and in public health agencies and other organizations as well.

Organization and Faculty

The organization and the faculty of the session were as follow:

- First, in her address "*Jacobson v. Massachusetts* and the Maturation of Public Health Law," Wendy E. Parmet, JD, Professor of Law at Northeastern University School of Law, spoke on the historical setting and the facts of the *Jacobson* case, reviewed the central legal principles and controversies, and described the implications of the ruling for the practice of public health.
- Two intentionally divergent commentaries then were given on the *Jacobson* ruling, one from the point of view of Reverend Henning Jacobson and the other from the point of the state of Massachusetts. The former was presented by Charity Scott, JD, Professor of Law at Georgia State University, and the latter by James G. Hodge, Jr., JD, LLM, Associate Professor at the Johns Hopkins University school of public health and Executive Director of the Center for Law and the Public's Health.

- Finally, a three-person panel discussed the *Jacobson* ruling and its contemporary implications from three differing perspectives: David E. Nahmias, JD, U.S. Attorney for the Northern District of Georgia; Alfred DeMaria, Jr., MD, State Epidemiologist for the Massachusetts Department of Public Health; and Clifford Rees, JD, former legal counsel to the New Mexico Department of Public Health and, at the time of the session, legal counsel to the New Mexico Department of Finance and Administration.
- The session moderator was Richard A. Goodman, MD, JD, MPH, Co-Director of the CDC Public Health Law Program. (Information about the program is available at <http://www.cdc.gov/phlp>)

“*Jacobson v. Massachusetts* and Public Health Law: Perspectives in 2005” comprises the following suite of materials:

- A CD-ROM containing the 90-minute program and presentations by the six faculty members, including slide presentations by Professors Parmet, Scott and Hodge
- A curriculum guide for use in public health schools and in state, local and other public health practice settings
- A curriculum guide for use in schools of law, and
- Supporting materials, including key points distilled from the six faculty members’ presentations and citations to selected reference materials.

The “*Jacobson v. Massachusetts* and Public Health Law: Perspectives in 2005” materials may be downloaded without charge from the CDC Public Health Law Program (www.cdc.gov/phlp) and also may be requested in printed form (including the CD-ROM) from the Public Health Foundation (www.phf.org) for a nominal fee. All materials are in the public domain.

This resource was created by a team with members from the CDC Public Health Law Program; the Office of Applied Public Health at the Rollins School of Public Health, Emory University; and the Northeastern University School of Law.

Learning Objectives

This educational resource is intended for use primarily in public health schools and programs, in law schools, in state, local and other public health agencies, and in other settings where public health and law intersect.

“*Jacobson v. Massachusetts* and Public Health Law: Perspectives in 2005” is set against the backdrop of unfolding U.S. history and features a cast of compelling characters, including city health workers, a charismatic clergyman and his legal counsel, and Supreme Court Justice John Marshall Harlan, among others. This resource is grist for developing an understanding of the legal issues of the case and their keen relevance to the public’s health today. Further, it encourages us to probe the assumptions about rights and responsibilities that underlie today’s public health practices and to ask about the legal and ethical standards those practices should meet.

Within this framework, those who learn from this resource will be able to:

- Identify and describe civil liberties established in the U.S. Constitution, particularly in relation to public health considerations;
- Describe key factors mediating the balance between individuals' rights and protection of the public's health;
- Explain the Supreme Court's approach to balancing individual rights and the common good in 1905, and the principles it laid out to protect individual rights; and
- Discuss implications of the *Jacobson* decision for contemporary public health practice and law.

USING THIS GUIDE

This guide is intended for use in public health schools and in state, local and other public health practice settings. A companion teaching guide is available for use in schools of law. Instructors preparing to use this educational resource will find it helpful to consult both guides as each guide contains material (e.g., concepts, suggested discussion points and suggested learning exercises) that instructors may integrate or borrow from in order to engage specific audiences in the most effective manner possible.

The body of this guide is the “Educational Content” section which is organized into four parts:

1. “*Jacobson v. Massachusetts* and the Maturation of Public Health Law”

This part links to the opening presentation (with the same title) given by Professor Parmet at the June 2005 session. Professor Parmet, a constitutional law scholar, painted the historical context of the day, outlined the facts of the case, and described the significance of the ruling as a lasting, foundational framework for public health practice.

This part includes a selection of PowerPoint slides as well as related notes for use in teaching the material.

2. Core Theme: Public Health and the Police Powers

This part defines the term “police powers,” gives examples of police powers in practice and of agency and jurisdictional roles, offers insights into the *Jacobson* ruling, suggests class discussion questions and learning exercises, and lists selected additional resources.

3. Core Theme: Balancing Individual Rights with Societal Protection

Using quotations from a variety of sources, this part presents legal concepts relevant to the balance between individual rights and protection of society's interest in maintaining health. It also includes comments on *Jacobson's* implications for that balance and for present-day public health practice, suggests discussion questions and exercises, and lists selected, relevant resources.

4. Core Theme: Coordination across Sectors and Jurisdictions

This part describes some of the sectors (e.g., public health, law enforcement, and private businesses) and jurisdictions typically involved in public health interventions and the critical role of coordination, especially with respect to public health emergencies. This part also includes suggested discussion questions, learning exercises, and additional reference materials.

The final section of the guide includes supporting materials:

- Key points from the faculty presentations, and
- Citations to selected reference materials.

The instructor should review this content, revise or amplify it as appropriate to the learning objectives adopted for the target audience, and use it in conjunction with the presentations and other materials contained on the “*Jacobson v. Massachusetts* and Public Health Law: Perspectives in 2005” CD-ROM.

EDUCATIONAL CONTENT

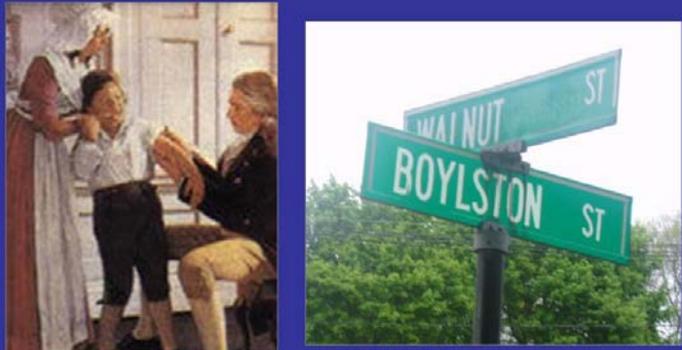
Overview of “*Jacobson v. Massachusetts*”

Adapted from the address “Jacobson v. Massachusetts and the Maturation of Public Health Law” given by Wendy E. Parmet, JD, Professor of Law, Northeastern University School of Law. See “Faculty Presentations” for her full address and the related “Faculty Presentations – Key Points” later in this guide.

