PUBLIC HEALTH POLICING AND THE CASE AGAINST VACCINE MANDATES

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> There can be no simple reading of a text, be it literary, philosophical or scientific, nor of the social text in the most general sense. Rather, the question must turn upon itself, no less than its putative object, as a matter of *interpretation* and, more important, as a matter of the *forces* at work in the interpretative activity under way. There is always the ascription of voice to what is otherwise silent, the attribution of a face or the placement of a mask. [1]

> Le germe n'est rien, c'est le terrain qui est tout.
> The microbe is nothing, the soil is everything.[2]

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[1] Jared Sexton, *Ça: Were It Constituted as a Question*, 26 QUI PARLE 298, 298 (2017).

[2] Louis Pasteur, on his deathbed, recanting his prioritizing of the germ over the conditions in disease causation. HANS SELYE, THE STRESS OF LIFE 301 (1978).

I. INTRODUCTION: PANDEMIC POLICE POWER

In the twentieth year of the twenty-first century, the Pandemic Year, not even the virus could displace policing from its usual share of the news headlines. The current global economic and public health crises are unprecedented in modern human history. The antiblack violence of state and civil society is not; it is typical, banal, and contiguous with times gone before and times yet to come. These two facts—what is alarmingly new and grotesquely familiar—are of the utmost analytical and political importance. We need to think them together to understand policing. The unprecedented and the precedential, which is also the precedent for all else—two data sets, if you will, from which we can scientifically discern a larger pattern, a historical process in which we remain mired.

In this article I argue for understanding the Pandemic Year in terms of public health policing. As I write, the world is being told that vaccination is the answer to our problems of the past year. The decision to vaccinate should be a personal one, like all other decisions about how to take care of one's health. Vaccines do indeed impact public health, not just individual health, but not in the manner in which we typically assume they do. We are told that vaccines are vital to protect ourselves *and* our neighbors from disease. I present evidence, and an argument for interpreting this evidence, that shows vaccines in general, and the currently proposed vaccines for COVID-19 specifically, do not strengthen collective health, but rather are part of the larger structure by which the vast inequalities of this society are reproduced. The biological products currently marketed as COVID-19 vaccines are a particularly egregious illustration of how this structure stands in the way of the kind of communal empowerment that can support holistic health and healing for everyone, not simply those with access to institutional power.

The COVID-19 injections cannot be mandated under currently existing law. They have not been approved as safe and effective by the Food and Drug Administration (FDA); they are on the market under emergency use authorization. Federal law is very clear that people must be free to give or withhold their consent with EUA products. I present a case for the further interpretation of vaccine mandates as unconstitutional, because there are numerous effective and widely available alternatives to vaccination that are less invasive and costly to society and to the individual. This argument rests on a legal interpretation of vaccine case law going back to the leading precedent, *Jacobsen v. Massachusetts*; and it also relies upon extensive reading of the scientific literature regarding COVID-19 and immunology.

Matters of public health policing and vaccine mandates must be considered within the real-world context in which they occur. These are not academic or theoretical questions. Since policing is fundamentally about the reproduction of power, we are talking about how non-white bodies are construed as less worthy compared with white ones, with black people the most devalued in society. The Pandemic Year has inspired many observations about black sacrifice and

racial inequities in health. A recent piece from *Essence* magazine, for instance, claims that so-called essential workers—disproportionately black and female—are inadequately protected from virus transmission and sacrificed to the public health crisis so that the economic crisis can be averted.[3] The *Essence* piece cites the history of J. Marion Sims, recognized by Western medicine as the Father of Gynecology, who conducted experiments on enslaved women without anesthesia, claiming that black people do not experience pain the way whites do. These enslaved women were tortured to enable advances in modern medicine.[4] Evoking this history to call for better protection from transmission of the COVID-19 virus today, however, is a treacherous formulation of the problem at hand because it trades on a historical truth (antiblack violence) to obscure a contemporary set of half-truths and untruths related to the pandemic. The history of slavery does indeed continue to structure our present: black people continue to experience medical discrimination and malpractice, as well as disproportionate illness, chronic disease, and premature death related to a range of social factors.[5] Citing this reality, however, only contributes to the mystification that the pandemic relies upon for its coherence. To put it differently, the police power makes good use of black history when it serves its policing aims. This is part of the price we continue to pay in the post-civil rights era for the suppression of black self-determination.[6]

