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How Well Do Religious Exemptions Apply to Mandates for COVID-19 Vaccines?

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Abstract: In the United States, religious exemptions to health-driven mandates enjoy, and should enjoy, protected status in medical ethics and healthcare law. Religious exemptions are defined as seriously professed exceptions to state or federal laws, which appeal to Title VII of the Civil Rights Act of 1964, allowing workers to request an exception to a job requirement, including a health-protective mandate, if it "conflicts with their sincerely held religious beliefs, practices, or observances". In medical ethics, such religious exceptions are usually justified on the basis of the principle of autonomy, where personally held convictions, reflected in scripture or established religious norms, are safeguarded on the basis of the first amendment, thereby constituting an important area in which societal good must yield to individual liberty. Acknowledging the longstanding category of "religious exemptions", and referencing some examples that adhere to its parameters in good faith (e.g., objections made by some institutions to HPV vaccines), I argue that, to date, no coherent basis for religious exemptions to COVID-19 vaccines has been offered through appeal to the principle of autonomy, or, in a healthcare context, to "medical freedom". Indeed, proponents of characterizing these exemptions as legitimate misconstrue autonomy and abuse the reputation of the religious traditions they invoke in defense of their endeavors to opt out. The upshot is not only an error in interpreting the principle of autonomy, whereby it is issued a "blank check", but also a dishonesty in itself whereby a contested political position becomes deliberately disguised as a protected religious value. "Sincerely held beliefs", I conclude, appear no longer to constitute the standard for religious accommodation in the era of COVID-19. Individual declaration, seemingly free of any reasonable constraint, does. This is a shift that has serious consequences for public health and, more broadly, the public good.

Keywords: religious liberty; autonomy; "sincerely held beliefs"; vaccine mandates; religious exemptions; Title VII of the Civil Rights Act; COVID-19

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1. Introduction: A New Sort of Religious Exemption to a Well-Established Mandate

In the United States, religious exemptions to health-driven mandates in the workplace and, under exigent circumstances, even in the public square, enjoy, and should enjoy, protected status in medical ethics and healthcare law. Religious exemptions are defined as seriously professed exceptions to state or federal laws that appeal to Title VII of the Civil Rights Act of 1964, allowing workers to request an exemption to a job requirement, including a health-protective mandate, if it "conflicts with their sincerely held religious beliefs, practices, or observances" (US Department of Labor 2014). In the context of labor law, religious ethics, and medical ethics, religious exemptions are justified on the basis of the principle of *autonomy*, whereby one's personally held convictions, often reflected in the scriptures or established norms of the religious traditions of which they are a member, are safeguarded on the basis of the first amendment. The invocation of autonomy in this respect constitutes an important area in which the societal good must yield to individual liberty. According to the principle of autonomy, one should have the freedom to make

decisions about one's body for oneself, as a result of which one cannot be forced against one's will to undertake any proposed medical therapy (Beauchamp and Childress 2001, pp. 176–77). In its strongest versions, autonomy presupposes that patients should be free to override their caretakers when the latter paternalistically propose a course of action that, in good faith, is in the patient's medical interests. (Glover 1977, pp. 80–81; Buchanan and Brock 1990, pp. 38–39; Gillon 2003, p. 310).

Notably, what is *not* entailed in this understanding, neither here nor in any other standard definition of the term in medical or legal ethics, is that autonomy should be considered an absolute claim, not required to be in balance with the other principles with which it stands in tension. More important, while autonomy implies one's stewardship over one's body, it does not give license to put others in danger. While there is a burden on employers and public officials to *accommodate* individuals claiming exemptions reasonably, this does not imply unrestricted prerogative in the public square or the workplace. The critical question before us is what happens when a pandemic arrives and public health officials, with the state's backing, have determined that the safety of the population under their jurisdiction requires adherence to a health-mandated vaccination, which, given the stakes, cannot be worked around through a "reasonable accommodation"?

Until recently, the answer in our country has been that while one is not required to be forced to stick one's arm out to receive an injection—there is no *direct* bodily coercion—it is within the state's jurisdiction to decide to refuse entry of vaccine-refusers into shared spaces. Specifically, this precedent had been set in Jacobson v. Massachusetts, where the majority ruled: "The liberty secured by the constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is *necessarily* subject for the common good". (Jacobson v. Massachusetts 1905). Religious exemptions are real and must be respected, but not at the expense of the "life and liberty" of everyone who lives in society, not just privileged or exempted groups.

Acknowledging the longstanding category of "religious exemptions", and referencing a controversial example that does adhere to its parameters in good faith (namely, that of objections made by some institutions to HPV vaccines), I set out to argue that, to date, no coherent basis of religious exemptions to COVID-19 vaccines has been offered, particularly through appeal to the principle of autonomy, or, in a health care context, to "medical freedom". Indeed, proponents who characterize *these* exemptions as legitimate misconstrue autonomy and even abuse the reputation of the religious traditions they invoke in support of their endeavors to opt out. While in what follows I address recent developments in how "religious exemptions" are being interpreted in the workplace, as this is where labor law applies, the conclusions I draw about policy are applicable also to the public square, more broadly. In both settings, at work no less than in a grocery store or at a motor vehicles department, there is a group of people who constitute a captive audience insofar as they cannot perform functions necessary for basic daily living without convening in these shared spaces. This noted, the scope of this effort is neither to affirm nor to undo legal grounds for abstention. The law about what the state can do to impose vaccine mandates is changing so rapidly, in some instances being overturned at the appellate level only to be re-overturned by the Supreme Court, that at this time it is anyone's guess to say where things land (Council on Foreign Relations 2021). What I do hope to present, if not prescriptively then descriptively, is that the checks and balances customarily in effect when individuals object to public health mandates issued in response to exigent crises, alarmingly, appear to be no longer.