Historical Context

In 1721, Dr. Zabdiel Boylston, of Boston, Massachusetts, became the first North American physician to administer smallpox variolation, an early practice that entailed significant risks for the

Dr. Zabdiel Boylston



Public Domain, Courtesy of the National Library of Medicine

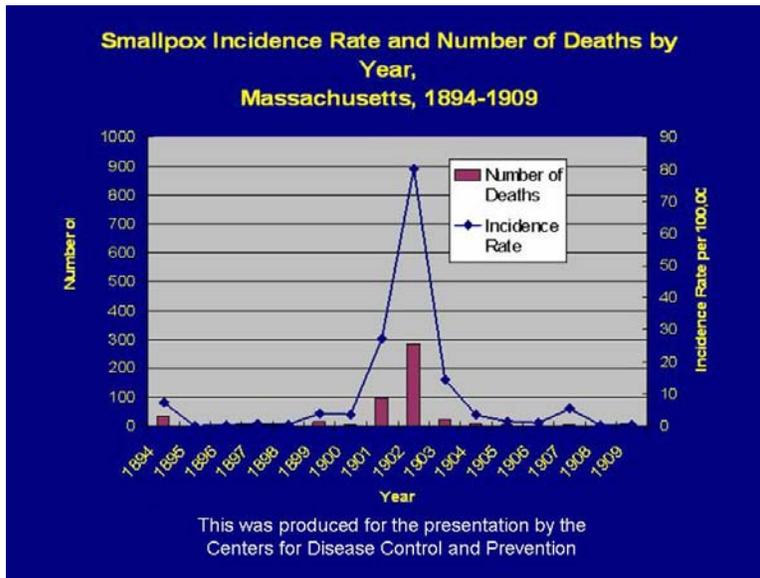
Copyright Wendy Parmet

recipient and his or her contacts. Dr. Boylston learned of the practice from Cotton Mather, a Puritan minister who learned it from London medical publications. The more effective and safer practice of smallpox vaccination superseded variolation and was widely adopted by the mid-1800s. In 1850, Massachusetts became the first state to require smallpox vaccination as a condition of admission to school. Both practices initially met with considerable

opposition from the medical and clerical communities, but was followed by growing acceptance ~ especially as government developed a regulatory regime to address safety concerns ~ and ultimately by free public clinics.

The Return of Smallpox

By 1901, Boston and its surrounding towns (including Cambridge) were in the center of what has been called “the golden age” of public health. This also was a time of great social change and

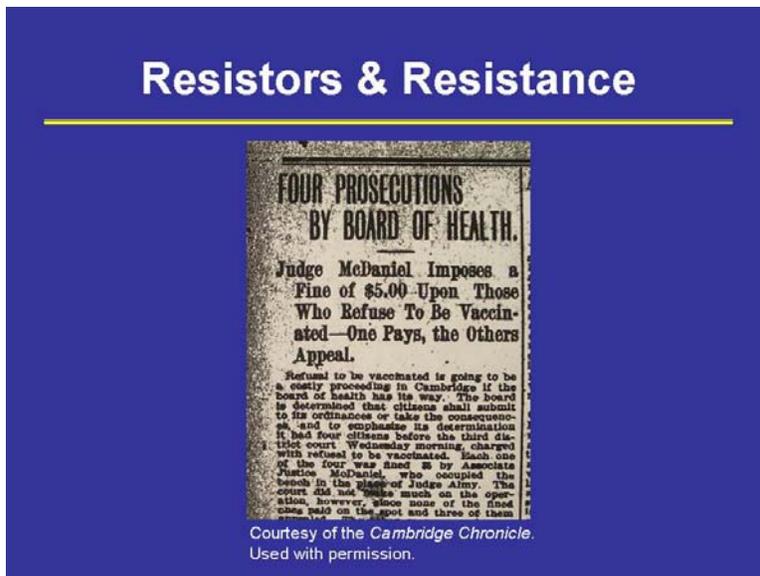


turmoil as immigration increased and industrialization advanced across the country. The nation was in the midst of intense social, religious, and political changes.

In this protean setting, smallpox ~ which had waxed and waned over the history of the new Republic ~ made a new and deeply disturbing reentry. One of the most feared of all diseases, smallpox over the centuries had killed untold millions across the world. Although outbreaks

had been contained during the preceding thirty years, the number of smallpox cases began to rise in the Boston area in the late 1890s and first years of the new century.

By 1902, smallpox had caused nearly 300 deaths in Massachusetts. Health officials’ concern escalated to the extent that Boston’s board of health dispatched teams of physicians and police



officers to administer vaccinations, by force if necessary, and concentrated their attention on neighborhoods populated by recent immigrants and ethnic minorities.

The Cambridge board of health adopted an ordinance requiring all residents to be vaccinated or to pay a fine of \$5. At least four residents resisted the Cambridge ordinance, including a city clerk, a water department worker, and the Rev. Henning

Jacobson, a Swedish-born immigrant. While the causes of his concerns are not available in the historical record, Rev. Jacobson was known to have reported negative experiences when vaccinated as a young man.

The Case

The four Cambridge resisters were tried and convicted by a lower court in 1902. They appealed to the Superior Court and were convicted again. Two then appealed to the state's highest court but with the same result. Rev. Jacobson alone appealed to the U.S. Supreme Court in 1904, hinging his case on 14th Amendment guarantees of due process protections and limits on the power of the state.

Rev. Jacobson



Courtesy of *My Church*, a publication of the Augustana Lutheran Church (1860-1962). Used with permission.



Copyright Amy Farber. Used with permission.

Supreme Court Justice John Marshall Harlan wrote the opinion that ruled against Rev. Jacobson on a 7-2 vote.

JACOBSON v. MASSACHUSETTS

- SUPREME COURT OF THE UNITED STATES
- 197 U.S. 11;
25 S. Ct. 358;
49 L. Ed. 643;
1905 U.S. LEXIS 1232
- Argued December 6, 1904
February 20, 1905
- Court found in favor of state:
7 – 2
- Supreme Court Justice Harlan wrote the opinion



Public Domain, U.S. Government

Key Holdings of the *Jacobson* Decision

The Supreme Court's ruling had four main themes, as follow:

- The Police Powers ~ The Court upheld the 14th Amendment limits on the police powers of the state and the authority of the federal courts to review exercise of those powers. This interpretation of liberty paved the way for later rulings on the constitutional right to privacy.
- Balance ~ The Court viewed individual liberties as emanating from a civil society and held that individuals may exercise their liberties only within the laws that protect the common good.

- Deference to the Legislature ~ The Court accepted that the “common good” applies to the right of society to protect itself from epidemics and that legislative bodies have authority to choose the means toward that end. Deference to the state (in this case, the Cambridge board of health) was upheld on the ground that the state could demonstrate a reason for its choice of vaccination as the means. The Court recognized, however, that deference to the state could be misplaced, for example, if the medical intervention were cruel or inhuman.
- Constitutional Limits ~ The Court articulated four standards for legitimate exercise of the police power for public health purposes:

Necessity: Public health measures must be necessary to address the identified health threat.

Reasonable Means: Moreover, the measures taken must have a reasonable relationship to the goal.

Proportionality: The burden the public health measures impose must not exceed, in some reasonable calculus, the benefits they bring.

Harm Avoidance: The public health measure should not cause harm to those subjected to it.

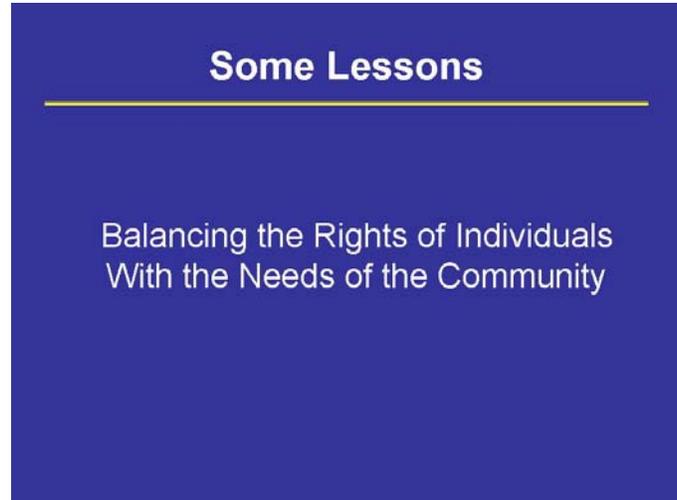
***Jacobson*: Key Holdings**

- Police power upheld
- No absolute right to be wholly free from restraint. Restraints necessary for the common good
- Deference to the legislature
- Court's approval of public health intervention depended on:
 - Public health necessity
 - Reasonable means
 - Proportionality
 - Harm avoidance

Conclusions

The Court's ruling in *Jacobson* established foundational public health law and also contributed in important ways to the interpretation and application of constitutional law. Lessons we can learn from the case include:

- Police powers must be exercised within Constitutional law which recognizes, and seeks to balance, the rights of the individual with the common good.
- The historical context, important at all times, framed the ways in which Rev. Jacobson's case was perceived, advanced by his attorneys, and challenged by the state.
- Those who resist deserve public health's respect. Cambridge public health officials appear to have downplayed adverse effects of smallpox vaccination and to have neglected to engage public opinion, forfeiting the public's trust and fueling reaction.
- The Constitution and public health laws provide a framework not only for public health interventions but also for productive, social debate.



