

1) Wearing a seat belt or a face mask can help to save lives, so why do some people still refuse to put them on and even protest against laws requiring them?

“I just hate them,” says one woman when asked why she refused to put one on. “I think I hate them because you have to wear them, and I think it’s more of a ‘you’ve got to wear it’, so I don’t want it.”

“I think, whether you’re male or female, it’s a dominance thing,” replies the man next to her. “I’m in charge, you don’t tell me what to do.”

It’s the sort of reasoning you might expect from protestors who refuse to wear masks when out in public during the pandemic. Their objection is not just about comfort, or even scepticism that they can save lives. It’s also resentment about being told what to do by authorities. Except the interviewees above were not upset about laws that have made face masks mandatory in public spaces in many countries. Instead, they were talking about seat belts.

The interviewees were British drivers who admitted to not wearing their seat belts while in cars in 2008, despite it being a legal requirement in the UK to wear one in the front seat of a vehicle since 1983 and in the back seat since 1991.

The comparison between face mask and seat belt protests is a popular one. Celebrities have used it to point out that abstainers have always existed. The media has pointed to it in an attempt to explain the origin of protests against a measure that could help to control the spread of the pandemic. But the introduction of seat belt laws was far less straightforward than the requirement to wear face masks. It was messy, fraught and slow.

But there is a lot we can learn from the introduction of seat belt laws and other public health interventions. Why, for instance, does there seem to be differences between the adoption of the rules in different countries? And why are some people prepared to challenge a health measure that will surely save lives?

While the evidence that seat belts save lives is undeniable, there was a time when their introduction looked uncertain. Car manufacturers, insurance companies, law enforcement, politicians and drivers all had vested interests in seat belt laws.

For the car manufacturers, the issue was cost. At the time they were hopeful that seat belts would become mandatory because they were much cheaper to fit than airbags – the other technology for which lobbyists were campaigning. “[If seat belts became mandatory], proponents of the airbag, which inflates upon impact in a collision to protect riders, fear the device will never achieve widespread use,” wrote the New York Times on 28 Feb 1985.

A single airbag in the mid-80s cost up to \$800, compared to a few dollars for a seatbelt. Had the law required all cars to carry airbags, new car prices would have appreciated accordingly creating a mini-shock to the market.

Motorists were most interested in comfort. One survey found that 86% of Americans recognised that seatbelts saved lives, while only 41% of those people actually used them (other surveys suggested the number was even lower in other countries). Meanwhile as many as 65% of Americans were against seatbelts being made mandatory for reasons of comfort.[...]

Yet the protests against seat belt laws did not mean that Americans as a whole ignored them, even if they did object to them on principle. Data collected by federal officials in New York suggested that 70% of front-seat motorists were adhering to the law two months later. In the UK, about 90% of front-seat motorists were observed to be following the law after a similar amount of time.[...]

It is clear that the level of protesting and the number of legal challenges did not necessarily equate to adoption of the new law or regulation. Something else was going on.

The general practice for drivers and passengers in Yugoslavia, according to studies at the time, was to drape their belts over their shoulders without clicking them in place. While it meant they often avoided a fine, they were not wearing the belt for its intended purpose. If there was no intention on the part of the drivers to wear the belt properly then why go to court? And there was no restriction on their personal liberties if the belt could be worn incorrectly.

This is perhaps the most useful lesson from comparing seat belt laws and face mask adoption: the amount of protesting is immaterial and is probably influenced by how much people in a country respect authority and the legal process. What matters more is whether people follow the guidance and how effectively they do so.

Many people do follow face mask guidelines, it seems. In the US, about 77% of people wear them, with slightly more in France and slightly fewer in Germany (the UK lagged behind these countries for a long time, before catching up at the end of July and now 74% of Brits wear masks in public).

However, not everyone wears them correctly. One observational study of 12,000 people in the region of Sao Paulo, Brazil, found that about 30% of people were wearing masks incorrectly either exposing their nose or mouth and nose, although the paper is still to be published in an academic journal.

Public health interventions, like the introduction of face masks, take time. The messaging and the legal framework that allows the laws to be enforced has to be right. But time will force people to conform. Despite the protests of a vocal minority, attitudes to face masks are changing as evidence shows that the interventions will make a difference and with time adoption will continue to increase, just as happened with seat belts.

BBC May 28 2020

2) The continuing tensions between individual rights and public health.

Although efforts to justify the regulation of behaviour in non-paternalistic terms might be effective in the short term, they are almost always transparent subterfuges. It would be more honest—and in the long term more protective of public health—to acknowledge that intervention is sometimes necessary to protect individuals from their own foolish or dangerous behaviour because such efforts can have a broad and enormous impact at a population level. An explicit acknowledgement would also help to understand the trade-offs involved. Ironically, the use of the social impact argument can, in the end, be more subversive of rights than the explicit embrace of paternalism. After all, everything can be shown to have a social impact.