Traditionally, one would have had to justify a claim of a violation of individual rights within the context of a coherent belief system to which one had showed evidence of adhering over time. A sharp shift in the way in which "religious belief" itself is now understood, however, as a strictly *subjective* conviction, makes it an unchecked prerogative. This historical shift, in essence, awards a blank check to prospective believers claiming exemptions to not be compelled to justify their choice. One may simply assert that one's

personal interests trump the public good when the two come into conflict. In this manner, a believer exempting oneself from a health-protective vaccine mandate is afforded an opportunity to cloak ideological objections under the guise of religious rationale. The burden shifts to the state to demonstrate that *it* is not violating individual freedoms, thereby allowing for a strategic exploitation of religion that promotes political activism.

Thus, what I present here is neither a legal argument nor an argument about the threat we collectively face when we do not respond to a pandemic such as COVID-19 on a population level (which is an empirical argument), nor even an argument about the normative justification for collective action, e.g., that the threat entailed by the contagious and ubiquitous virus of SARS-CoV-2 is so compelling that individual beliefs ought not to take precedence over the public good, even if it is evident that that case can be made. Rather, it is an elucidation of what the consequences in fact are for a rampant subjectivism in the application of religious exemptions, particularly in the Abrahamic traditions, amidst a worldwide exigent health crisis. In such a state of affairs, not only does the traditional requirement of "sincerely held beliefs", a requirement for which there has been longstanding and historical respect, lose its power of distinction, but we inhabit a world in which public health—and the public good—is declared to be ancillary to political identity and self-interested action.

What are the options available to public health officials, and more broadly to policy makers, who want to promote safety and human flourishing, in a shifting legal landscape according to which personally held beliefs can likely no longer be checked by reasonable constraint? Is there a threshold beyond which claims of the sacrosanct nature of "bodily autonomy" lead to a harmful state of affairs from the perspective of shared health goals and policy initiatives? These questions become even more pointed in a legal and cultural environment in which religion and religious belief are increasingly fragmented, individualized, and divorced from traditional religious institutions and communities.[1] No doubt, there are ethical implications tied to these inquiries, particularly in light of the seeming tension this shift reveals between safety and individual expression in the public square. (What does an individual living through the pandemic owe to other individuals in the state? Conversely, what must the state tolerate for the sake of preserving individual liberty, a prized and precious good in our society?) However, the principal contribution of this article is descriptive. Specifically, it elucidates the consequences of modifying the longstanding framework for interpreting and adjudicating claims about individual belief in the public square, consequences for which, in the context of a pandemic, the stakes could not be higher.

2. Religious Belief as "Individually Authoritative"

In a seminal lecture clarifying the nature of mystical experiences, William James famously described the convictions about the believer's claim that such experiences were "true", as individually, but only individually, "authoritative" (James 1985, p. 422). In this judgment, James sought to convey both the power and fulfillment of a quintessential affirmation of faith while simultaneously recognizing that the content of such faith articles could not only vary, but possibly stand in contradiction from individual to individual. That is, James sought to preserve the believer's right to stand unflinchingly behind a worldview that furnished life with purpose and richness while recognizing as a matter of common sense and pragmatic justice that that believer was not alone in the world; should any belief result in action, it could affect more than that one believer. From this principle, James gave voice to a key principle of the First Amendment: Individuals ought to be free to explore and benefit from a religious expression that gives their lives meaning while not being issued carte blanche to prevent others from doing the same. This principle—or compromise—arguably became a tacit dictum for the setting of policy in instances in which individual liberties ran up against the public good. The former was given a proverbial vote, but not a veto, when the well-being and flourishing of many lives stood in the balance.

The implications of this compromise are critical for setting health policy. Until recently, for example, vaccines could be required by the state in exigent circumstances to protect the population at large. According to the American Bar Association, under the U.S. Constitution's 10th Amendment and nearly 200 years of Supreme Court decisions, state governments have had the primary authority to control the spread of dangerous diseases within their jurisdictions, allowing them to assume authority to take public health emergency actions, such as setting quarantines and business restrictions (American Bar Association 2022). This constraint historically has not pertained just to public health emergencies. In normal life, too, public health and safety historically have taken precedence over individual liberties in scenarios where the two conflict. In 1922, the Supreme Court held in Zucht v. King that making accessible public education conditional on standard vaccine compliance did not violate the Fourteenth Amendment (Shachar 2022). By 1980, all fifty states had laws requiring vaccines for children to attend public schools. Naturally, there are constraints on governmental authorities in a position to declare a state emergency. Under Section 319 of the Public Health Service Act of 1944, (Roosevelt 1944) establishing the government's quarantine jurisdiction, the Secretary of the Department of Health and Human Services was given the power to declare a public health emergency "after consulting with such public health officials as may be necessary", in the event that a disease, a separate public health disorder, or even a bioterrorist attack, presented an imminent health crisis (US Department of Health and Human Services 2019). To be sure, the burden of demonstrating an emergency was high, but that is the point. In the setting of policies that can entail emergency powers, until very recently, the thresholds have been transparently understood by all parties. Our nation's legal and medical history establish a public health precedent such that a balance is struck between individual liberties, to be held intact, all other things being equal, and the public good, which in an emergency can override the government's default "hands off" approach to the setting of health policy. Leaving aside the question of trusting the right authorities when empirical judgments must be made about assessing a public health emergency, when one is, in fact, declared, it is respected.