The argument I pursue in this essay is that power is most effective where it is least visible. This goes for policing. Policing is a spectacle of state power that is as bad as it advertises on itself, as the latest incidents of police killing unarmed black people illustrate. With the conviction of Derek Chauvin for the murder of George Floyd, and the prosecution of the three other officers for aiding and abetting Chauvin, the state attempted to construct the situation of Floyd's death as exceptional. This is incorrect, of course, for what the officers did was routine, even if the staging of their particular methods were uncommon. We have been here before with the police, and unfortunately, we will be here

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[3] *See* Health Equity Cypher, *Black Women Are Still Saving Everybody During COVID-19*, ESSENCE (May 11, 2020), https://www.essence.com/health-and-wellness/black-women-sacrifice-economy-covid-19/ (finding that black women "dying during the COVID-19 pandemic is in the tradition of this nation's adherence to necrocapitalism").

[4] *See generally* DEIRDRE COOPER OWENS, MEDICAL BONDAGE: RACE, GENDER, AND THE ORIGINS OF AMERICAN GYNECOLOGY (1st ed. 2017).

[5] *See* Risa Lavizzo-Mourey & David Williams, *Being Black is Bad for Your Health*, U.S. NEWS & WORLD REP. (Apr. 14, 2016, 8:00 AM), https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities (elaborating on the health disparities between black and white people and how racial bias is a problem in health care).

[6] *See* Tryon P. Woods, *Still Missing and Murdered: Atlanta's Lost Children Address Today's Plague of Police Violence*, BLACK AGENDA REP. (Sept. 23, 2020), https://blackagendareport.com/still-missing-and-murdered-atlantas-lost-children-address-todays-plague-police-violence ("Criminalization is less a function of behavior–breaking the law–and more a reflection of race and class status."). *See generally* TONI CADE BAMBARA, THOSE BONES ARE NOT MY CHILD (2000) (explaining the ways in which black historical struggle is manipulated in the post-civil rights era to abet the further suffering of black communities).

again very shortly. The reason why this state violence continues unabated is because there is a police power more fundamental to how society is organized than law enforcement. Despite what the police constantly tell us, they are not the frontline; they are merely the backups. Their job is to back up the police power organized to comprehensively reproduce an antiblack society in all arenas. This is why the police are not accountable to law: the police power precedes law, and the spectacles of policing like Chauvin and his colleagues, as outrageously lethal and catastrophic as they are for the black community, are meant to draw the public's attention away from how the police power works in other areas to achieve social control.

In order to understand what policing is, therefore, we need to learn how to read it where it is least legible, because policing, like all forms of power, is most effective precisely where and when it goes unnoticed *as* policing. I use the Pandemic Year to demonstrate this claim because it concentrates the many diffused forms of social policing like never before. In the following section, I summarize the reconceptualization of policing that undergirds my analysis of the Pandemic Year. I then spend the remainder of the article examining the pandemic police power to assess one of the key areas of society where policing is effective precisely because it does not appear to be policing.

The efficacy of any medical case is no different from a legal one in that it rests on an accurate establishment of the facts from which the case issues. What will emerge in due course, then, is a portrait of policing by medical science and public health institutions in the service of an expanded social control apparatus at the expense of the public's further diminished capacity for dissent and self-determination. That is, the Pandemic Year represents a severe cost to public health in almost every way *besides* viral infection. I conclude with an assessment of what medical science policing means for law and for popular empowerment. While there are serious legal implications to the Pandemic Year—including civil liberties, tort damages, fraud, white-collar and state crime, international treaty conventions, and class action lawsuits—law remains constitutive and subordinate to all policing, not external or supraordinate to it. Law's relation to policing in all its myriad forms, in other words, is structural, not instrumental. That said, I focus here on the pandemic police power precisely to illuminate a pressing area of attention for lawyersand legal scholars. Vaccine mandates are already in effect for COVID-19 for college students and many workers. I argue that these mandates are unconstitutional, and I endeavor to provide lawyers with the scientific and legal basis for supporting parents and workers in challenging this barrier to health, school-based learning, and a nondiscriminatory learning environment and workplace.

