



Written by [Steve Byas](#) on May 19, 2020

Dershowitz: State Governments Can Force You To Be Vaccinated

Appearing on the webcast *Crowdsource the Truth*, posted to YouTube on Sunday (video below), highly regarded Harvard Law School Professor Emeritus Alan Dershowitz insisted that state governments in the United States have the constitutional authority to force citizens to be vaccinated.



While many constitutionalists have respected Dershowitz's dedication to civil liberties and following the Constitution in the past — despite being a proud self-proclaimed liberal Democrat — his latest remarks are sure to provoke intense opposition and debate.

“Let me put it very clearly,” Dershowitz told *Crowdsource the Truth* host Jason Goodman, “you have no constitutional right to endanger the public and spread the disease, even if you disagree. You have no right not to be vaccinated, we have to be vaccinated.”

In the video, Goodman appears stunned, and interrupted, asking Dershowitz if he had heard him correctly, and that he was saying that if the government decides “you have to be vaccinated, we have to be vaccinated.”

Dershowitz left no doubt that was exactly what he was asserting: “Absolutely. And if you refuse to be vaccinated, the state has the power to literally take you to a doctor's office and plunge a needle into you arm.” The only alternative, Dershowitz said, was if a person chose to remain in his or her home, without contact with others, until the government decided the threat was over.

“Where is that in the Constitution?” Goodman asked.

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Dershowitz did not immediately answer, but added that a person can refuse treatment if the disease is not contagious.

“But you have no right to refuse to be vaccinated against a contagious disease. Public health, the police power of the Constitution gives the state the power to compel that. And there are cases in the United States Supreme Court,” Dershowitz explained.

Dershowitz said that while the U.S. Constitution does not delegate such a power to the *federal* government, *state* governments retain expansive “police powers” under the 10th Amendment. The 10th Amendment reads, “The powers not delegated by the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.”

As such, police powers — meaning the powers of government, not just law-enforcement officers — whatever they are, are left in the hands of the states. James Madison said, “The powers delegated by



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the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

Dershowitz added that any such forced vaccination would have to be the result of a law passed by the state’s legislative body, and not simply left up to the state’s governor to decide. (In some states, governors have declared that they can, in effect, make law through the use of executive orders). He said that there have been multiple court cases upholding states enacting laws to stop the spread of communicable disease, citing tuberculosis as an example.

The Supreme Court’s decision in 1905, *Jacobson v. Massachusetts*, concluded that a state may require vaccination if the board of health deems it necessary for public health, Dershowitz argued. In that decision, the court found that the regulations in Massachusetts did not violate the 14th Amendment’s protections of liberty, and that if an individual is allowed to act without regard to the welfare of others, true liberty does not exist.

He said that this is the nature of a “democracy,” asserting that if the people decide that forced vaccination is necessary to protect public health, then that is sufficient — at least at the state level.

While it is true that the U.S. Constitution left most issues to the states, that does not mean that Madison and the other Founders expected the states to ignore the very liberties they had fought the British Empire to keep. After all, the states then and now include in their own state constitutions bills of rights (sometimes called declarations of rights), guaranteeing that the state government would respect the individual rights of its own citizens. These listings of rights in the state constitutions of the original 13 states preceded the adoption of the federal Bill of Rights.

In Wisconsin, the state enacted an order for citizens to stay home, but this would appear to be a direct violation of Article I, Section 4 of the state constitution, which guarantees the right of the people peaceably to assemble.

Dershowitz asserted that, in a democracy, the majority can dictate to the minority, but he has not held to that assertion in multiple other cases. Madison certainly did not. Writing in *The Federalist*, No. 48, Madison compared democracies, in which majorities are unrestrained, and the representative republic, which he contended the Constitution of the United States was establishing. “In a democracy,” Madison explained, “tyranny” will inevitably be imposed “on some favorable emergency.”

Liberties do not come from the benevolence of government, even those found protected in constitutions. As Judge Andrew Napolitano explained in his book *Constitutional Chaos*, “Natural law theory teaches that the law extends from human nature, which is created by God. Thus, the Natural Law theory states that because all human beings desire freedom from artificial restraint and because all human beings yearn to be free, our freedoms stem from nature — from our very humanity — and ultimately from God.”

The Founders, such as Thomas Jefferson and Alexander Hamilton, differed on many things, but they all agreed that our rights come from God, not from government. John Adams essentially wrote the Massachusetts state constitution, in which he asserted that the very purpose of government is to protect the “natural rights” of its citizens.

Arguing that the state can forcibly jam a needle into a person’s arm seems to be ignoring that person’s natural rights. Whether one thinks vaccinations are a good thing generally, or only good in specific instances, is beside the point. The decision to be vaccinated should be left up to each individual.

There are also practical reasons to let each person decide whether or not to be vaccinated. Once it



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becomes simply a decision of the state, all sorts of abuses can follow. Not only do individuals disagree on the efficacy and safety of a particular vaccine, so do health professionals. Vaccines can do much good, but they can also cause great harm. Whether the good outweighs the harm has to, ultimately, be left up to the individual to decide.

I remember talking to a man in 1992 who had been vaccinated for the swine flu of 1976. One might recall that, after a soldier died of swine flu, President Gerald Ford pushed for a national effort to vaccinate the entire population. As it turns out, the virus killed a miniscule number of individuals, but the vaccine proved deadly to others. The man I talked to told of his experience in which he almost died from the vaccine, not the flu. (I did not get the vaccine, thinking that it was being rushed into use far too quickly).

Political leaders make decisions based, at least partly, on political considerations. Ford was facing a tough reelection campaign, in which he narrowly lost to Jimmy Carter. There is little doubt that Ford was motivated, at least in part, by things other than public health.

Vaccines have often done good, such as the polio or smallpox vaccines. If it is clear that the dangers of the disease outweigh the dangers of the vaccine, individuals will not have to be dragged to some medical facility and have their arm penetrated by a needle filled with vaccine. And, if the vaccine is so effective, then those who choose to take it do not have to worry about those who have not taken it.

Certainly, the Founders envisioned the states having more impact on the daily lives of citizens than the federal government. But one obligation of the federal government to the states, found in the federal Constitution, is to guarantee a republican form of government to the states. At some point, if a state becomes so oppressive that it has ceased to be a republican form of government, it has gone beyond the powers that any government should exercise.

Dragging someone to a doctor's office and ramming a needle into their arm, filled with vaccine that the person does not want, would seem to bursting beyond the boundaries of republican government.



Image: screenshot from [YouTube video](#)

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