Public buy-in, in fact, heavily relies not only on public opinion but also on clerical figures who speak for their respective communities. When polled, representatives of a cross-section of the world faiths have tended to express no canonical disposition against vaccines and immunoglobulins, with the lone exception among major sects or denominations being Christian Science (Grabenstein 2013). This is not to say that sanction for vaccine hesitancy does not exist in some congregations of various denominations. Members from Pentecostal sects such as Endtime Ministries or groups such as Christ Church or General Assembly Church of the Firstborn believe in the primacy of prayer and that the human intervention in God's work is obstructive, from which it follows that the administering of a vaccine to prevent a health outbreak is for these believers at best futile, and more likely, seen as provocative. (Linnard-Palmer and Christiansen 2021). As many as 42 groups from the Christian tradition feature teachings that could be interpreted to support the refusal of medical treatment, including in the case of children (Linnard-Palmer and Christiansen 2021; Adams and Leverland 1986; Asser and Swan 1998). However, this attitude is not representative of mainstream Christianity, where a duty to preserve life can be inferred from Gospel sources. "Pro-life" usually means being anti-exemption. In deference to the First Amendment, and as an explicit specification of Title VII, religious exemptions have been available options in such historical moments as health-related public health mandates were deemed necessary. However, these have always been regarded as exceptions to a rule for which there was remarkable ground-level support among religious insiders, exceptions, by the reckoning of the clergy themselves, which are more likely to be abused than legitimately claimed (Reiss 2014). This is important to note, if only to demonstrate the establishment of presumed limits on individual claims that went against chosen representatives of a faith. That one's exemption is *defined* as an "exemption", as opposed to a subjective preference, maintains the historical balance between individual liberties and the public good on which American public health policy has been traditionally predicated.

This point is not just pragmatic from a public-policy-making standpoint, but also one about regard for religious traditions themselves. The compromise in play since 1905, as a result of the decision in Jacobson versus Massachusetts, had been that religious claims on the basis of which one sought to opt out of public policy could not be absolute; some emergencies afforded no exceptions. But another tacit constraint on claims of religious liberty was that they had to be pursued in good faith. Here, one might draw a contrast between reservations voiced by Catholics to their schools providing support for the administering of HPV vaccines (and to Catholic institutions in general providing resources for abortion or birth control), on the one hand, and clinicians seeking religious exemptions in health care settings to COVID-19 vaccines, on the other. In 2007, The Catholic Medical Association issued a position paper that, while acknowledging the safety and effectiveness of the HPV vaccine Gardasil, opposed any form of a mandate that girls be vaccinated against HPV. (Catholic Medical Association 2007). While the Catholic Medical Association found nothing in and of itself unethical about Gardasil, it did note that given "the importance of parental involvement for raising children, and particularly in forming their children in chastity, it would be counterproductive to override their ethical objections and negate their authority on this issue". Not denying that many Catholic women were bound to have pre-marital sex despite the teachings of their faith, the group found that condoning such a mandate, even for a worthy public health cause, was tantamount to inducing a subversion of one of the tradition's central pro-life tenets of discouraging pre-marital sex. To not stand against a regulation that would *impose* such a health-protective measure, the Catholic Medical Association found, would effectively be to ask faith-adherents to forego that which they saw to be a crux of their discipleship.

What is interesting about this response is that, whether or not one buys the argument on the basis of which the regulation is rejected, one has no problem seeing that the objection is issued in good faith: public health officials are being told the truth about the motivations for hesitancy among those who are being asked to sanction this preventive health measure. By contrast, there is mounting evidence during the pandemic that the opposite has taken place with regard to individuals seeking religious representatives to sign off on ad hoc requests for religious exemptions for vaccine mandates in healthcare settings, which are petitioned on the basis of no discernable or consistent grounds. As Michelle Mello notes, we are for the first time in our history seeing clergy not only not supporting COVID-19 mandates, but at odds with their flock:

> It's not that a person is failing to produce a letter from a clergy member saying, yes, I back them up on this claim. It's that clergy members have actively gone out in public and said: No, we don't bar COVID vaccination in our religion. Our religion either has nothing to say about this or we are going on record as saying in our church we want people to get COVID vaccines. It is acceptable. It's consistent with doctrine to get COVID vaccines. There is no bar here. And nevertheless, there is a person who identifies with that religious belief system who comes forward and says: Yes, but my interpretation of the Bible, of Catholic doctrine, is that I shouldn't get this vaccine. And it doesn't matter that the religious leader has said this. (Council on Foreign Relations)

Mello goes on to document the increased frequency of these contestations brought on behalf of individuals in the era of COVID-19, who, despite being at odds with official teaching on a narrow issue, are finding support among courts at all levels of appeal, up to the Supreme Court. (Council on Foreign Relations) According to Mello, the new precedent signals that something other than a "sincerely held" religious belief is being invoked, which "looks more ideological" than spiritual.

Mello's suggestion that the recent spate of religious objections to health-protective mandates in proposed legislation which are not on the basis of religious grounds is reminiscent of examples introduced by Dorit Rubenstein Reiss of individuals who strategically attended services held by denominations to which they did not belong in order to acquire sympathy they found lacking in their own congregations (Reiss 2014). The affiliations

were almost always temporary, and in some cases, the faith surfers admitted their deception. (Reiss). Without the presumed burden to share one's reasons for objecting to health protecting measures introduced by the state, the stable compromise to which Jacobson versus Massachusetts had led—while in dire health crises vaccination laws do not violate due process or the 14th amendment, requiring enforcing parties to shoulder the burden of finding a "reasonable accommodation" if they can—falls away, and with it, any deference to a "common good". The upshot is a violation of the implied constraint on the believer as identified by William James in his reference to the faith-leaper who has license to maintain a religious conviction unflinchingly, for belief is now not *only* individually authoritative but also impacting others in society. Indeed, the public health consequences of this shift are undeniable. Given the nature of how "herd immunity" works, where thresholds of protection via vaccine immunity need to be established across a population, any individual decision on whether to vaccinate impacts the health and safety of everyone. (Flescher and Kabat 2018; Yeh 2022).