All told, this analysis of policing extricates our thinking from the either/or strictures of popular dichotomies typical of the sectarianism characterizing American public life today: Trump is bad, Fauci is good; politicians are bad, doctors and scientists are good; capitalists are bad, philanthropists are good;

anti-vaxxers and re-openers are bad, mask wearing, and social distancing is good; kids are bad, technology is good; science is truth, science is political; and so on. These binaries are, in fact, state narratives which function as dead-ends for thought: state power promotes anti-intellectualism, the sequestration of critical thought, and the quarantine of independent research and analysis. Legal scholars and practitioners are no different from scientists and medical professionals, who are no different from the rest of us: we are all impacted by the socio-political context of our lives, which tends to shape the kinds of questions we ask and do not ask about the world. At the same time, we all have at our disposal an almost endless trove of evidence with which to make independent determinations about what is going on with the Pandemic Year. This essay aims to supplement independent thought against policing everywhere.

II. POLICING IS NOT WHAT WE THINK IT IS

We continually misread policing because we begin with law and the criminal justice system in the abstract, rather than understanding them in the historically grounded reality which produces them. It is insufficient to observe that current policies and practices in the criminal law do not correspond to the principles of fairness, equity, and due process codified in law. The state's job is to preserve the status quo, and one way that it does this is by establishing the parameters of acceptable debate and dissent. If we limit our analysis about law to a critique of its inequitable outcomes, then we are strengthening the state's control over our understanding of what the law is and how it works. That is, we are doing the state's job of preserving the status quo. We must focus instead on an accurate and rigorous assessment of how power works by examining the violence that produces law. This focus means attending to the world as it is, not the one we wish it were nor the one that the law purports it is. Only in this manner can we begin to understand what policing really is. My recent book, *Blackhood Against the Police Power: Punishment and Disavowal in the "Post-Racial" Era*, employs this approach to redefine policing as a sociohistorical process of implementing and reproducing the modern world's onto-epistemic structure of antiblackness.[7] In so doing, I demonstrate how racism is policing's other name, and as such, is foremost an act of sexual violence that produces the punishment of "race." Antiblack policing, therefore, saturates the society in ways large and small, and reveals an anxiety about the threatening specter of black liberation that is both foundational and persistent to social organization at all levels. In this first section, I briefly summarize this redefinition of policing.

Beginning where we are now, and walking it back conceptually and historically: most of the harm caused to our society today—in terms of financial loss, bodily injury, communal disarray, and premature death—comes from the realm

[7] *See generally* TRYON P. WOODS, BLACKHOOD AGAINST THE POLICE POWER: PUNISHMENT AND DISAVOWAL IN THE "POST-RACIAL" ERA (1st ed. 2019).

of white-collar crime and state crime, not from so-called street crime, and yet we focus the overwhelming brunt of our attention, resources, and fear on the latter realm of criminal behaviors.[8] I call this the "justice contradiction": society focuses mostly on those behaviors that cause the least amount of harm, socially speaking, while devoting the least amount of attention to those behaviors that wreak the most destruction on society.[9] The justice contradiction turns our attention away from crime and onto the police themselves: we have a *policing* problem, not a crime problem, per se. Members of all races and classes participate in law-breaking, and yet whites and the wealthy go relatively unpoliced and decriminalized. This means that what gets counted as "crime," and who shows up as "criminal," is not a reflection of what is actually happening in terms of law-breaking behavior but is merely a catalog of police behavior, not to mention an index of the law's disposition itself. Third, given this policing problem, we face the reality that we are not policed for what we do, but for who we are or what we represent in the historical structure. This is why the determining factor in who gets punished with imprisonment is whether a person is black, not whether that person is a law breaker.[10] Policing is thus a cultural and structural phenomenon. "[I]t is not principally about enforcing law, making us safe, or keeping a lid on chaos."[11]

As a cultural and structural problem, the cultural content of policing is antiblackness. This cultural content derives from the historical structure of racial slavery that police exist to maintain. Contemporary policing does not descend from the colonial night watch or from the London constabulary; it is a distant cousin to these institutions. Those who point to the slave patrols as the progenitors of today's police hit much closer to the mark.[12] But this too is a kind of misdirection because the original police power was not a discrete cadre of deputized individuals, riders in the night hunting down fugitive slaves—rather, it was white society itself, writ large. For four hundred years of slavery, in the least, followed by one hundred years of lynching, it was everyday white people who policed all black people. At the compulsion of the black freedom movement during the civil rights era, this duty transferred from the average white citizen to the state in the form of the criminal justice system by the 1970s—which means it has only been in the hands of the cops for less than five decades

[8] *See* STEVEN BOX, POWER, CRIME AND MYSTIFICATION 5–6 (1st ed. 1984) (finding that the discretion of state actors results in "too much 'street-justice'" while "the wealthy, privileged, and powerful are better able to secure favorable outcomes").

