

Should Parental Rights be the Final Judgment for Their Child's Medical Needs?

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ABSTRACT

Should a parent have the decision over their child's life, which is in dire medical need? Many would accept a parent's right over their child's autonomy in such circumstances, believing that they would only do what is best for their child. However, if one sees what some parents believe is truly best for their child it should give pause to such general approval. There are millions of children are denied immunizations against easily preventable virus due to their parent's misinformed fear that their child will become autistic. While this connection is unfounded, it is a fact that children suffer needless pain and even death because their parents believe they are doing what is best for their child. Millions more are denied proper medical treatment for similar reasons. Parents opt for alternative treatments such as praying, using herbs and other supplements, homeopathy, and a whole host of other failed methods to treat not only themselves but their children as well. The problem is that someone needs to speak for these children, those whose autonomy is not yet realized. Should parents continue to have authority over their children in regards to medical treats, which has allowed many children to suffer and die needlessly or should that power be given to doctors? I argue that the doctors should be given complete control in such situations. Parents should be required by law to vaccinate their children (with the only exception being a medical reason) and to seek proper medical treatment when their child is in need. The failure of the parent to comply should be punishable, as it is negligence. If parents truly wish to help their children yet still hold unto their unfounded beliefs then they must be forced by law to take the proper course of action, the action that is most effective and could potentially alleviate their child's suffering and prevent their death, that being medical treatment.

KEYWORDS

Autism, Alternative Medicine, Autonomy, Children, Medicine, Measles, Parents, Rights, Treatments, Vaccines

Should parents be legally permitted to deny medical treatment or vaccinations for their children because of their beliefs (religious and/or philosophical)? Some parents wish to opt for different “medical treatment” such as Alternative or New Age medicine or even simply pray for a cure without seeking other treatments. The controversy is no longer whether the science validates medicine and vaccines, but rather, how we should handle the parents who believe that they have the right to deny their children life-saving medical treatment in favor of whatever unsupported “medicine” or “treatment” they prefer. I argue that the parent does not have the right to deny their child medical treatment for religious or philosophical beliefs, including their beliefs in the power of prayer or Alternative/New Age medicine.

First, I must define medicine and alternative medicine. Medicine is based on the scientific method and is accepted by the medical community based on whether it is proven to be effective. It has developed and improved generation after generation allowing for new and better forms of treatment to be included once they pass trials and testing, and once again, get accepted by the medical community.

Alternative and New Age “medicine” are treatments that claim to solve the same problems that medicine solves but without the scientific method or results being applied. In other words, these methods are not tested nor do those who espouse them recant the recommendations of their use once they are proven faulty. In actuality, it seems that those individuals support the faulty methods even more strongly and make up or distort facts to support their claims, which are then propagated by their misinformed followers.

These individuals reject real-science-based medical treatments in favor of Alternative treatments such as homeopathy, acupuncture, vitalism, chiropractic, hydrotherapy, magnetic theory, use of herbs and vitamins, praying, and many other similar “treatments.” I will not discuss all of these, rather; I will address why these treatments in general (as in Alternative treatments) are not to be preferred over science-based medicine when it comes to a child.

The parents’ right over their child’s health and even life should be denied when their beliefs are actually going to harm the child, not help them. I will present arguments from both sides regarding whether a parent has such rights or if the doctor’s judgment is to be preferred in cases mainly dealing with vaccinations. I will also address a couple cases dealing with some of the other alternative treatments.

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Those who oppose vaccinations in favor of a wide assortment of other treatments, such as a diet that relies heavily on various herbs and vitamins to prevent illness or prayer claim that the government cannot force parents to give their own children vaccinations as it is a violation of the First Amendment. The First Amendment prohibits the making of any law respecting an establishment of religion or impeding the free exercise thereof. Therefore, if vaccinations are against an individual's religion then it is unconstitutional to force them to get vaccinations for their child.

Following that argument's focus on religion is another religious argument against medical treatment in general: medical treatment violates god's plan. A non-religious based objection specifically to vaccinations is that they cause serious reactions like autism or even death. Many will often object to the "chemicals" used to make up vaccines and other medicine as being the problem here. For example, mercury was in vaccines for a time and mercury stunts brain growth, therefore it would follow that mercury in the vaccines cause autism.

The First Amendment argument has a few problems; the children of a religious parent do not know their own views on religion. Further, most religious texts do not even mention medical treatments. There were Supreme Court cases that allowed for limitations on citizens' First Amendment rights regarding vaccines being preferred over someone's beliefs. Finally, the First Amendment allows for religious freedom without choosing a particular religion but it does not say anything about scientific knowledge, so science can be proffered over religion.