Companion Presentations (see "Faculty Presentations")

- Charity Scott, JD, addresses misuse of the police power for public health purposes in her presentation from the point of view of Rev. Jacobson.
- James G. Hodge, Jr., JD, LL.M., gives the perspective of an attorney defending the public health agency's action in this case.
- For the perspective of a U.S. Attorney on the applicability of *Jacobson* today, see the presentation by David E. Nahmias, JD.
- In his presentation, Alfred DeMaria, Jr., MD, reflects on *Jacobson*-related issues from the point of view of a senior state health official and state epidemiologist.
- Clifford Rees, JD, describes the current-day relevance for public health legal counsel of *Jacobson* and its surrounding issues.

Related Resources

Gostin, LO. (2005), Jacobson v. Massachusetts at 100 years: Police power and civil liberties in tension. *American Journal of Public Health*, 95(4), 576-580.

Mariner, WK, Annas, GJ, and Glantz, LH. (2005). Jacobson v. Massachusetts: It's not your great-great-grandfather's public health law. *American Journal of Public Health*, 95(4), 581-590.

Parmet, WE, Goodman, RA, and Farber, A. (2005). Individual rights versus the public's health ~ 100 years after Jacobson v. Massachusetts. *New England Journal of Medicine*, 352(7), 652-654.

Core Theme: Public Health and the Police Powers

Concepts

- “Police’ traditionally connoted social organization, civil authority, or formation of a political community ~ the control and regulation of affairs affecting the general order and welfare of society.” (Gostin, 2000, p. 48)
- A definition of “police power” is: “The inherent authority of the state (and, through delegation, local government) to enact laws and promulgate regulations to protect, preserve, and promote the health, safety, morals, and general welfare of the people.” (Gostin, 2000, p. 48)
- “...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (14th Amendment to the U.S. Constitution)

Examples

- All states require children to complete designated vaccinations as a condition of admission to school (subject to specified types of exemptions.)
- Those suspected of exposure to infectious diseases may be quarantined at home or in other locations, if necessary; those known to be exposed may be isolated.
- Health officials may remove or destroy hazards to the health of the community, e.g., rodent-infested waste.
- Health officials may seize a private hospital if necessary to treat and care for large numbers of victims of a public health emergency.

Insights into *Jacobson v. Massachusetts*

- “Every imaginable threat from civil suit to cold-blooded murder when they got an opportunity to commit it, was made by the writhing, cursing, struggling tramps... and a lot of them had to be held down in their cots, one big policeman sitting on their legs, and another on their heads while the third held the arms, bared for the doctors.” An account of the 1901-1903 smallpox epidemic in Boston, Massachusetts. (Cited in Mirahi, 2004, p. 195)
- “In cases like *Jacobson*, the state compelled vaccination only indirectly ~ by imposing penalties, denying school admission, or quarantining. This did not directly affect an individual’s control over their body ~ which made it easier for the courts to uphold police powers.” (Gostin, 2005, p. 577)
- “Early American law defended police powers staunchly. It was a very important tool to a developing nation, especially one in the throes of infectious communicable disease... ‘police power was preeminent because upon it depends the security of social order, the life and health of citizens, comfort of existence in a thickly populated community, enjoyment of private and social life and the beneficial use of property.’” (Gostin, 2005, p. 572)

- “Out of the 69 Supreme Court cases where *Jacobson* has been cited, almost all did so in defense of police power.” (Gostin, 2005, p. 597)
- “*Jacobson* set a constitutional floor or balancing test for the use of police powers. To be upheld, the police power within the intervention had to be measured against a four-part test based on necessity, reasonable means, proportionality, and harm avoidance.” (Gostin, 2005, p. 579)

Suggested Discussion Questions

1. What police powers do the state and local public health departments of your state possess? Are all relevant parties aware of these powers, e.g., elected officials, health care providers, law enforcement agencies, the courts, and the news media?
2. Are these police powers adequate to address public health emergencies? Are public health agencies, law enforcement, and emergency response professionals trained in coordinating their efforts in public health emergencies?
3. Do public health department officials understand how to implement their police powers and, in addition, the legal limits on their use?

Suggested Learning Exercises

1. Have students research and present on court rulings since 1905 that cite the *Jacobson* ruling to see its influence in public health law and in American jurisprudence more generally.
2. Students may research the specific legal protections provided to individuals under the Civil Rights Act, the Americans with Disabilities Act, and counterpart state laws.
3. Have students research and present on the police powers of their state and local health departments. Do they consider the police powers adequate and appropriately circumscribed by legal protection for individual rights? Have state court rulings addressed the application of these powers?
4. Students could interview legal counsel to the state health department, or legislative staff, to determine if the state has enacted new laws to address infectious disease epidemics or other public health emergencies. Do those new laws conform to the standards articulated in the *Jacobson* ruling?

Related Resources

Gostin, LO. (2000) *Public Health Law: Power, Duty, Restraint*. Berkeley: University of California Press; and New York: Milbank Memorial Fund.

Gostin, LO. (2005) *Jacobson v. Massachusetts* at 100 years: police power and civil liberties in tension. *American Journal of Public Health*, 95(4), 576-580.

Misrahi, JJ, Matthews, GW, Hoffman, RE. (2003) Legal authorities for interventions during public health emergencies. In Goodman, RA, et. al. (eds), *Law in Public Health Practice*. New York: Oxford University Press.

Parment, WE, Goodman, RA, and Farber, A. (2005) Individual rights versus the public's health—100 years after *Jacobson v. Massachusetts*. *New England Journal of Medicine*, 352(7), 652-654.