3. The Public Health Consequences of Jettisoning "Sincerely Held Beliefs"

One of the key concepts on the basis of which exemptions had been evaluated was whether they were "sincerely held", a standard formally introduced in Title VII of the Civil Rights Act of 1964 (Civil Rights Act 1964). Under federal law, as supported by several Supreme Court cases in the twentieth century, such as United States v. Ballard (1944), United States v. Seeger (1965), and Wisconsin v. Yoder (1972), an individual religious exemption from vaccines was deemed legitimate when it rested on *sincere*, i.e., longstanding and committed, beliefs grounded in one's religion, even if the nature of such beliefs themselves were not fully understood by the individual claiming an exemption (Anders 2020). The effect of this stipulation was to tether one's ability to opt out of health protective public policy to affiliation with a recognizable religious tradition. In such an understanding, exemptions do not qualify as religious if they are merely *personally* held beliefs, including social, political, or economic philosophies, for according to the Equal Employments Opportunity Commission's interpretation of Title VII, religion is "comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching" (Africa v. Commonwealth of Pennsylvania 1981).

This is a standard upheld by ample juridical precedent. Burwell v. Hobby Lobby Stores, Inc. (Burwell v. Hobby Lobby Stores 2014) was a landmark decision where the Court acknowledged the claims of for-profit business owners to engage in discrimination on the basis of not violating their religious convictions. Justice Samuel Alito, writing for the majority, nevertheless concluded that the courts are quite capable of determining when insincere claims are put forward. Fraudulent or inappropriate attempts to skirt state regulation can be detected in instances in which an individual request is not consistent with demonstrated past action (Adams and Barmore 2014). While the impact of the majority's decision in this case was to strike down a requirement that the company's health insurance packages provide contraceptive options for their female employees, as had been directed by the enactment of the Affordable Health Care Act four years earlier and enforced by the US Department of Health and Human Services, the case did reinforce the importance in maintaining the distinction between sincerely and non-sincerely held beliefs. Not only could the two sorts of beliefs be meaningfully distinguished from one another, but there were also criteria for scrutinizing and evaluating a person's record:

> [C]ourts are best able to examine sincerity "where extrinsic evidence is evaluated" and objective factors dominate the analysis. First, courts look for any secular self-interest that might motivate an insincere claim. In [US v. Quaintance], for instance, the defendant's desire to avoid prison and continue selling drugs offered an obvious motive to fabricate religious belief. This factor is particularly probative where the purported religious belief arose only after the benefit of claiming such a belief became apparent. (Adams and Barmore)

While on the substantive issue Burwell v. Hobby Lobby Stores signaled a setback for governmental regulatory health initiatives, sincerity as a criterion itself became reinforced following the decision. As recently as 2014, self-interest, including acting on the basis of ideology, was re-determined to be insufficient grounds for rejecting health-protective policies. As Adams and Barmore concluded in their analysis of this case, while "the judiciary has no business evaluating the moral truth underlying religious claims", objective standards do and should continue to be applied by evaluating the "factual sincerity" of proposed exemptions based on demonstrated past behaviors of the claimant. This is far from an "anything goes" standard.

Nevertheless, although the vast majority of today's religious leaders do not object to medical vaccinations, questioning the legitimacy of "suddenly held" beliefs when they are claimed (Wojcik 2022), requests for such exemptions on the basis of religion are precipitously on the rise. This is the situation in which individuals, finding no authoritative sanction in their appeal to opt out, contend that their *interpretation* of doctrine instructs them not to get a mandated vaccine in the workplace for which it is appropriately designated. For the first time in recent history, breaking over a hundred years of court precedent, these individuals' arguments are in many instances (depending on the deciding court) allowed to sidestep the distinction between "sincerely held" and "suddenly held", finding merit because the courts, more politicized than during any time in recent American history, are split. Weighing in on this "constitutional moment" in American history, Michelle Mello explains: "The Second Court of Appeals, which is a fairly high-level court of appeals, just . . . joined at least one other district court, a lower-level federal court, in holding that a member of a religious denomination can assert their own interpretation of doctrine . . . cit[ing] a Supreme Court case that indeed seemed to suggest something along that line" (Council on Foreign Relations).

This sea change, giving more discretion to the individual in court decisions of this nature, is occurring in a context in which the standard of scrutiny applied to any law which allows for secular exemptions is now "strict". As such, it must allow the same flexibility for comparable religious exemptions, despite the fact that secular activities bear a public character while religious activities are significant only to those individuals engaging in them. Mello cites a recent case in which the Supreme Court refused to support public health officials in the State of California during mitigation efforts following a severe outbreak of COVID-19. (Council on Foreign Relations). In the decision, the Court offered injunctive dispensation against an issuance barring at-home or private-residence Bible studies and comparable settings by restricting the headcount of all congregants. Mello concludes that decisions such as this, combined with a surge in applications for exemptions, create a "potential catch-22" for any public health organization adopting a medically exigent mandate. "If you don't have a religious exemption, you might get strict scrutiny . . . because these medical contraindications are treated more favorably than the religious objections. But if you do have a religious exemption process, well, now you've got a problem because now you've got this process for considering individualized exemptions, and that could trigger strict scrutiny. So it seems like either way you turn, as a mandate designer, you might have a problem" (Council on Foreign Relations).