The First Amendment guarantees that American citizens have the right to the free exercise of religion and that the government cannot establish a government-religion. The problem with this half of the argument is that the government can reject certain religious beliefs and customs for many different reasons, especially if someone else could be or is harmed in the process. For example, Mormons are not permitted to practice their religious belief of polygamy. Jews, Christians, and Muslims all have sacrifices as part of their belief system but none are legally allowed to sacrifice neither humans nor animals. Nor are the above three religious groups permitted to stone women to death for not being a virgin on her wedding night even though the Old Testament commands it by law (Deuteronomy 22:20-21) as does the Qur'an. Following from this, it is easy to see that just because something is a belief or is a *perceived* right that someone has, does not mean the government has to accept anyone harming others based on one's religion.

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Furthermore, there are limitations to the First Amendment supported by the Supreme Court. One is the case of *Schenck vs. U.S.* (1919), that limits which forms of free speech are constitutional. The case stated that individuals are not free to say anything that falsely causes alarm or hysteria, like yelling, "Fire" in a crowded theatre. Supreme Court Justice Oliver Wendell Holmes stated that limits to free speech were permissible in cases where there would be a "clear and present danger" in allowing that speech to be spoken.

A Supreme Court case that directly dealt with the government being able to force individuals to get vaccinated was a 1905 case called *Jacobson vs. Massachusetts*. Henning Jacobson did not wish to be vaccinated against small pox as he viewed it as a violation of his "inherent right" to "care for his own body and health in such way as seems to him best," citing the Fourteenth Amendment. The Supreme Court ruled that government could place burdens and restraints on individuals for the good of the public's welfare including compulsory vaccinations. Justice John M. Harlan accepted that there would be individuals that would be medically unable to get vaccinations and that it would be inhumane to force those particular individuals and therefore would be an outreach of government powers. This created an exemption for adults with legitimate medical reasons. However, Jacobson did not qualify for this exemption. Further, if Jacobson (or any individual for that matter) wishes to have the benefits of living in a society such as the U.S., which has taken the step to ensure not only the safety of themselves but also those around them, then it would be unfair to have such an individual enjoying the benefits of herd immunity without participating himself. The case was upheld in the 1922 case: *Zucht v. King*, which allowed schools to refuse admission to students who were unvaccinated.

The argument that it is "against god's will" is an arrogant statement as one could not possibly know the will of such a being; therefore one could not know if medical treatment is actually against "god's will." Further, to say that a holy book is against something that did not exist until thousands of years after that particular book was written is ludicrous; no book could speak out against something it has no concept of. A religious person could even argue for medical use by arguing that it was god's will being manifested through humans. Moreover, scientific medicine is proven to work, while there is no evidence of such claims from religious texts. Oftentimes they are absolutely wrong in regards of scientific issues. Examples range from biology (*Genesis* 1:11-13; 1:14 and 1:19), astronomy (*Genesis* 1:1-17),

geology, and medicine (Mark 7:1-23; 7:32-35; 8:22-23). Knowing how wrong holy books are why should we take anything they say on matters of science? They are wrong on these matters and therefore should be ignored in these matters.

Finally, the argument that medical treatment, especially vaccinations, causes life-threatening and serious reactions as well as autism is also not a strong argument. I will address the autism portion of the argument first and end by showing that medical treatments far outweigh the risk of not doing anything to treat whatever problem one might have or could have. The claim that vaccines cause autism is unfounded. Research has been thoroughly conducted on the argument and no evidence has arisen to support it. The belief that vaccines cause autism came from pediatrician Andrew Wakefield and several others, who published in *The Lancet* (Wakefield, 1998) a report that the Measles, Mumps, and Rubella (MMR) vaccine containing the measles virus may have caused inflammation that could have led to problems with brain development. However, Wakefield had a conflict of interest as he was marketing for a rival vaccine. The Lancet had later retracted the report for falsifying data through “misrepresented or altered medical histories of all 12 of the patients.” (Cohen & Falco 2011). It is clear that vaccines are not the problem here; it was simply one man trying to discredit his rivals.

Another argument against vaccines is that there was thiomersal in vaccines, which is a mercury compound and was used as a preservative. Thiomersal was used in vaccines from the 1930s until 2001. It was then removed from vaccines to alleviate the fears of those who believed it caused autism. In 2003, the Center for Disease Control and National Institutes of Health reviewed the research on thiomersal and autism and concluded that there was no evidence to support the claim that thiomersal caused autism (“Physicians, patients, and others: Autonomy, truth telling, and confidentiality” 2014).