State Emergency Public Health Powers

POWER	SOURCE	RESTRICTION
Disease reporting and medical surveillance	Police power reserved to states under Tenth Amendment	Constitutionally recognized right to privacy; state statutes covering medical privacy
Subpoena of business information, for example, customer lists, shipping information	Derived from state statute	Fourth Amendment right against “unreasonable” searches and seizures; trade secrets and other information may be viewed as “property” under the Fifth and Fourteenth Amendments
Commandeer private buildings and seize pharmaceuticals	Police power	Fifth and Fourteenth Amendments’ requirements of due process and just compensation
Abate nuisances	Police power	No compensation required if deemed a “nuisance,” otherwise a “taking” requiring compensation
Personal-control measures, for example, quarantine, compelled medical testing, mandatory vaccination	Police power	Considered a significant deprivation of “liberty” requiring due process; Equal Protection Clause implicated if applied in a discriminatory manner; possibly First Amendment Freedom of Religion Clause
Legal immunity	State statute may provide legal immunity from lawsuits under state law	42 U.S.C. 1983 authorizes damage awards for violation of rights under the Constitution subject to doctrine of “qualified immunity”
Dissemination of public health information	Unclear whether the police power authorizes control of media outlets	First Amendment doctrine of “prior restraint” generally prohibits government from censoring information in advance of publication

(Source: Misrahi, JJ, Matthews, GW, & Hoffman, RE, 2003)

Core Theme: Balancing Individual Rights with Societal Protection

Concepts

- “[In the *Jacobson* ruling] the Court held that states may limit individual liberty in the service of well-established public health interventions.” (Parmet, et. al., 2005, p. 652)
- “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.” (From the Supreme Court ruling in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905))
- “...it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations as the safety of the general public may demand.” (From the Supreme Court ruling in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905))
- “...the right to practice religion freely does not include liberty to expose the community...to communicable disease.” (From the Supreme Court ruling in *Prince v. Massachusetts*, 321 U.S. 158 (1944))

Examples

- Many states and municipalities prohibit individuals from smoking in publicly accessible places to limit nonsmokers’ exposure to tobacco smoke.
- Federal and state laws reduce the public’s exposure to toxic substances in air and water by regulating industries, with consequences for those businesses and their employees.
- Some states require disclosure of the names of HIV-positive people to their sexual partners.

Insights into *Jacobson v. Massachusetts*

- Even though *Jacobson* represents a balancing test between individual liberties and the public good, such cases are often tailored to a particular situation and influenced by the membership of the particular court (in this case, the Supreme Court.) As such, balancing tests generally only apply to the facts of the case that was heard. The fact that *Jacobson* was not decided unanimously underscores the subjectivity of the interpretation. *Buck v. Bell* is a prime example that the balance can be enforced in ways that are later determined to be unjust. (See “Faculty Presentations” for pertinent comments by Professor Scott.)
- “As the need for large-scale personal-control measures diminished through the advent of antibiotics and improved public health in the 1950s, courts became increasingly concerned with individual rights and due process.” (Misrahi, 2003, p. 205)
- “The state’s interest in imposing such personal-control measures as quarantine, civil confinement, and mandatory treatment must be balanced against an individual’s constitutional rights to due process, freedom of movement, and bodily integrity.” (Misrahi, 2004, p. 197)

- “In the context of detaining infectious persons, [modern] due process requires that the state provide written notice of the behavior or conditions that allegedly pose a risk to the community, access to counsel, a full and impartial hearing, and an appeal.” (Misrahi, 2003, p. 205)

Suggested Discussion Questions

1. Select a contemporary public health issue of major importance and discuss how the *Jacobson* balancing test applies. Is the test applicable in the same way to infectious disease, chronic disease, and injury issues?
2. Do motorcycle helmet laws and smoke-free restaurant laws violate individual liberties? Do mandatory workplace ergonomic standards violate employers’ rights?
3. Public health agencies frequently interact with police agencies. Can a public health agency legally use information about a crime suspect who also is carrying a highly contagious disease?
4. Public health emergencies can pose potentially catastrophic dangers. What practical steps should public health officials take to ensure their response efforts do not violate individual liberties?

Suggested Learning Exercises

1. Discuss how laws prohibiting smoking in publicly accessible places may raise questions about the relationship between individual rights and the health of the public.
2. How do the excerpts given above from the *Jacobson* ruling apply to present-day public health issues? Who decides on the real-world meaning of the phrase “under the pressure of great dangers?” Do the courts, the legislature, or the public health department?
3. In designing public health interventions, what are some options to mandating or compelling behavior by law? What are their strengths and weaknesses as compared with legal compulsions?

Related Resources

Colgrove, J. and Bayer, R. (2005). Manifold restraints: liberty, public health, and the legacy of *Jacobson v. Massachusetts*. *American Journal of Public Health*, 95(4), 571-576.

Gostin, LO. (2005). *Jacobson v. Massachusetts* at 100 years: Police power and civil liberties in tension. *American Journal of Public Health*, 95(4), 576-580.

Mariner, WK, Annas, GJ, and Glantz, LH. (2005). *Jacobson v. Massachusetts*: It’s not your great-great-grandfather’s public health law. *American Journal of Public Health*, 95(4), 581-590.

Parmet, WE, Goodman, RA, and Farber A. (2005). Individual rights versus the public’s health ~ 100 years after *Jacobson v. Massachusetts*, *New England Journal of Medicine*, 352(7), 652-654.

Core Theme: Legal Coordination across Sectors and Jurisdictions

Concepts

- “[A core element of public health legal preparedness] is coordination of legal authorities across the multiple sectors that bear on public health practice and policy and across the vertical dimension of local-state-federal-international jurisdictions.” (Moulton, 2003, p. 3)
- Responding to virtually any public health problem ~ acute or chronic ~ requires effective collaboration by multiple agencies and individuals. Those involved may not understand public health or have the established working relationships with public health agencies needed for effective response. (See “Faculty presentations” for further information.)
- The *Jacobson* ruling did not address legal coordination issues directly but the ruling has important implications in that respect today. The interplay of multiple agencies, sectors, and jurisdictions was clearly evident in the Massachusetts response to resurgent smallpox. City and state governments were involved along with six agencies or sectors: health officials, the state legislature, local boards of health, law enforcement, attorneys, and the judiciary.

Examples

- Achieving the optimal balance between individual liberties and the community’s health—the essence of the *Jacobson* ruling ~ is complicated when multiple agencies and levels of government jointly attempt to address a given public health objective. These entities typically have distinct and sometimes overlapping legal powers which, moreover, may interact with constitutional liberties in differing ways and lead to divergent conclusions about how best to protect those liberties.
- “A bioterrorism event probably will require public health officers to collaborate with other agencies and organizations with which they do not have regular working relationships (e.g., public safety, law enforcement, or the National Guard).” (Misrahi, 2003, p.204)
- “The 2003 SARS epidemic...raised legal issues not only for public health agencies and hospitals (public and private both) but also for law enforcement personnel, diplomats and immigration officials, airport and other transport administrators, the police, school administrators, and national security agencies. In the private sector, legal issues involved private hospitals, churches, apartment managers, airlines, employers..., schools, child care programs, and myriad other entities.” (Moulton, 2003, p. 3)
- “In *Jacobson*, the scientific practice of vaccination was not questioned by the Court. In most present-day cases that limit individual freedom in favor of community health, a sound, scientific basis must be established. Judges and attorneys ~ many of whom have little or no background in public health or disease management ~ will often be involved in assessing the reasonableness of the intervention.” (See “Faculty Presentations” for this and additional comments by U.S. Attorney David E. Nahmias.)

Suggested Discussion Questions

1. Did law enforcement and public health officials coordinate effectively in their response to the 1901-1903 Massachusetts smallpox outbreak? Did their response indicate adequate attention to individuals' legal rights?
2. Do your public health and law enforcement officials have a shared understanding of the laws protecting the rights of those who have been exposed to a contagious disease yet who may not comply with quarantine or other orders?
3. Do the private hospitals in your community understand their legal duties if the public health director must take control of a facility during a public health emergency?

Suggested Learning Exercises

1. Determine whether students' cities, counties, and states have executed mutual aid agreements for public health emergencies. Do they provide an adequate legal basis for exchange of response personnel, medicines, and other supplies?
2. Research public health agencies' legal basis for taking control of private entities' vaccines, drugs, and other supplies in the event of shortages.
3. Determine whether public health, law enforcement, emergency management, and other sectors address cross-cutting legal issues in their public health emergency exercises and table-top simulations. What legal coordination issues have surfaced and how have they been addressed?