[9] WOODS, *supra* note 7, at 8 (explaining the "justice contradiction" and how it affects the criminal justice system and society's views on crime).

[10] *See generally* Angela Y. Davis, *Race and Criminalization: Black Americans and the Punishment Industry*, *in* THE ANGELA Y. DAVIS READER 61 (Joy James ed., 1998).

[11] WOODS, *supra* note 7, at 8.

[12] *See generally* KRISTIAN WILLIAMS, OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA (3d ed. 2015) (2007).

(compared with five centuries).[13] The recent killings of Ahmaud Arbery, Trayvon Martin, Renisha McBride, Jordan Davis, and many "others at the hands of non-police officers remind us that th[e] police power rests first with civil society, not with law enforcement."[14] The cultural implications of this historical structure are threefold: "modern policing formed through the policing of blackness"; it "has always been militaristic with respect to black people"; and it thus serves as "a key mechanism for racialization."[15] Put differently, policing is racism's other name.

Slavery as the condition of possibility for modern society means that policing precedes law. We can trace law's subordinate position relative to policing through every historical period, beginning with the manner in which the U.S. itself was conceived in a counter-insurgent warfare against both rebellious slaves and the British abolitionism they compelled. U.S. constitutional law from inception all the way through the contemporary period codifies and reflects this racial warfare. While the U.S. criminal justice system presents a clear and convincing case study, in and of itself, of the persistence of modern racial slavery, the criminal law is but one facet of how slaveholding culture persists into the twenty-first century.[16] If the police are merely an appendage of power, not the seat of power itself, then the operations of criminal law are symptomatic of society's governing structure and call for a more capacious redefinition of policing that can address how power actually operates. I turn now to examine the pandemic police power in order to assess how policing functions through public health and medical science.

III. IS THERE A PANDEMIC?

One place where policing today hides itself in plain sight is also the one issue monopolizing everyone's attention during the Pandemic Year: COVID-19 and the police power of medical science. Health care is four hugely profitable industries—insurance, instruments and drugs, doctors, and hospitals—and like all capitalist industries, they seek monopolistic control over markets. My approach to this medical industrial complex will be to read the available evidence at the heart of medical science discourse. The teachings of civil rights leader Ella Baker are instructive here:

> In order for us as poor and oppressed people to become a part of a society that is meaningful, the system under which we now exist has to be radically changed. This means that we are going to have to learn to think in radical terms. I use the term radical in its original

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[13] *See generally* THE IRON FIST AND THE VELVET GLOVE: AN ANALYSIS OF THE U.S. POLICE 32–60 (2d ed. 1977) (discussing the "professionalization" of the police).

[14] *See* WOODS, *supra* note 7, at 9–10.

[15] *See id.* at 8–9.

[16] *See* Tryon P. Woods, *Slavery and the U.S. Prison System,* GLOB. POL'Y (May 6, 2021), https://globalpolicyjournal.com/blog/06/05/2021/slavery-and-us-prison-system.

> meaning—getting down to and understanding the root cause. It means facing a system that does not lend itself to your needs and devising means by which you change that system.[17]

The imperative to understand root causes is not in tension with addressing immediate needs. We can analyze how the structure itself is constituted without minimizing or neglecting its operational dynamics and the suffering it produces. This is especially vital in the time of pandemic when fear, sorrow, and despair in equal measures commingle to produce compliance, silence, and resentment in equally toxic doses.

According to my reading of the evidence laid out below, the COVID-19 pandemic is not what it has been made out to be. The state's narrative on public health contorts reality in much the same way that it does with law and order. Based on the widespread reticence to interrogate the paradigm of medical science, public health policing may present an even more challenging problem. We have seen over the decades that law and order policies do not make communities safer; public health policies warrant similar critical attention since they do not produce a public in good health. Both safety and health are socially produced, and indict the various interconnected institutions and complex of forces that impinge upon healthy lives.