Further, it has been argued that there has been an increase in autism since vaccinations have been implemented. There has indeed been an increase in *reports* of autism; however, vaccinations are not the reasons for the increase. There are several reasons for the increase of reports that show vaccines are not the cause, reasons include: what is considered to be autism has broadened drastically and over the diagnosis of autism. Along with this, there is evidence that supports that autism is simply genetic.

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Autism is a term of a wide range of syndromes that incorporate several syndromes such as Asperger Syndrome, pervasive developmental disorder-not otherwise specified (PDD-NOS), as well as autistic disorder. With wider ranges in what is considered to be autism and what is considered when diagnosing someone as autistic has certainly caused the increase in *reported* cases of autism. Moreover, physicians are now over-diagnosing autism, as they are looking for early signs. Many children are being labeled as autistic, yet they are not actually autistic. They over-diagnose autism with "early warning signs" yet autistic children can be developing normally before they actually show any signs of autism around the age of three, ("Physicians, patients, and others: Autonomy, truth telling, and confidentiality" 2014) such as losing the ability to communicate through speech.

The evidence that supports a genetic cause of autism is very strong compared to the belief in vaccination-caused autism. Consider the genetics of autism. What are the chances that a family with an autistic child having another autistic child? If that child were a male, then he would be four times more likely than a female to be autistic. If it were caused by vaccinations, then it would be roughly 50/50. Further, as the one child already has autism it makes the other child 25% more likely to be autistic. If they are identical twins in which one is autistic, the other is 60-90% more likely to be autistic as well. In cases of fraternal twins, again where one has autism, the other is 24% likely to be autistic. This is the case regardless of whether either child receives a vaccination. The very fact that there are autistic children who never received a vaccination shot should be sufficient evidence against the claim that vaccinations cause autism. To reiterate the point further, there is a reason for autism, that being genetics; and reasons for the increase of reported cases: over diagnosis and a broadened-redefinition of what autism is; however, vaccinations are not the cause.

Vaccinations as well as other forms of medicine are to be preferred over any alternative because they work. The success rate of these methods is significant whereas alternatives have nothing to show for their "success." Real medicine based on science has cured polio, small pox, measles, whooping cough, and many others along with being able to treat other medical problems such as various forms of cancers. Medicine can do this and has done it; alternative medicines cannot and will not be able to do anything like this. One may take all the herbs they want or pray until they can pray no more, but they will never accomplish anything similar to what scientific based medicine has. It should be noted that

medicine has not cured everything but thus far it is the best (and should be the only) option as “Few things in medicine work 100% of the time, but vaccines are one of the most effective weapons we have against disease—they work in 85% to 99% of cases. They greatly reduce your child’s risk of serious illness (particularly when more and more people use them) and give diseases fewer chances to take hold in a population” (Ben-Joseph, MD 2012).

“Herd Immunity” is created when the vast majority of people get vaccinated so that they cannot contract an illness/disease which in turn lowers the risk of someone who cannot get the vaccine from acquiring the disease. This unfortunately breaks down if there are too many who depend on herd immunity. It works, though, because the more people who cannot contract the disease, the less likely it is that the individuals who are not vaccinated will come into contact with someone who has a preventable disease that they can in turn contract. Therefore, if anyone is allowed to reject receiving vaccines for any reason, mainly religious or philosophical, instead of just for medical treatments, then the risk of coming into contact with individuals with these preventable diseases is greatly increased. The risk of succumbing to the virus is increased significantly if a random individual chooses to not have their children receive vaccinations and live in a community where others also do not receive them. It becomes a huge problem when people are involved in such communities, like a church or private school.

Consider the case of the measles outbreak in Texas in 2013. In Texas, children are to be vaccinated before they attend school; however, homeschooling does not have this requirement, which allowed the Eagle Mountains Church’s Pastor Terri Pearsons to tell the members of her church not to vaccinate their young children because she believed it would cause autism. Measles were once responsible for over 400 deaths in America each year from 1958-1962 (Andrews et al.).

Measles in recent times have been considered eradicated in the Western Hemisphere but they have resurged in the past few years. The Center for Disease Control and Prevention (CDC) says there are an estimated 20 million cases and 164,000 deaths each year worldwide (“Overview of Measles Disease” September 12, 2013).