Related Resources

Duffey, WS. Public health and law enforcement: Intersecting interests, collegiality and cooperation. *Journal of Law, Medicine and Ethics*, supplement to 32(4), 19-22.

Moulton, AD, Gottfried, RN, Goodman, RA, Murphy, AM, Rawson, RD. (2003). What is public health legal preparedness? *Journal of Law, Medicine and Ethics*, 31(4), 1-12.

Parmet, WE, Introduction: The interdependency of law and public health. In Goodman, RA, et. al. *Law in Public Health Practice*. New York: Oxford University Press, 2003; xxv-xxxiv.

Supporting Materials

Faculty Presentations – Key Points

“*Jacobson v. Massachusetts* and the Maturation of Public Health Law”

Wendy E. Parmet, JD, Professor of Law, Northeastern University School of Law

“*Jacobson v. Massachusetts*: Alternative Perspectives in 2005”

Charity Scott, JD, Professor of Law, Georgia State University School of Law;

and

James G. Hodge, Jr., JD, LL.M., Associate Professor, Johns Hopkins Bloomberg School of Public Health, and Executive Director, Center for Law and the Public’s Health

“Commentaries”

David E. Nahmias, JD, U.S. Attorney for the Northern District of Georgia;

Alfred DeMaria, Jr., MD, State Epidemiologist, Massachusetts Department of Public Health;

and

Clifford Rees, JD, General Counsel to the New Mexico Department of Finance and Administration, and former legal counsel to the New Mexico Department of Public Health

Annotated References

Faculty Presentations – Key Points

“*Jacobson v. Massachusetts* and the Maturation of Public Health Law”

Wendy E. Parmet, JD, Professor of Law, Northeastern University School of Law

In her presentation, Wendy Parmet wove together the compelling facts, issues, and people involved in the *Jacobson v. Massachusetts* case and traced the historic decision’s impact on law and public health. This was the first case in U.S. history to deal with the right of self-determination under the 14th Amendment regarding one’s own body. In the succeeding one hundred years *Jacobson* has been cited in many federal court reviews, often when individual rights are at issue, and has been given both positive and negative connotations.

Historical Context

- Massachusetts experienced many important historical events in the development of public health and related law. The state is known as the “birthplace of public health,” for its commitment to vaccination practices and its responses to the public health challenges posed by its role as a major seaport and landing for immigrants. Vaccination was introduced to North America in Boston, the first jurisdiction that required children to be vaccinated.
- In 1721, Boston’s Dr. Zabdiel Boylston became the first physician in North America to practice smallpox variolation, an early practice that entailed significant risks for the recipient and his or her contacts. Dr. Boylston learned of variolation from Cotton Mather, a Puritan minister who learned the practice from London medical publications. The more effective and safer practice of smallpox vaccination superseded variolation and was widely adopted by the mid-1800s. In 1850, Massachusetts became the first state to require smallpox vaccination as a condition of admission to school. Both practices initially met with considerable opposition from the medical and clerical communities, followed by growing acceptance—especially as government developed a regulatory regime to address safety concerns—and ultimately by free public clinics.

Smallpox, Social Strains, and the Public Health Response

- Boston in 1901 was in the midst of the “golden age” of public health. The field of public health had recently been professionalized. New laws had been passed to assure clean water and wholesome food. The bacteriological revolution was illuminating the causes of, and stimulating new approaches to preventing, infectious diseases. Life expectancy was climbing and the health of the general population was improving. This also was a time of social turmoil as new immigrants and industrialization swept the country. Throughout the nation there were religious and spiritual awakenings; laissez-faire capitalism dominated the economic scene; populism energized political unrest; and immigrants, especially in Boston, entered public life and began to take an active role in law-making.

- Deeply engrained fear of smallpox undoubtedly shaped the lens through which the judiciary looked at this case. Before 1901, smallpox, which had been a scourge of colonial times and was the first infectious disease that involved law as a tool for prevention, had waxed and waned as a threat to New England. Starting in 1901, however, it began to return. By 1902 the smallpox outbreak had caused nearly 300 deaths in Massachusetts and public health officials became alarmed about the potential for a widescale epidemic.
- The public, however, had become complacent and did not seem to share that sense of urgency. New immigrants and established citizens were skipping vaccinations, leaving the region's inhabitants increasingly vulnerable to smallpox. Public health officials took action nonetheless and, among other steps, sent teams of physicians and police officers out at night to vaccinate those they found in the streets, by force if necessary. The Cambridge board of health held contentious debates, finally enacting an ordinance requiring all residents to be vaccinated or to pay a \$5 fine.
- At least four people resisted the Cambridge order, including a city clerk, a worker from the water department, and Rev. Henning Jacobson. They, like many in the Boston area, may have belonged to an organized anti-vaccination movement that had ties to the Anti-Vaccination League in Great Britain. Rural Sweden, Rev. Jacobson's native home, also was a hotbed of anti-vaccination sentiments based on religious beliefs that held vaccination to be ungodly. Many believed smallpox was punishment for evil behavior and that affliction with the disease reflected divine intent.
- After emigrating from Sweden to the U.S., Rev. Jacobson studied in Illinois, ministered in Kansas, and ultimately was called to Boston to lead a congregation. He reportedly was pious, charismatic, and deeply respected. One can only speculate on what fueled his resistance; there is no written record of his personal reasons, and he did not ask his congregation to resist vaccination. He was, however, an outsider to the area and not part of the Harvard elite who demanded vaccination. He was a poor man and reportedly recounted negative experiences when vaccinated as a young man.
- Government regulation was in full bloom at the time and was decried by many as elitist and an offensive intrusion on individual liberty. Public health workers had not informed the community about potentially injurious consequences of smallpox vaccination, as the practice then was not completely sterile and could take several, sometimes painful, attempts to complete.
- The four Cambridge resisters were tried and convicted before a lower court in 1902. Only one had a lawyer. They appealed to superior court and were again convicted. Two of the four then appealed to the state's highest court and were represented by two prominent attorneys who argued that the Cambridge ordinance violated the 14th Amendment to the U.S. Constitution.
- The state court ruled against the plaintiffs, arguing that the state held police powers that could be used to limit individual liberty when disease threatened. The court stated that the rights of individuals must yield if necessary to protect the wellbeing of the whole community. The court emphasized that the Cambridge ordinance did not force anyone to be vaccinated, but rather gave citizens a choice between vaccination or paying a fine of \$5.

To the Supreme Court

- Rev. Jacobson appealed to the U.S. Supreme Court in 1904. Even though Rev. Jacobson had lost three times, he continued to press on legal questions related to the 14th Amendment, which guarantees due process protections and limits the power of the state. This was an evolving area of law at the time, and many businesses were also challenging new regulations. Supreme Court Justice Harlan wrote the legal opinion for the majority; the case was settled by a 7-2 vote. The opinion stressed these key points:

Police Power: The ruling stated that the 14th Amendment imposed limits on the police powers held by the states and that federal courts had authority to review exercises of police power under the amendment. The Court, however, did not see individual rights as absolute. Instead, it viewed individual liberties as emanating from a civil society and opined that it is only within the laws that protect the common good that individuals can exercise their liberty. The Court's conclusion that the 14th Amendment protected liberty paved the way to modern constitutional cases on the right to privacy.