Given that what gets recognized as "truth" is a reflection of power relations and is *not* a gauge of whether something is true or not, nothing can be taken for granted; all received knowledge must be cross-examined.[18] To verify if there is in fact a pandemic—and if so, of what nature—we should interrogate the science subtending four key issues: testing, infection, treatment and prevention, and mortality. Since the known scope of COVID-19 as a public health crisis rests on the authority of test results, the Polymerase Chain Reaction (PCR) test sits at the crux of our problems. The PCR test was invented by Kary Mullis in 1985, for which he was awarded the 1993 Nobel Prize in chemistry. The test swiftly and selectively multiplies, isolates, and mass-produces specific DNA segments. Mullis' invention has enabled a range of scientific inquiry, from detecting hereditary cancers in fetuses, to criminal forensics, to retracing the evolutionary chain itself. For instance, an American soldier in Vietnam was identified more than a generation later by pairing DNA from a lock of his baby hair with a single bone found on the battlefield.[19] The Innocence Project and other legal teams that work to overturn wrongful convictions based on DNA evidence

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[17] BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 1 (2003).

[18] *See* MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977 131–33 (Colin Gordon ed., 1988) (characterizing truth by having five traits and how it is heavily influenced by who says it and the power they hold).

[19] *See* Celia Farber, *AIDS: Words from the Front*, VIRUSMYTH (July 1994), http://virusmyth.com/aids/hiv/cfmullis.htm (describing one of the beneficial uses of PCR tests).

owe their very existence to the PCR test.[20] The PCR test was *not* designed, however, for diagnostic purposes because it measures fractal presence of virus DNA, amplifying fragments which may be present as a result of the immune system having confronted and cleared the virus, or *any* virus that shares DNA with COVID-19 including a panoply of corona and influenza viruses, at any time in the past. Using PCR to diagnose viral infection is analogous to using a highly sensitive breathalyzer test to measure drunk driving. If a breathalyzer were calibrated to levels of sensitivity higher than the legal limit, it might detect the residual presence of alcohol from some point in the past, but without any accuracy as to when the substance was in the body, nor in amounts significant enough to result in impairment. Likewise, when PCR is used to diagnose COVID-19, what it detects does not necessarily equate to illness. Something similar happened when PCR was first applied to HIV research, around 1989. Scientists were suddenly able to see viral particles in quantities they could not see previously. As science journalist Celia Farber noted in her 1994 interview with Mullis:

> Scientific articles poured forth stating that HIV was now 100 times more prevalent than was previously thought. But Mullis himself was unimpressed. "PCR made it easier to see that certain people were infected with HIV," he told Spin in 1992, "and some of those people came down with symptoms of AIDS. But that doesn't begin even to answer the question, 'Does HIV cause it?'"[21]

Noting, as well, that many patients diagnosed with AIDS do not have HIV in their systems, or only a miniscule presence, Mullis would join numerous other prominent scientists in questioning the prevailing medical science discourse on AIDS.

In addition to its own creator's objections to using PCR for diagnosing illness, the CDC itself has acknowledged that the test is not suitable for this purpose. The CDC's instruction manual for administering the PCR Diagnostic Panel features a Limitations section in which it notes the following:

- Detection of viral RNA may not indicate the presence of infectious virus or that 2019-nCoV is the causative agent for clinical symptoms.
- The performance of this test has not been established for monitoring treatment of 2019-nCoV infection.

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[20] *See* Rory O'Sullivan, *The Innocence Project: A Short History Since 1983*, BLACKPAST (Mar. 8, 2018), https://www.blackpast.org/african-american-history/perspectives-african-american-history/innocence-project-short-history-1983/ (detailing how the Innocence Project used DNA tests that utilized the PCR method to launch their services in 1992). *See generally What is DNA?*, INNOCENCE PROJECT NEWS (Mar. 2, 2007), https://innocenceproject.org/what-is-dna/ (listing Short Tandem Repeat testing as the current standard of DNA testing, which includes elements of the PCR method).

[21] Farber, *supra* note 19.