The implications of this new restraint on collective regulation during health emergencies are profound, especially in a context in which for vaccination campaigns to be effective they need to be adopted by a critical mass of individuals. This trend needs to be evaluated in a health policy-making environment in which, aside from COVID-19, we have also seen the resurgence of measles, and now polio, which had been absent for decades (Kuehn 2020). As critical as these cases are, it does not require a stretch of the imagination to envision worse; yet the new standard is uncompromising, not allowing for any emergency-thresholds that trigger a suspension of the norm of maximal deference to liberty.

There is an additional reason to be concerned that this shift in our traditional system of checks and balances will make a difference in population health. Historically, the link

between legal barriers and nonmedical exemptions rates has long been established in public school systems in several states. States with fewer barriers to immunization exemption procedures have religious exemption rates more than twice as high as those states where it is legally harder to opt out, with predictable health consequences. (Blank et al. 2013; Rota et al. 2001) This finding suggests that if the Supreme Court decides to make the non-medical exemption process more convenient, more people will be likely to avail themselves of the option. The standard of "sincerely held", traditionally a rate-limiter, would no longer serve as the organic barrier it had been to reducing illegitimate exemption claims, since it would not matter whether one had demonstrated longevity of commitment to the religious tradition in whose name the exemption was being sought. Nor, moreover, would it matter what authoritative representatives of that invoked religious tradition would be likely to rule on the matter. Only the arbitrary and non-morally relevant factor of *where* such exemptions happened to be invoked would be decisive, additionally welcoming an instance in which individuals would only have to move to the state where their pattern of religious commitment would not be scrutinized. In a context in which a Supreme Court is likely to restrict governmental health regulation, we all become increasingly susceptible to public health emergencies whose containment a government is impotent to affect.

4. From Religion to Ideology

It bears reminding that I have not suggested that the *category* of religious exemptions should be eliminated or is not legitimate. Rather, I have called into question the manner in which exemptions are being invoked with unprecedented frequency in the context of the COVID-19 pandemic. I now, perhaps controversially, want to suggest that religious exemptions, insofar as they have been applied to vaccine mandates for COVID-19, are not even "religious", but ideological. To be sure, I want to argue that the debate about whether vaccine mandates should be enforced under exigent health emergencies is not being driven by religious considerations so much as by the realities of a highly polarized political environment fueled by the suspicion of governmental intrusion into the private sphere.

Shortly after COVID-19 vaccines became available to the public, a survey conducted in successive waves from the Public Religion Research Institute (PRRI) and the Interfaith Youth Core (IFCY), the largest conducted to date on the issue of the influence of religion on views of vaccination, revealed that over half of Americans who reported attending religious services regularly found their encouragement to get vaccinated in the faith-based approach to which they were exposed at those services (PRRI-IFYC November 2021). This survey affirmed that in the case of African-Americans, an initially vaccine-hesitant group, attending services had a resoundingly net-positive effect in encouraging participation (PRRI-IFYC April 2021). In terms of perceived compatibility with the ethos of one's religious teachings in America, exhortations considered in religious settings were found to be consistent with vaccine acceptance, particularly when injunctions to "love the neighbor", a cross-cultural value affirmed across traditions, was invoked. As the survey reports:

> A majority of Americans (53%) agree with the statement "Because getting vaccinated against COVID-19 helps protect everyone, it is a way to live out the religious principle of loving my neighbors", while 44% disagree with the statement. . . . With the notable exceptions of white evangelical Protestants (46%) and Hispanic Protestants (49%), majorities of all major religious groups agree that getting vaccinated is a way to live out the religious principle of loving their neighbors. More than six in ten Jewish Americans (69%), Mormons (66%), non-Christian religious Americans (64%), and other Christians (61%) agree with the statement. Majorities of other Protestants of color (58%), white Catholics (57%), Hispanic Catholics (55%), white mainline Protestants (55%), religiously unaffiliated Americans (53%), and Black Protestants (52%) agree. (PRRI-IFYC April 2021)

The survey supplied compelling evidence that religious leaders are regarded as sources of authority in providing sanction for taking a vaccine, and the majority of those polled

(71%) reflected confidence that the distribution of the COVID-19 vaccine took into account the needs of religious people, including one in five (20%) who were *very* confident that the needs of religious people were being taken into account (PRRI-IFYC April 2021). Significantly, across nearly every major group, fewer than two in ten people rejected the idea that the teachings of their religion prohibited vaccinations for childhood diseases, while even fewer reported that the COVID-19 vaccine stood in conflict with their personal religious beliefs (13%), or that the teachings of their religion prohibited them from getting vaccinated for COVID-19 (10%). The survey concluded that Americans by and large believe too many people use religion as an excuse to sidestep COVID-19 vaccine requirements, with 45% going so far as to assert that in general no one should be allowed to use religion as a basis for an anti-mandate platform (PRRI-IFYC November 2021).

What, then, accounts for the uptick in the percentage of people claiming "religious freedom" as the grounds for exemption status, if, when polled, religious insiders tend not to identify their religions as a source of hesitancy or refusal? The PRRI-IFYC survey was illuminating here as well: "Beyond Fox News, the rise of far-right media outlets dramatically affect vaccine hesitancy among Republicans", with Republicans (45%) less likely than independents (58%) and Democrats (73%) to be vaccine accepters. The survey reports that attitudes towards vaccination are strongly influenced by television news consumption, the highest rates of resistance occurring among Republicans who trust far-right news sources the most (42%) (PRRI-IFYC April 2021). It turns out that even the majority of Republicans who indicated that they trusted mainstream news sources (58%) or Fox News (54%) accept vaccines. By contrast, only about three in ten Republicans who reported trusting only far-right news (32%) or no television news (30%) do so (PRRI-IFYC November 2021). These findings suggest that while religion might serve as the *claimed* reason for vaccine hesitancy and refusal, politically biased media outlets were the real reason.