In 2013, there were at least 135 reported cases of measles in the U.S., most of which were from the Eagle Mountain Church. What had caused the resurgence of measles was the breakdown of herd immunity within the tight-knit community. The individuals who attended Pastor Pearson’s services had listened to her unfounded

beliefs of autism and forgone vaccinations for their children. This church is a “mega church”, so it can draw in a rather large crowd. A woman visited the mega church after she had recently traveled to the United Kingdom and contracted measles; the result was the spread of measles to a large number of church members who remained unvaccinated due to the lack of strong herd immunity. Many individuals ranging from four months to 44 years now have measles at this church. This could have a snowball effect on the measles outbreak because when those who are not vaccinated interact with those who are infected, there is a high possibility of contracting the diseases. A recent example of the spread of Measles has been reported in Manhattan and the Bronx, New York (Schmitt 2014) and (“Measles Outbreak in NYC Grows by 3 Cases to 19 Total” 2014). Ninety percent (Szabo, 2013) of the people who are unimmunized who is exposed to the Measles virus will become infected.

A further objection made against my argument is that the parent is only doing what they believe is best for their child and that the First Amendment supports their decision. While I would agree that the parent truly *believes* that they are doing what is best for the child, the fact remains they are not *actually* helping their child at all. The objection dealing with the belief that they are just doing what is right for their children is wrong because it does not matter what someone believes to be true, reality is what is true. The parents may truly believe they are doing what is right, but the reality is that it is harmful and can result in the child being in tremendous pain and it can even cause their death. This is even more terrible when one realizes that the pain did not have to be so severe or even exist, and death could have been easily avoided if only the parents had been willing to do what was truly right for the child by doing what has been proven the most effective form of prevention and treatment.

Consider the example of Jessica Crank a 15 year-old with a rare form of cancer. Jessica died when her mother Jacqueline refused to take her to the emergency room. Jacqueline took the advise of a religious leader, Ariel Ben Sherman instead of doctors. Sherman’s advice was for Jacqueline to simply pray for her daughter’s cancer to go away. Jacqueline’s attorney, Gregory P. Isaacs said, “Jacqueline Crank is a loving mother, and her exercising of her religious freedom is recognized under Tennessee law.” Further, Isaacs said, “This isn’t the time for lawyers and prosecutors. It’s time for prayer and grieving.” If the counter argument presented is valid, then it was permissible for this mother to allow her child to die painfully,

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because it coincides with her religious views and what she thinks was “best for her child.” I would expect almost everyone would be horrified if this were allowed or even considered to be “helping” the child. This example shows how a parent who truly believes they are helping their child with an unrestricted First Amendment right is not something that is legitimately moral; it is morally reprehensible and irresponsible to allow this.

The doctors who follow contemporary medical science have the right to decide the treatment for the child, not the parent or guardian. Of course, these can be case by case at the doctor’s discretion as there are individuals who have legitimate medical reasons why they may not be able to have certain treatments like vaccinations or chemotherapy. A problem does surface when a doctor is given the control over saving a child’s life by making a decision: what if the doctor makes the wrong decision, should they be held accountable? The problem with this objection is that it assumes that only one doctor will be involved in the case and that they may not be an expert in a certain area of their medical field pertaining to the case of a particular child. If a child is having problems with a tumor in their brain the doctor that this child would see would not be a doctor that deals with regular check ups, there would be several doctors involved to make decisions, including a neurologist, an oncologist, a radiation oncologist, a neuro-oncologist, a team of surgeons, and rehabilitation specialists. A whole team of specialists would be used to ensure that the child receives the best possible chance of survival. Serious cases would be handled delicately. Further, there is always the chance of failure and of success, which the doctors would inform those involved. There is obviously always a chance that that someone might not survive an ailment. But at least there would be some sort of attempt being made that could help save their life; certainly better chances than doing nothing or doing crystal healing or praying for a cure. Regardless of the chances against someone with a brain tumor, surviving surgery and undergoing successful rehabilitation far outweighs doing something that will certainly result in the child’s death such as idly standing by praying that the tumor disappears.

The parents should not be able to use their personal beliefs whether it is religious, philosophical, or just the desire to keep “chemicals” out of their child. The best and only sensible treatment is one based on hard empirical science that is proven to work in the vast majority of cases. Parents who fail to comply should be punished for negligence, as there is no reason for a child to suffer or even die

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from something that is easily preventable and treatable. The fact of the matter is that the larger the number of parents who refuse to vaccinate their children, the larger the toll of suffering, misery, and death that will occur.

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