Deference to the Legislature: The ruling accepted that the "common good" applies to the right of society to protect itself from epidemics and that it is not the role of the courts to step into the shoes of the legislature in choosing the means by which to achieve that common good. Thus, deference to the state (manifested, in this case, in the Cambridge board of health) was upheld on the basis that the state could show grounds for its actions. (Notably, the Court did not consider medical evidence supporting vaccination as a chosen intervention. Instead, it essentially trusted the prevailing medical wisdom regarding vaccination). The Court did recognize, however, that there could be exceptions to this doctrine of judicial deference, for example, if the intervention chosen were cruel or inhuman.

Constitutional Limits: The Court articulated four standards for legitimate exercise of the police power for public health purposes:

Necessity: Public health measures must be necessary for the given problem they seek to address.

Reasonable Means: Moreover, the measures taken must have a reasonable relationship to the goal.

Proportionality: The burden the public health measures impose must not exceed, in some reasonable calculus, the benefits they bring.

Harm Avoidance: The public health measure should not cause harm to those subjected to it.

Conclusions

The Court's ruling in *Jacobson* established foundational public health law and also contributed in important ways to the interpretation and application of constitutional law. Lessons we can learn from the case are that:

- The exercise of the police power is constrained by the rule of law. The ruling established the principle that police powers must be exercised within the Constitution which recognizes, and seeks to balance, the rights of the individual with the common good.
- The historical context is significant. The turn of the 20th century was a time of sweeping change with intense controversy surrounding public health, fueled by religious beliefs, political events, and often rancorous differences over the scientific evidence for vaccination and other interventions. This context framed the ways in which Rev. Jacobson's case was perceived, advanced by his attorneys, and challenged by the state.
- Those who resist deserve public health's respect. Rev. Jacobson, well respected in his church and community, brought forward a not unreasonable concern. Cambridge public health officials appear to have oversold the effectiveness of the smallpox vaccine. Administering the vaccine to a single individual often required repeated attempts. Officials underplayed negative side effects. *Jacobson* demonstrated that public health and other government officials should make efforts to understand and engage with those who resist or disagree with a recommended intervention. Sometimes, as in the *Buck v. Bell* case, resisters are proved correct. (See "Faculty Presentations" for related comments by Prof. Charity Scott.)
- The Constitution and public health laws provide a framework not only for public health interventions but also for productive, social debate. As part of its vaccination campaign, the Boston city board of health dispatched physicians and police officers to vaccinate by force and focused disproportionate attention on ethnic communities and immigrants. Resort to force, however, evaded the rule of law and was counterproductive, possibly fueling the community's resistance to vaccination. In contrast, the orderly progress of Rev. Jacobson's case through the court system contributed to resolution of a highly charged issue within a socially accepted framework of laws.

"Jacobson v. Massachusetts: Alternative Perspectives in 2005"

Charity Scott, JD, Professor of Law, Georgia State University School of Law

Speaking from the perspective of Rev. Henning Jacobson, Professor Scott highlighted the balance struck in the case between individual liberty and civil rights, on one hand, and state police power, on the other hand. She described instances in which individual liberties have been overwhelmed by the needs of the many and probed their legacy and lessons for public health. Among Professor Scott's key points:

- Pertinent cases in which abuses of police power and emphasis on the community's health protection have outweighed individual rights have involved quarantine, containment of venereal disease, public health experiments, reproductive health policies, eugenics, and in times of war and other crises.

- Public health policy makers and practitioners both should strive to strike a balance of individual rights with the common good and should consider policies that maximize protection of individual liberties simultaneously with protection of the common good.
- Our nation’s commitment to due process protections is most strained during our most challenging and uncertain moments and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.
- In his written dissent to the majority’s decision in *Korematsu*, Justice Jackson said that the Court’s ruling would “lie around like a loaded weapon” waiting to be fired inappropriately.

James G. Hodge, Jr., JD, LLM, Associate Professor, Johns Hopkins Bloomberg School of Public Health, and Executive Director, Center for Law & the Public’s Health

Professor Hodge spoke from the point of view of the attorneys who represented Massachusetts before the U.S. Supreme Court. He noted that the state viewed the case as a “must win” because its outcome was central to the state’s ability to protect the health of its citizens. The state argued that public health practice makes an essential contribution to the citizens of the state and that it is the role and obligation of the state to do what no single person can do to protect the community’s health.

The state hinged its argument on the proposition that state powers and individual rights are mutually supportive. Key supporting points were that:

- The state not only has the power but the duty to act ~ for no single person can do what the state can to protect the public’s health. The state acknowledged that police powers have constitutional limits but that sovereign states were established to protect their citizens.
- The federal judiciary cannot usurp the role and powers of the state legislature (the principle of separation of powers). A line separates federal from state government powers. (In reality, this balance is like a pendulum swinging between state sovereignty and federal supremacy). Courts cannot contradict legislative decisions unless they find them utterly arbitrary and unreasonable. In this case, the state argued, the Cambridge board of health acted in a fair and non-discriminatory manner; the judicial branch must respect the board’s actions and the federal government must not interfere.
- Citizens do not exist as islands: A social contract exists between the state and its citizens; they are responsible to each other. Liberty does not safeguard against restraint.

In summary, Professor Hodge argued that the *Jacobson* ruling was crucial because the case illuminated themes that have been consistently cited and used to shape responsible public health practices and policies that limit individual interests only when truly necessary. This is evidenced in such diverse fields of public health as vaccination, quarantine and compulsory medical treatment, fluoridation, and traffic safety.

“Commentaries”

David E. Nahmias, JD, U.S. Attorney for the Northern District of Georgia

In his comments, Mr. Nahmias brought to bear the perspective of a trial lawyer and U.S. attorney whose office would defend government actions during a public health crisis. He concluded that the applicability to modern settings of the century-old *Jacobson* ruling remains an open question. The Supreme Court has relied on *Jacobson* and other rulings of that era but the law has evolved in significant ways. Other, more recent cases are being looked to and new ground is being established in this area as well. Judges and attorneys who may not be aware of the prevailing public health laws and relevant doctrines need new tools ~ such as public health law bench books and manuals ~ to represent their clients effectively and, with respect to judges, to be adequately informed about the legal powers of public health officials at all levels of government.

Mr. Nahmias further noted that:

- Even though *Jacobson* gives us a balancing test, such tests are applied depending in large part on each specific situation and according to the membership of the cognizant court. Balancing tests are only relevant in the context of the facts of a given case. The fact that the *Jacobson* decision was not unanimous reveals the subjective nature of the interpretation given by the majority. *Buck v. Bell* ~ a case in which the Court condoned government-ordered sterilization of a mentally incompetent woman ~ is a prime example that the “balance” can be struck in ways none of us would agree with today.
- The legal issues raised in *Jacobson* remain unsettled in important ways. The relevant balancing tests used today are much more complex. In addition, there is significantly more skepticism about government intervention due in part to a history of bad decisions. Government thus faces a much heavier burden of proof both within the legal community and among the general public when attempting to infringe on the freedom of individuals in the name of the common good.
- In this context, when the laws are inadequate (e.g., federal quarantine laws) and where past decisions are tainted, it becomes more unlikely that local governments would willingly accept guidance or intervention by the federal government. As a result, in the context of a public health emergency or crisis we are likely to see a disconnect between federal powers and those of local government. The worst-case scenario would be for the federal government to attempt to compel lower governments to act as it ordains, creating confusion and delays in response to crises.
- One hundred years after the *Jacobson* ruling, courts no longer simply defer to legislative judgments on scientific and medical issues. More often, a battle of experts ensues in which each side gets equal time to present facts. This can result in significant delays in decisions until the court hears all opposing arguments.
- Many statutory changes have limited the ability of governments to impose restrictions on individuals since the 1905 ruling, e.g., the Religious Freedom Restoration Act, the anti-detention act, and procedural due process. These changes in law have contributed to an environment in which it is much harder to compel an individual to act and for the government to withstand judicial scrutiny.