Notably, Title VII, under which religious exemptions are claimed, is not invoked in the comparable case of disabled individuals who are entitled to the same accommodations as refusers considered under religious grounds. The Americans with Disabilities Act of 1990 specifies that employers should offer the same "reasonable" accommodation to disabled Americans as they do for religious Americans, yet there is no evidence that this community is availing itself of the right to this accommodation with anywhere near the same frequency as individuals who claim religious exemption status. If anything, the opposite is so: Those with disabilities report difficulty obtaining vaccines relative to the general population to the vaccines they *do* want. In one prominent study, an analysis of the National Immunization Survey Adult COVID Module (NIS-ACM), researchers concluded that in comparison to adults without a disability, those with a disability were less likely to have received a vaccination, but not for want of trying but because of comparatively restricted access. (Ryerson et al. 2021).

This contrast between religious and disabled communities becomes even more conspicuous in light of new research that establishes the correlation between political orientation, susceptibility to conspiracy theorizing, and vaccine resistance, finding that conservative worldviews that uphold vaccine resistance do so as a symbol of the exercising of freedom in society overrun by big government (Albrecht 2022). In a well-publicized recent study, Don Albrecht found that counties across the US with a high proportion of Trump voters had more per capita cases and deaths from COVID-19 than those with fewer Trump voters (Albrecht 2021). This suggests that the discussion about vaccine refusal based on resistance emanating from religious doctrine or worldview would be different in an alternative political environment. That the sincerity of held religious beliefs is no longer required might account for the conflation between exemption status *claimed* on behalf of one's religion and that actually *based* on one's religious belief, a distinction that may have not been as relevant in a previous epoch of adjudication.

5. Religious Leaders on the COVID-19 Vaccines and "Love thy Neighbor"

This emerging hypothesis and claim that it is not religion itself which directly influences the opting out of public policy is given even more circumstantial credence by the support the majority of religious leaders have lent in their own voices to public and secular vaccine efforts. There is surprising and significant agreement among leaders of the world's major religious traditions that vaccines are not about oneself but the vulnerable "other", where great theological weight is placed on the preservation of a communal good in the form of the health and safety of a population. To the extent that there are deeply held cultural or individual justifications to be hesitant about vaccination mandates, these should be balanced against other reasons. Religious exemptions should not be regarded as a birthright, but something to be evaluated in a larger context, if only to ensure that religions and their leaders are not being exploited for ideological reasons. The analysis would be otherwise if religious leaders issued some statement about what is problematic about COVID-19 vaccines, as many did in the case of HPV vaccines for reasons relatable, if not convincing, to fellow religious insiders. But religious leaders have tended either to stay silent on COVID-19 vaccines or come out resoundingly in favor of them.

The PRRI-IFCY survey notes that one of the significant developments in the era of COVID-19 in religious communities in America has been the near consensus among religious leaders to lend support for vaccination efforts, support that is grounded in resources internal to their own traditions. Such arguments are both theological and ethical in nature, often referring to communal norms and shared understandings of scripture, in general featuring no standing objection to vaccines, with only occasional caveats to known dietary restrictions (Grabenstein 2013). With regard to COVID-19 specifically, the growing number of religious groups who have come out in favor of vaccination is impressive. For example, when the mRNA vaccines first became available, leaders in the Southern Baptist community comprising theologians and professors made the following public statement:

> It is not possible to properly love a person and act so as to unnecessarily jeopardize their health. If by the minimal burden of wearing a mask, we can potentially protect others from grave illness, then it seems we have a moral obligation to wear a mask. The same can be said for COVID-19 vaccinations. If by being vaccinated we can protect others from illness, then we have a corresponding obligation, given our Lord's command to love neighbors, to be vaccinated. Vaccinations not only protect me, but also protect other vulnerable members of society. (Arbo et al. 2020)

In the same vein, tying the exhortation to get vaccinated to injunctions to cultivate compassion and keep in mind the vulnerable, the Pope instructs Catholics: "Thanks to God's grace and the work of many, we now have vaccines to protect us against COVID-19 . . . Getting the vaccines that are authorized by the respective authorities is an act of love" (Juffras 2021). Likewise, the Islamic Society of America and the National Black Muslim COVID Coalition have determined that even in the event vaccines might contain non-Halal ingredients, necessity overrides prohibition. Of utmost importance is preventing the spread of a highly contagious and deadly disease that could wreak havoc in Muslim and human communities (Juffras). As for Jewish communities across all denominations, the overriding normative value of *pikuach nefesh* (the "saving of lives") takes precedence:

> Jewish law is strongly and invariably supportive of vaccination, including mandatory vaccination with suspension of non-medical exemptions if the health of the surrounding community is at stake. *Halachic* views do not provide a deterrent for Jews to inoculate; rather, it would be "*halachically irresponsible*" to not vaccinate. (Muravsky et al. 2023)

The exhortation is again unequivocal and decisively rooted in communal care for the vulnerable neighbor. These examples, ecumenically reflected across traditions, are not meant to be exhaustive or not allowing for exceptions, but representative of attitudes among leaders in the Abrahamic faiths of the West. There are no specific disclaimers in

any of these instances with regard to the mRNA COVID-19 vaccines. Even when usual concerns are reported, as in the case of dietary considerations in Muslim traditions, leaders have issued a specification that this consideration should not carry the day.