- The performance of this test has not been established for screening of blood or blood products for the presence of 2019-nCoV.
- This test cannot rule out diseases caused by other bacterial or viral pathogens.[22]
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When the test limitations undercut the purpose for administering the test in the first place—to detect the presence of infectious virus and to establish the cause of any clinical symptoms—the efficacy of the test appears nullified. The same manual also includes a section on Performance Characteristics, featuring the following statement:

> Since no quantified virus isolates of the 2019-nCoV were available for CDC use at the time the test was developed and this study conducted, assays designed for detection of the 2019-nCoV RNA were tested with characterized stocks of in vitro transcribed full length RNA (N gene; GenBank accession: MN908947.2) of known titer (RNA copies/μL) spiked into a diluent consisting of a suspension of human A549 cells and viral transport medium (VTM) to mimic clinical specimen.[23]

The key phrasing here is "since no quantified virus isolates…were available" in December 2020 when this document was published. Every object that exists can be quantified or measured. Medical science must isolate a specimen of the virus in order for it to be identified and verified as existing. Without first extracting, purifying (separating the pathogen from everything else), and isolating the virus, diagnostic tools and vaccines cannot be created with any accuracy. Since the CDC has not isolated a virus specimen, it presents PCR as a diagnostic tool for finding RNA which it merely *presumes* to come from a virus which it has not yet confirmed in the laboratory. Needless to say, science is not supposed to be based on assumptions.

We face no less than five ramifications of using PCR to test for COVID-19. First, with no actual COVID-19 virus isolated in the laboratory, PCR cannot confirm that what it says it finds is in fact the virus. Moreover, PCR cannot reliably ascertain the presence of *active* virus in the body. A positive test result may refer to detected RNA fragments from earlier viral exposure or from a related virus. The sensitivity of PCR is set by cycle thresholds. At a cycle threshold of twenty-five, seventy percent of PCR "positives" are not "cases" because

[22] *See CDC 2019-Novel Coronavirus (2019-nCoV) Real-Time RT-PCR Diagnostic Panel*, CDC 40 (Dec. 1, 2020), https://www.fda.gov/media/134922/download.
[23] *Id.* at 42.

the virus cannot be cultured.[24] If the virus cannot be cultured in the lab, then it is dead, and there is no risk of contagion. Most PCR testing for COVID-19, however, is done at cycle thresholds greater than thirty, which means the percentage of dead virus can be as high as ninety percent, with the likelihood of a false positive even greater than at lower cycle thresholds.

Second, as a result of the reliance on PCR, the public health establishment has created a scenario whereby it grossly overexaggerates the problem at hand. One researcher has estimated that PCR establishes a benchmark that is between ten and twenty times the actual prevalence of the disease.[25] Third, medical science has abandoned the established clinical basis for establishing a medical "case" that has been in practice since the time of Hippocrates in ancient Greece. A medical case has always been defined in relation to the presence of illness: signs (that which a medical professional recognizes) and symptoms (that which the patient also recognizes). The CDC specifies that a case definition should be no less than a set of standard criteria for classifying whether a person has a certain disease, syndrome, or other health condition.[26] There is great variance internationally, including between the World Health Organization (WHO) and its member nations, as to the clinical features of COVID-19, but in every instance a positive laboratory test trumps clinical diagnosis. At best, we have a problematic conflation between a clinical case definition applied to an individual presenting for health care, and a surveillance definition used to collect information for epidemiological purposes.[27] Fourth, the use of PCR to override or displace clinical diagnosis not only means that we have disconnected a medical "case" from actual illness, but it also marks the complete shift into bio-tech-driven medicine, or lab result medicine. This development has been underway for quite some time, but COVID-19 marks biotech's saturation point. The dramatic difference between biotech medicine and clinical medicine can be described thusly:

> "You have to have a whopping amount of any organism to cause symptoms. Huge amounts of it," Dr. David Rasnick, bio-chemist, protease developer, and former founder of an EM lab called Viral Forensics told me. "You don't start with testing; you start with listening to the lungs. I'm skeptical that a PCR test is ever true. It's a

[24] Jaafar et al., *Correlation Between 3790 Quantitative Polymerase Chain Reaction–Positives Samples and Positive Cell Cultures, Including 1941 Severe Acute Respiratory Syndrome Coronavirus 2 Isolates*, CLINICAL INFECTIOUS DISEASES 1 (2020).