- If a governmental action involves any type of compulsion directed toward individuals the chances are good that it will end up in federal court – as seen in the 2005 Terry Schiavo case. There has been a significant revolution in individual constitutional liberties (civil liberties), including the right to refuse unwanted medical treatment. As a result, it is now much more difficult for governments to impose limits on the exercise of individual liberties.
- There is a great need for public health leaders to prepare the lawyers and judges who will hear “*Jacobson*-like” cases. The reality is that most judges have little or no expertise in public health issues. Similarly, the lawyers defending such cases will be civil lawyers with little background or experience in public health or criminal law. When a public health crisis strikes and a health department applies quarantine or intervenes to prevent the spread of disease, it is likely the issue will end up in federal court with a claim that the state is violating individual rights. It is highly likely that neither the lawyer nor the judge will have proper training in these areas, yet they will have to go into court that afternoon and start making decisions that may have implications for the health of cities, states, or the entire nation.

Alfred DeMaria, Jr., MD, State Epidemiologist, Massachusetts Department of Health

Dr. DeMaria is a senior public health official for the state that in the late 1800s authorized local boards of health to compel smallpox vaccination, leading ultimately to the *Jacobson* ruling. Dr. DeMaria described the dynamic tension that surrounds attempts to practice public health in a way that is respectful of human rights but also is rooted in the science of epidemiology and in calculations of the potentially vast human costs associated with disease epidemics. Among his main points, Dr. DeMaria noted that:

- The *Jacobson* case provides an important perspective on concepts of necessity, reasonableness, proportion and minimizing harm. Lessons can be gleaned from the case that help us understand not only what governments are allowed or empowered to do but also how government actions can respect human rights while protecting the public from disease.
- It is significant that the 1901–1903 smallpox outbreak in Massachusetts led to significant improvements in health regulation and in the practice of public health.
- A lesson the case teaches public health professionals is to be closely attentive to the ways in which government powers are carried out. Health officials and practitioners should be continually cognizant of the great powers they possess and of the serious abuses that have accompanied use of those powers in the past.
- The *Jacobson* case must be examined in its totality, starting with the enormity of the threat posed by smallpox, a horrendous disease that had killed untold numbers of people in the U.S. and throughout the world. The public harbored great fear of smallpox yet vaccination, the preventive measure of choice, was not a simple matter. Vaccine was produced by an unregulated industry that had significant manufacturing problems. Vaccination practices were crude and even unsafe; those vaccinated actually could contract syphilis from the procedure. Public concerns about the safety of the procedure thus were not totally unfounded. On the flip side, smallpox was on the rise at the time and public health officials felt tremendous pressure to take decisive action. They also had a strong professional sense that they were taking the right approach (even including forceful

vaccination of “tramps” and the homeless who frequented the rail yards) and perceived support for their actions as smallpox-related deaths rose and fell.

Clifford Rees, JD, General Counsel, New Mexico Department of Finance and Administration, and former legal counsel to the New Mexico Department of Public Health

In his comments, Mr. Rees offered the perspective of a practicing public attorney in a state health department who deals with day-to-day applications of public health law. He observed that he had not studied *Jacobson* in law school or in a professional setting but that it was directly relevant to his practice in public health law. In addition, Mr. Rees noted that:

- The precedent set by *Jacobson* was cited in testimony to the New Mexico legislature to help make the case for the state’s right to implement a state drug policy on the use of medical marijuana even though the federal government has direct jurisdiction over drug policy.
- The *Jacobson* case can be an excellent teaching tool with a variety of audiences on issues of emergency preparedness, on identifying gaps in existing laws, and in drafting legislation to protect individuals’ interests while allowing health departments to exercise appropriate police powers. Mr. Rees noted also that *Jacobson* is a valuable teaching tool with law audiences; he has used it for this purpose. Interested citizens understood the essence of the ruling and found it a useful lens through which to explore and appreciate issues involved in government’s attempt to protect the health of the public at large.
- The *Jacobson* case can be a helpful tool to explain and promote understanding of the powers granted to public health departments. In the case of New Mexico, many of those powers stem from the 1919 state law that created the first state health department in the aftermath of the Spanish flu pandemic.
- As a contemporary public health lawyer reads *Jacobson*, it is clear that much has changed in the legal environment. For example, the Supreme Court summarily dismissed the freedom of religion argument in its 1905 ruling; further, 1st Amendment law has evolved greatly since 1905. Thus, while *Jacobson* casts a bright, educational light on the core issues, public health officials realize that they face a broader spectrum of relevant legal issues today than their counterparts did a century earlier. These issues implicate religious beliefs, the concept of medical necessity, and a host of additional issues.

Annotated References

Cases

- Yick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064 (1886).
Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358 (1905).
Lochner v. New York, 198 U.S. 45, 25 S. Ct. 539 (1905).
Buck v. Bell, 274 U.S. 200, 47 S. Ct. 584 (1927).
Korematsu v. United States, 323 U.S. 214, 65 S. Ct. 193 (1944).
Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 101 S.Ct. 1309 (1981).
Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
General Electric Co. v. Joiner, 522 U.S. 136 (1997).
Kumho Tire Co. v. Carmichael, 119 S. Ct. 1167 (1999).
Hamdi v. Rumsfeld, 542 U.S. 507, 124 S.Ct. 2633 (2004).

Journal Articles

- George J. Annas, "Puppy Love: Bioterrorism, Civil Rights, and Public Health," 55 Fla. L. Rev. 1171 (December 2003).

This commentary is a sharp critique of prevailing doctrines of emergency legal preparedness and of proposed new public health statutes. Professor Annas suggests that the government's response to perceived threats from terrorism is exaggerated and lacking in firm scientific basis. He sees new public health statutes as a serious erosion of civil liberties and suggests that public health preparedness need not require the violation of human rights and is not in conflict with civil liberties.

- James F. Childress & Ruth Gaare Bernheim, "Beyond the Liberal and Communitarian Impasse: A Framework and Vision for Public Health," 55 Fla. L. Rev. 1191 (December 2003).

This commentary seeks to find a middle ground between Annas' and Gostin's positions. The article suggests that a more sophisticated legal philosophy and political science is required. A proposed framework for evaluating any proposed public health regulation that would curtail civil liberties is suggested.

- Colgrove, J., & Bayer, R. (2005). Manifold restraints: Liberty, public health, and the legacy of *Jacobson v Massachusetts*. *American Journal of Public Health*, 95(4), 571-576.

An examination of the relationship between the individual and society in 20th Century public health practices including the use of law and other compulsory measures to constrain personal liberty for the sake of protecting the public health. It highlights the varied tools employed by public health professionals (laws, persuasive campaigns, financial incentives or disincentives, etc) and the rationale and relative success for using those tools. It highlights the relevance of *Jacobson* to more contemporary public health issues such as motorcycle helmet laws and HIV/AIDS.

Goodman, R.A., Lazzarini, Z., Moulton, A.D., Burris, S., Elster, N.R., Locke, P.A., & Gostin, L.O. (2002). Other branches of science are necessary to form a lawyer: Teaching public health law in law school. *Journal of Law, Medicine & Ethics*, 30(2), 298-301.

A commentary on the value of public health law and the importance of a more substantive integration between law, science and public health as an interdisciplinary approach to addressing some of today's most compelling challenges. Highlights the benefits of incorporating public health coursework in legal curricula as well as recommendations for next steps.