Importantly, faith leaders have proactively advised their congregants *not* to worry about usual sources of ambivalence when technology rubs up against science. For example, leaders of Christian and Catholic faiths go out of their way to make known that in contrast to prior vaccines, fetal cells are not used in the creation, development, and general production of the Pfizer and Moderna mRNA vaccines (Juffras). With regard to the Abrahamic traditions, we can readily point to the injunction in Protestant and Catholic traditions from Luke 10 to "love one's neighbor as oneself", or Rabbi Hillel's inspirational instruction "if I am only for myself, what am I?" in the Jewish tradition, or the observation issued by the canonical and revered ninth century Muslim Persian theologian and scholar, Saheeh Al-Bukhari: "None of you truly believes until he loves for his brother what he loves for himself". All three of these authoritative sentiments imply an obligation to participate in population protective action when the opportunity arises because, to reiterate what public health officials are often wont to say, "the vaccine is not about you".

The larger point here, however, is that when we pay attention to context and the larger picture, evidence of a misleading tactic among exempters under the banner of "religious freedom" begins to emerge. Not only are religious exemptions typically not "religious" in nature, but they are not representative of the religious traditions they invoke. More likely, their exemptions serve as a litmus test for political power in the public square and are not really about religion at all. The familiar mantra, "my body, my choice", a rallying cry against the intrusion of big government, is in this light more plausibly interpreted as an expression of political power than the advocacy of a religious norm. (Astor 2021).

Finally, such rhetoric raises critical questions about the deployment of the terms such as "liberty" or "autonomy" in the public square. The concept of liberty is taken to safeguard individual freedom, but in the context of a pandemic liberty, counterintuitively, becomes an expression of tyranny at the level of population. In keeping with the injunctions to "love the neighbor" we have seen featured in the Abrahamic traditions, the unchecked assertion of individual rights, given biological realities and the nature of herd immunity, becomes a kind of enslavement and imposition on those who are dependent on the actions of unknown others to assure their well-being. In such a context, the "medical liberty" of one becomes a medical oppression of many. It may be that liberty is emblematic of the "American way", a familiar and prized value for which there is historical precedent. However, *this* sort of invocation is not a justification for non-participation that we are likely to hear from our religious leaders, for whom by and large, and to their credit, the welfare of all everywhere is instead the driver of what is motivating their messaging on COVID-19.

6. Religious Autonomy as a Blank Check, Christian Nationalism, and a Tension within the First Amendment

The discussion to this point has not substantively engaged the juridical arguments for or against the permissibility of considering objections to public policy that are "religious" in nature as legitimate. I have not made a legal argument. Rather, I have focused on the shift in the way in which religious objections are *de facto* currently being deployed in contrast to the recent past. "Sincerely held beliefs" is no longer the standard for religious accommodation. Individual declaration, seemingly free of any reasonable constraint, is. My aim has been to look at the consequences of this shift. The issuance of a blank check based on personal liberty to public policy is the undermining of public policy itself, particularly during a public health crisis. Finally, the argument above has been intended as an examination of the nature of belief itself and what, technically, makes it "religious" to begin with. If religious *leaders* are themselves to serve as guides, we have grounds for concluding that exemptions claimed to necessary mandates in the name of religion during public health crises constitute not only a formidable obstacle to the state's efforts to keep people safe at the level of population, but also an abuse of religious rationale. To be sure, in terms of

bodily autonomy, whatever grounds for *it* can be located in the first amendment, they are not synonymous with "religious liberty".

Or, rather, the shift reflects the ascension of a particular understanding of religious belief as the template for all others, namely, one that puts the interpretative authority of scripture solely in the hands of the individual believer while preferencing a sense of belief that concentrates on the fate of that believer at the hands of an infinite and all-powerful redeemer. In such an account, there is little allowance for deference to "population-level" concerns; the will of the individual trumps objections that potentially arise even from the community or congregation. John Fea identifies this "blank check" as a kind of "cherry-picking" of notions such as "my body is my temple" roughly expressed in verses such as Luke 17: "Jesus touched the leper and healed him, so I don't need a vaccine to be healed". (Council on Foreign Relations) This logic is part of a self-protective strategy in which no mortal has the prerogative to contravene God's will:

> The vaccine is a threat on my liberty and rights as an American, but my rights and liberties as an American come from God, right? So this is not just a constitutional or Declaration of Independence, right, endowed by our creator with certain inalienable rights kind of threat. This is also a threat to the kind of divine order, the kind of nation that the United States is supposed to be. And it's deeply embedded in these ideas of Christian nationalism, or the idea that America is somehow a Christian national, is a special nation, is blessed by God. And God has given us rights in an exceptional way no other nation has. (Council on Foreign Relations)

This interpretation of the explanation of the shift to individual authority in claims of religious exemption is a kind of exceptionalism that utilizes subjectivism for purposes of nationalistic preference. In this account, rules that come from the authority of the state, especially in heterogenous, pluralistic settings, take a back seat to the imperative of Christian, and "American", interest. According to Christian nationalism, no "outside" authority is empowered to supersede native representations of one's manifest density among God's favored. At once, a radically individualistic account of choice and freedom in society is also a tribalist one, bereft of concession and compromise.

This is the state of affairs in which the current Supreme Court is presently poised to deliberate on the issue of how to interpret claimed religious exemptions. How this issue has been decided in recent cases suggests the Court will support proponents of the strong individualist/nationalist view. With regard to mitigation efforts implemented at the state level early on in the pandemic, on November 2020, in Roman Catholic Diocese of Brooklyn v. Cuomo, the Court determined New York's order violated First Amendment free exercise principles despite clear demonstration of exigent public health circumstances justifying the order, while in February 2021, the Court deemed unconstitutional a similar ban on indoor religious gatherings in Southern Bay United Pentecostal Church v. Newsom (Hodge 2022). In April of the same year, the Court again restricted the state's right to impose mitigation efforts, granting an injunction in another key case against regulations limiting at-home Bible studies. What these recent cases suggest is that public health concerns, which are population-level considerations, shall not take precedence over individual religious prerogative.