The failure to make a strong case for paternalistic restrictions with regard to motorcycle helmets set the stage for repeals of compulsory helmet laws for adults; now, only half the states have such statutes. The consequences were predictable: in 2004, approximately 4,000 cyclists died, the seventh year to show an increase in fatalities. The triumph of individual rights has transformed a public health success story into a public health defeat. Recognizing the right to ride a motorcycle without a helmet might be a right we want to protect—but there should be no confusion about the price we pay.

The case of tobacco control gives more reason for optimism (Feldman & Bayer, 2004), but here too, recent history underscores that achievements in public health often carry a price in individual freedom. It would be convenient to think about tobacco as similar to other environmental toxins, which we simply ban when we find that they cause morbidity and mortality; however, tobacco is different. Millions consume it because of addiction, habit, desire or social convention. It is therefore impossible to consider public policy without addressing the extent to which the state might exert pressure and impose limits in the name of health. The answer to this question will determine whether we will be able to save the lives of smokers both now and in the future.

It is striking that in most economically advanced democracies, the first decades of tobacco control were marked by a distinct reluctance to embrace measures that bore the taint of paternalism—especially in the USA. Pressure from the tobacco industry and its allies partly accounted for this phenomenon, but they do not provide a sufficient explanation. Here, as in the case of motorcycle helmets, there was considerable uncertainty about how far the state could go. As a consequence, much of public health policy focused on children and innocent bystanders.

When limits were proposed on tobacco advertising—a unique problem in the USA, where the Supreme Court has extended the protections of the First Amendment to commercial speech—they were commonly justified by the need to protect children from the seductions of tobacco. When arguments were made for radically increasing taxes on cigarettes, thus burdening consumption—especially for those with less disposable income—it was asserted that such levies were vital because of the social costs created by tobacco-associated morbidity and mortality. Finally, when increasingly restrictive measures were imposed on smoking in public settings, the central justification was that passive smoking was pathogenic and responsible for deaths associated with cancer and heart disease. It was almost never asserted that limits on advertising, increases in taxes and restrictions on public smoking were necessary to protect those who might begin to smoke or those who were smokers.

EMBO.org Report December, 2007

3) Face mask rules: do they really violate personal liberty?

Several hundred people assembled in London's Hyde Park in July 2020 to protest rules making face masks mandatory in shops and supermarkets to help control the spread of COVID-19. This was not an isolated event. Similar protests have occurred in many places around the world in reaction to the prospect of "mask mandates" – especially in the United States.

These protesters are not without allies. “Anti-maskers” have elicited support from prominent figures on the political right in the UK and America: Peter Hitchens of the Daily Mail has called them “muzzles”; Michael Savage, a prominent talk radio host, called masks a “mark of submission”; to say nothing of President Donald Trump’s refusal to wear a face mask in public and his dismissal of them as “politically correct” (until his abysmal approval ratings compelled him to awkwardly soften his position).

Why do mask mandates elicit such anger?

Setting aside the conspiracy theories and disinformation that seem to pervade these protests, the participants are joined by a fierce attachment to individual liberty. They believe mask mandates sacrifice individual liberty to a collectivist notion a “greater good”.

It is easy to understand why: mask mandates use the coercive power of the state to require a person to do something that they would otherwise not choose to do. And it seems to follow that a person’s liberty is compromised by such interference.

The conception of “freedom as non-interference” that underpins the anti-mask movement has the virtue of simplicity. It allows us to apply an easy metric to test our freedom: if our choices are interfered with, then we are less free.

But if this is correct it is unclear why wearing a mask is so troubling given the widespread “interference” in our other choices. Surely, the requirement that you have to cover any part of your body is a far graver violation of individual liberty than being compelled to wear a small face covering during a pandemic? It may be that the anti-mask movement is the spear tip of a global militant nudism trend, but that doesn’t seem particularly plausible (or desirable) The problem is that the idea of liberty as non-interference often runs up against common sense. For example, most people do not feel savagely oppressed by having to drive on one side of the road, by bans on public nudity or by laws against murder. They interfere with our choices, but they don’t seem to make us less free. Maybe we need a different formulation of freedom.

You are free when you are protected not against simple interference, but against arbitrary interference.

As the philosopher Philip Pettit notes, this makes liberty a more complex idea, but one better suited to our social reality. It is more vulnerable because it only requires the potential for interference to be compromised, but it also makes it more robust because if the interference is not arbitrary then it is not a violation of liberty even if our actions are constrained.