[25] Michael Yeadon, *Lies, Damned Lies, and Health Statistics—The Deadly Danger of False Positives*, LOCKDOWN SCEPTICS (Sept. 20, 2020), https://lockdownsceptics.org/lies-damned-lies-and-health-statistics-the-deadly-danger-of-false-positives/.

[26] *See Principles of Epidemiology in Public Health Practice, Third Edition an Introduction to Applied Epidemiology and Biostatistics*, CDC (May 18, 2012), https://www.cdc.gov/csels/dsepd/ss1978/lesson1/section5.html.

[27] *See* Elizabeth Spencer et al., *When is COVID, COVID?*, CTR. FOR EVIDENCE-BASED MED. (Sept. 11, 2020), https://www.cebm.net/covid-19/when-is-covid-covid/.

> great scientific research tool. It's a horrible tool for clinical medicine. 30% of your infected cells have been killed before you show symptoms. By the time you show symptoms…the dead cells are *generating* the symptoms."[28]

The PCR may be good enough to confirm a clinical diagnosis of a patient with symptoms. It is not up to the task, however, that is currently being asked of it, namely, to estimate the number of infectious people currently in the community.[29]

The fifth problem arising from reliance on PCR is that if it can produce a COVID-19 "case" without virus or illness, then we are seeing COVID-19 "deaths" declared without causation because the test does not verify the presence of virus. The COVID Tracking Project uses algorithmic modeling to turn PCR-based data into a statistical portrait of the pandemic. The entire liberal spectrum of media distribution is using the same data source platform, licensed by *The Atlantic* Foundation and supported by the Gates, Bloomberg, and Zuckerberg foundations.[30] This means most of the mainstream media is reproducing the same information based on the same unsound PCR foundation. This skewed information acts as "common sense" about the virus, and any dissenting knowledge is vigorously "fact-checked" and "proven" wrong. The PCR test situation, however, suggests that we do *not* have a viral pandemic, but rather a public health situation of another order produced by the medical industrial complex.

Integrating a variety of data points strongly suggests that the COVID-19 virus is unremarkable in its evolution and spread throughout the human population. Research studies have now established that at least thirty percent of our population already had immunological recognition of this new virus *before* it even arrived.[31] In other words, COVID-19 may be new, but coronaviruses are not, with at least four well-characterized family members which are endemic and cause some of the common colds we experience.[32] Cross-immunity in this case, then, means that our immune systems memorize pieces of whatever virus we are exposed to so the right cell types can multiply and protect us if we get a

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[28] *See* Celia Farber, *Was the COVID-19 Test Meant to Detect a Virus*?, UNCOVERDC (Apr. 7, 2020), https://uncoverdc.com/2020/04/07/was-the-covid-19-test-meant-to-detect-a-virus/.

[29] *See* Paul Kirkham et al., *How Likely is a Second Wave?*, LOCKDOWN SCEPTICS (Sept. 8, 2020), https://lockdownsceptics.org/addressing-the-cv19-second-wave/.

[30] *See* THE COVID TRACKING PROJECT, https://covidtracking.com/ (last visited May 30, 2021).

[31] *See* Alba Grifoni et al., *Targets of T Cell Responses to SARS-CoV-2 Coronavirus in Humans with COVID-19 Disease and Unexposed Individuals*, 181 CELL 1489, 1498 (2020). *See generally* Julian Braun et al., *Presence of SARS-CoV-2 Reactive T Cells in COVID-19 Patients and Healthy Donors*, MEDRXIV (Apr. 22, 2020), https://doi.org/10.1101/2020.04.17.20061440; Nina Le Bert et al., *SARS-CoV-2-Specific T cell Immunity in Cases of COVID-19 and SARS, and Uninfected Controls*, 584 NATURE 457 (2020).

[32] These isolated coronavirus families are: 229E, NL63, OC43, and HKU1. *See* Kirkham et al., *supra* note 29.