While it remains to be seen what the Supreme Court ultimately does with regard to upholding mandates in the case of FDA approved vaccines shown to be highly effective against contagious and deadly diseases such as COVID-19, it should be noted that the deference in these recent cases given to unqualified assertion of individual religious belief signals a resolution to a tension manifest within the First Amendment. The "free exercise" clause of the First Amendment has long been interpreted to safeguard citizens' rights to practice their religion in their own way on the condition that such practicing is compliant with upholding compelling governmental interests (Religious Freedom Restoration Act 1993). This check on the basic liberty of religious freedom is no longer to be taken for granted. The "liberty" of the First Amendment is precisely that no one is to be subject

to tyranny: *neither* religious minorities seeking to practice their faith in a society where most practice the majority faith, *nor* third parties environmentally enslaved by the exercise of harmful religious prerogatives. It is a fallacy to think that "my body, my choice", implemented as an unchallenged right without this standard internal check on the "free exercise" clause, will never lead to more harm than good. The rare mandate to keep the public safe during a pandemic defined by a deadly and contagious virus is meant to ensure the liberty of all, not just some. An analogy can here be drawn to the Second Amendment. The "freedom" entailed in the right to bear arms can, under tragic circumstances, can come to entail the deprivation of the very notion of liberty it is meant to uphold. Just ask parents who trusted the safety of their children in public spaces only to be informed after the fact, helplessly, that they lost their children in a mass shooting. In a "free" society they have become the victims of the tyranny of an environment unsafe for their children which they were powerless to alter. Full, unrestrained freedom can be the undoing of freedom.

7. Conclusion: Fractured Community, The Rise of Individualism, and the New Meaning of "Liberty" in Contemporary Society

In *Age of Fracture*, Daniel Rodgers argues that in the last three decades of the twentieth century the US experienced a key cultural paradigm shift during which we began to think less about populations and communal values and instead emphasized individual liberties. (Rodgers 2011) Classical liberal notions of "social justice" and "fairness" gave way to the prizing of the principle of autonomy and free choice, understood on the left to be a flexibility with which one could define one's own identity, and on the right to indicate a new preoccupation with unregulated markets, the promise of upward mobility, and the prioritization of the downsizing of the role of oversight in government. For the last half century, the ground has been made fertile for a broad and sweeping undermining of state-issued powers, even when exercised for the good of the people, for example, in the form of preventive, health-protective policy-making. It is in this context that the assertion of "religious rights" has come to be reinterpreted as an extension of this presumptive prerogative of autonomy and, correspondingly, as a challenge to a history of precedent-setting Supreme Court decisions over the previous century that had previously imposed checks and balances on the expression of religiosity and the importance of individual belief within the larger society. This development is not so much an overcoming of the "separation of church and state" as it is a holding at bay church *and* state in deference to the ideology of individualism and the unfettered expression of belief.

This historical context perhaps explains why there is no coherent basis, particularly in the Abrahamic traditions on display in the present examination, to reject policies in which COVID-19 vaccines come to be mandated. For, in such a social environment there *need* be no coherent basis. The first order assertion of one's claim to individual expression of belief is all one needs. The current pandemic, during which, for a time, in certain environments (e.g., health care settings in this country), mandates became a crucial part of the toolkit in the "mitigation effort", is just one case study. However, the thought experiment in which we consider how things might play out over the next pandemic, likely not another hundred years away this time around, is illuminating. Without a system of checks and balances where the assertion of exemption on the basis of individual belief is all one needs to opt out, no pandemic can be deemed to be too severe, nor the consequences of not contributing to herd immunity considered to be too grave, to deprive one of the autonomous right to assert dominion over one's body. This development would represent a total triumph of the ethos Rodgers describes emerging over the last twentieth century. If it lasts, it signals the death of communal action, shared values, civic policy-making, and ultimately public health itself.

In such a future, actions of "liberty" collectively risk being repurposed for an enduring state of tyranny, especially for the most vulnerable among us who depend on the taking of health-protective action among, and on behalf of, strangers. Such an attitude could not have helped us to overcome the spread of cholera in the 19th century when, with

the revelation of the contaminated Broad Street water pump in London, it was quickly understood that clean water is something in which we all have a common interest (Smith 2002). The brainchild of dot maps, because of which the contaminated pump could in the first place be located, is itself an innovation of collective action. The basic tools of public health, not just vaccines or compulsory policies, depend on a notion of the individual that is reliant on, and to an extent deferential to, the society of which it is a part.

I have also tried to argue, however, that it is not just policymaking and the concerted efforts of public health leaders that are weakened by the unnuanced and ultimately poorly understood interpretation of the unchecked right to religious expression as reflected in the First Amendment. Religion itself, and in particular the significance of the longevity and congregation-forming aspects of religious community, also hang in the balance. When religious leaders go out of their way to endorse the COVID-19 vaccines as safe and effective instruments against a plague, they do so not merely out of love of their flock, but also from a position of authority as ambassadors of their respective traditions. Among other things, *as* religious leaders, they are presumably depending on the good historical influence that religion has many times over had on the secular affairs in the society where that tradition is prevalent. In other words, their authority is legitimate because, again to return to a notion popularized by William James, of the fruits (they are in the best position to show) their religion has borne over time (James 1985, p. 19). Religion and religious expression are meant to work with the world, not apart from, and certainly not against, it. All the more reason the standard criterion of "sincerely held beliefs" makes sense. The alternative, ideological assertion, is a shortcut as well as a failure to embrace the authority of religious communities and the legal conventions of the nation.

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