This can be illustrated by contrasting the slave with the citizen. All the choices of a slave are predicated on their master’s permission. This is the case even if they have a kind or lazy owner who never actually interferes in their choices. The possibility of being “sold down the river” remains and being under such power is irreconcilable with freedom.

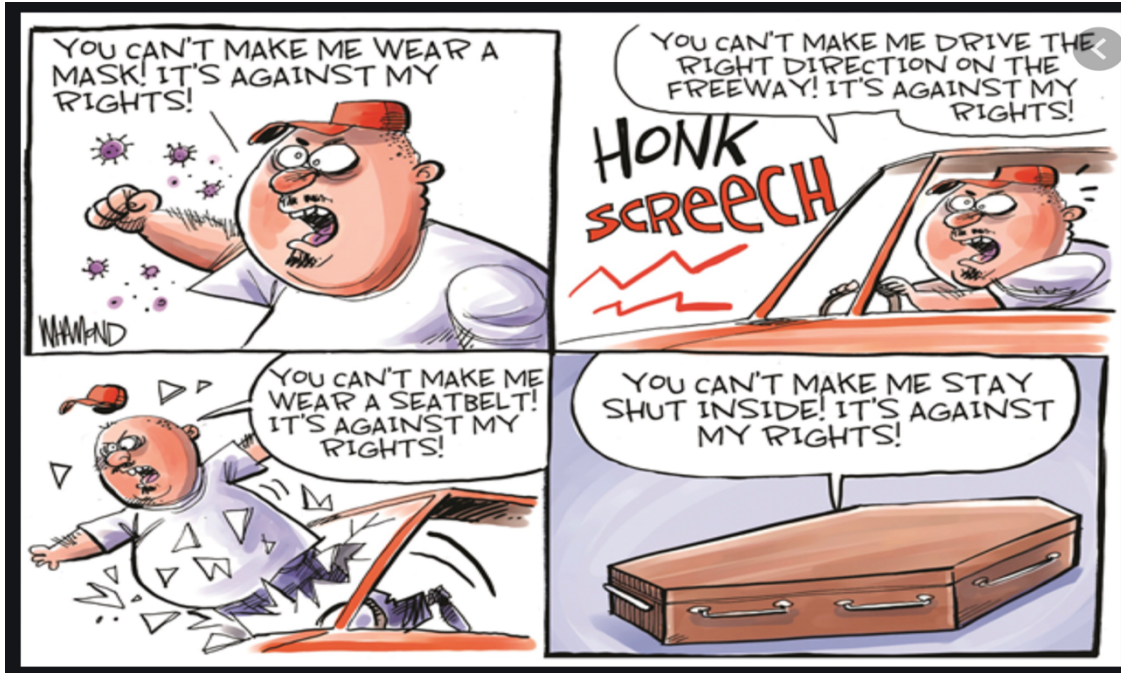
In contrast a citizen may be subject to significant interference from the state, but it does not diminish their liberty if the laws are not arbitrary. This is true if several conditions exist: the laws need to be publicly known so that you can ensure compliance; they need to be impartially enforced so that no one is above the law; they need to be contestable in courts of law and the public square; and they need to be subjected to invigilation by those they affect, usually through democratic accountability.

A slave has to live in a state of perpetual uncertainty, a citizen knows where they stand.

This account of freedom depends on the procedural mechanisms which prevent the power of the state being chained to the private will of a single person or group. If “mask mandates” meet these procedural requirements, then they cannot be said to violate the personal liberty of individuals even if they restrict what they can and cannot do. Let’s test whether mask mandates meet these requirements. The rules are publicly known and they seem to be being impartially enforced, though there is an open question about whether COVID-19 restrictions have been applied unfairly to people of colour. If these mandates violate a citizen’s rights, then they are free to bring a legal challenge and we know they can protest against them (so long as the protests comply with regulations). Finally, these rules are the product of democratically elected governments subject to judicial oversight and political opposition. They therefore cannot be called arbitrary.

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The Conversation 31 July 2020



5) The Coronavirus has put American on a collision course with the Constitution, *The Atlantic*, March 2020



Countries are taking extraordinary measures to slow the COVID-19 pandemic. Many of these measures limit individual freedom and may also violate rights guaranteed by national constitutions. [...] The United States now faces this same dilemma: To what extent should the Constitution be violated to fight the coronavirus? Lockdowns, especially ones that apply to people who haven't tested positive for the virus, are constitutionally questionable. The threat by the leaders of Newark, New Jersey, to prosecute residents who spread false information about the virus—if carried out—could violate the First Amendment. Some people in California have challenged the city of San Jose's authority to force a gun shop to close, citing their right to arm themselves. Perhaps most alarming, the U.S. Department of Justice "has quietly asked Congress for the ability to ask chief judges to detain people indefinitely without trial during emergencies."