Gostin, L.O. (2005). *Jacobson v Massachusetts* at 100 years: Police power and civil liberties in tension. *American Journal of Public Health*, 95(4), 576-580.

A succinct overview of the *Jacobson* case including an examination of the 4-point balancing test presented by the court (necessity; reasonable means; proportionality; and harm avoidance), the number of U.S. Supreme Court decisions citing *Jacobson* since 1905, the historical context for the development of police powers and social compact theory, and commentary on the enduring meaning (or lack thereof) of the *Jacobson* case today.

Lawrence O. Gostin, "When Terrorism Threatens Health: How Far are Limitations on Personal and Economic Liberties Justified?", 55 Fla. L. Rev. 1105 (December 2003).

Public health and civil liberties are described as being in conflict. Professor Gostin discusses terrorism threats and new public health law responses. Suggests a framework for evaluating state claims about public health and mitigating the conflict with individual liberties.

Gostin, L.O. (2002). The Model State Emergency Health Powers Act: planning for and response to bioterrorism and naturally occurring infectious diseases. *Journal of the American Medical Association*, 288(5), 622-8.

This article reviews the origins and provisions of the draft model state emergency health powers act prepared in December 2001 by the Center for Law and the Public's Health.

Mariner, W.K., Annas, G.J., & Glantz, L.H. (2005). *Jacobson v Massachusetts*: It's not your great-great-grandfather's public health law. *American Journal of Public Health*, 95(4), 581-590.

A pointed summary of the *Jacobson* case, its historical context and the meaning of the decision as well as a thorough discussion of the evolution of the individual liberty and public health issues over the last century up to present-day issues such as SARS, bioterrorist attacks, HIV and wartime detainment.

Mensah, G.A., Goodman, R.A., Zaza, S., Moulton, A.D., Kocher, P.L., Dietz, W.H., Pechacek, T.F., & Marks, J.S. (2004). Law as a tool for preventing chronic diseases: Expanding the spectrum of effective public health strategies. *Preventing Chronic Disease – Public Health Research, Practice, and Policy*, 1(2), 1-6.

An overview of the role that law has played in public health interventions. Provides a conceptual legal framework and an account of varied legal tools, remedies, and mechanisms available to public health practitioners and policy makers for achieving public health goals. It also examines law as a tool for expanding strategies for preventing and controlling chronic diseases.

D. Michaels & C. Monforton, “Manufacturing Uncertainty: Contested Science and the Protection of the Public’s Health and Environment” 95 A. J. Pub. Health S39 (2005).

Argues how opponents to public health and safety regulations take advantage of legal procedures to “manufacture uncertainty” about the scientific bases of regulations. Argues for tighter evaluation of scientific evidence and discusses modern legal doctrines and their effect on effective public health regulation.

Morbidity & Mortality Weekly Report (1999). Ten Great Public Health Accomplishments ~ United States, 1900-1999. Volume 48, Number 12. Centers for Disease Control & Prevention.

A series of articles that present an overview of ten areas in which the health of Americans made especially significant gains in the 20th century and that review the population-based, preventative interventions that made them possible.

Moulton, A.D., Gottfried, R.N., Goodman, R.A., Murphy, A.M., & Rawson, R.D. (2003). What is public health legal preparedness? *Journal of Law, Medicine & Ethics*, 31(4), 1-12.

Outlines the essential role that law plays in public health and the importance of public health legal preparedness to ensure that the public health system is ready to deal with terrorism and other potentially catastrophic health effects. Defines basic concepts in public health and law, initiatives and a framework to improve public health preparedness, benchmarks and standards, and calls for action to strengthen public health legal preparedness.

Wendy E. Parmet, “Liberalism, Communitarianism, and Public Health: Comments on Lawrence O. Gostin’s Lecture,” 55 Fla. L. Rev. 1221 (December 2003).

The author critiques Gostin’s approach, arguing for a more sophisticated political science in evaluating legal preparedness. The commentary also argues for more empirical analysis to determine the true nature of threats and for a more cautious approach to coercive measures that would harm populations.

Parmet, W.E., Goodman, R.A., & Farber, A. (2005). Individual rights versus the public’s health ~ 100 years after *Jacobson v. Massachusetts*. *New England Journal of Medicine*, 352(7), 652-654.

A succinct summary of the *Jacobson* case including key players, historical context, role of public health, role of law and the judiciary, and the context this decision has set for the continuing debate over the relationship between liberty and public health.

Wendy E. Parmet, “Informed Consent and Public Health: Are they Compatible When it Comes to Vaccines?”, 8 J. Health Care L. & Pol’y 71 (2005).

Provides an example of civil liberties working in cooperation with public health to achieve public health goals. Parmet argues that public health vaccination campaigns are not incompatible with doctrines of informed consent. In fact, respect for informed consent will promote public health goals.

Books

Margaret Berger, *The Supreme Court Trilogy on the Admissibility of Expert Testimony*, in Reference Manual on Scientific Evidence (2d ed., Federal Judicial Center, ed. 2000).

Provides a short summary of the trilogy of cases that govern the admissibility of expert testimony under the Federal Rules of Evidence. This is a good starting point for learning more about these cases and the law of evidence.

D. Coggon, Geoffrey Rose, DJP Barker, *Epidemiology for the Uninitiated* (4th ed. 1997).

A short handbook on epidemiology that is indispensable for those without training in public health. Provides a basic overview of the fundamental concepts of epidemiology and gives the tools necessary to read epidemiological reports and studies.

Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (2000).

This is a popular and widely read work on public health law. Provides a basic theoretical overview of the subject with detailed discussions of various public health programs and legal doctrines. This work is often a starting point for further study in public health law.

Frank P. Grad, *The Public Health Law Manual* (3d. ed. 2005).

Provides an “in the trenches” description of public health law. This manual is specifically geared to the public health officer and seeks to provide the basic legal tools he/she needs to work effectively. Provides less theoretical legal discussions and instead focuses on the explication of legal doctrine in public health.

Michael D. Green, D. Mical Freedman, & Leon Gordis, *Reference Guide on Epidemiology*, in Reference Manual on Scientific Evidence (2nd ed., Federal Judicial Center, ed. 2000).

This guide was written specifically for lawyers and seeks to explain the basic concepts behind epidemiology in terms most relevant for lawyers. It thus focuses on error in epidemiological studies and an analysis of causation in epidemiology as compared to legal causation.

Health and Human Rights (Jonathan Mann, Sofia Gruskin, Michael Grodin, George Annas, eds. Routledge 1999).

This book explores the relationship between health and human rights. It examines the importance of human rights to human health and explores the relationships between the two.

Institute of Medicine. *The Future of the Public's Health*. Washington, DC: The National Academies Press; 2003.

A comprehensive assessment of the U.S. public health system and set of recommendations to strengthen it, including reconsideration of its legal bases.

Law in Public Health Practice (Richard A. Goodman, Mark A. Rothstein, et al. eds. 2003).

This is also a popular work on public health law. An anthology composed of chapters written by leading legal scholars, public health practitioners, and attorneys and it discusses the field of public health law in detail and is specifically focused on the legal basis for public health practice. This work is also a starting point for further study in public health law.

Public Health Law and Ethics (L. Gostin ed. 2002).

This anthology provides a general overview of many of the ethical issues that often arise in public health practice and in law. A good source of some of the “difficult cases” in public health law and an exploration of their possible resolution.

Theodore H. Tulchinsky & Elena A. Varavikova, *The New Public Health* (2000).

This is an excellent introductory textbook on public health. It is especially suited for lawyers and other professionals not trained in public health. It provides general, yet detailed, discussions of the history and practice of public health.