related infection. This immune response to COVID-19 has been shown in dozens of blood samples taken from donors *prior to* the arrival of the new virus.[33] Similar findings from Germany, Sweden, and the U.S. confirm that this pre-immunity is geographically widespread and prevalent within each population studied.[34] The existence of this cellular memory is why the maintenance of antibodies to every pathogen to which we have been exposed is unnecessary for an effective immune response. The virus thus moves through the population as viruses have always done, affecting the most susceptible harshly and leaving the rest unaffected or recovered. This is also why it does not seem to matter much what kinds of public health protocols are implemented (such as lockdowns, school closures, social distancing, mask wearing, and so forth), countries, states, and regions with different policies return the same data profile—suggesting that claims of virus variants, spikes, or second waves are likely artefacts of increased PCR testing.[35] Scientists have explained, moreover, why it is that children appear to be the least affected by the virus. In order to do us harm, viruses need to penetrate into our cells; and to do that, they have to utilize receptors on the outside of those cells. In the case of COVID-19, the key receptor is an enzyme called ACE2. It turns out that the levels of ACE2 are highest in adults and much lower in children, with the levels becoming progressively lower the younger the child.[36] This is why it is highly unlikely for children to be vectors for disease, despite the paranoia, fearmongering, and scapegoating of young people putting their more vulnerable elders at risk. The important point here is to reiterate that infection does not mean illness, it simply means the beginning of an immune response (and, in fact, the immune system includes multiple pre-emptive barriers like skin, mucous, and the gut that work to prevent an antigen from even getting to the internal organs and tissues where infection can occur).

All of which raises the fallacy of asymptomatic transmission. It has been a longstanding tenet of infectious disease that the presence of clinical symptoms indicates when a patient is infected by live virus and may pose a risk of transmission to other people. The converse—no symptoms = no live virus = no transmission risk—has long informed the basic common sense that you need to stay home from work or school only when you feel unwell so as not to spread whatever affliction you may be coming down with. This is why, pre-COVID-19, we never quarantined the healthy, and why face masks have only ever been recommended for sick people *only*. With COVID-19, however, we have been told that even if you are not sick and have no symptoms, you could still have

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[33] *See* Jose Mateus et al., *Selective and Cross-Reactive SARS-CoV-2 T Cell Epitopes in Unexposed Humans*, 370 SCI. 89 (2020). *See generally* Le Bert et al., *supra* note 31.

[34] *See* Herb F. Sewell, *Cellular Immune Responses to Covid*-19, 370 BMJ 1 (July 31, 2020).

[35] *See* Kirkham et al., *supra* note 29.

[36] K. Lingappan et al., *Understanding the Age Divide in COVID-19: Why Are Children Overwhelmingly Spared?*, 319 AM. J. PHYSIOLOGY LUNG CELLULAR & MOLECULAR PHYSIOLOGY 39, 40–41 (2020).

the disease and spread it to people who could get sick and die. The idea of asymptomatic transmission began to appear in the media in March 2020, trailed off for a few months, and then spiked up across all media platforms in June 2020, after months of lockdowns and economic shutdowns had taken their toll with no appreciable positive impact on the pandemic.[37] On June 7, 2020, WHO informed us that according to known research asymptomatic spread was "very rare."[38] WHO quickly succumbed to political pressure, asserting that "much is still unknown."[39] A COVID-19 screening study conducted in Wuhan, however, has given us the latest scientific confirmation that asymptomatic spread is largely a myth. The study was conducted after lockdown restrictions were lifted in summer 2020 and involved almost ten million city residents. From the original hotspot of the pandemic, the study *did not uncover one single incidence* of asymptomatic transmission.[40]

But what about illness? COVID-19 has indeed made many thousands of people very sick and a portion of those people have succumbed to their illness. The infection mortality rate (IMR) measures the rate at which people who are infected end up dying. The most up-to-date study of IMR was published by WHO in October 2020. By assessing serological data from across the world, this study estimates that the IMR ranged between 0 and 1.63 percent, with a median figure of 0.27 percent. The big range in mortality is affected by the variety of local factors including age profile, treatments, different methods of recording deaths, and pre-existing immune defenses. The study notes that the data was heavily skewed towards locations with much higher IMR than the global average, warning that "most locations probably have an infection fatality rate less than 0.20 percent and with appropriate, precise non-pharmacological measures that selectively try to protect high-risk vulnerable populations and settings, the infection fatality rate may be brought even lower."[41] Moreover, the study shows that this disease "has a very steep age gradient for risk of death," with the median IMR for the under-seventy age group coming out at only 0.05 percent.[42] How does the IMR for COVID-19 compare with the annual death rates for influenza? The latest CDC figures from the 2016-2017 influenza

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[37] *See* Jeffrey A. Tucker, *Asymptomatic Spread Revisited*, AM. INST. FOR ECON. RSCH. (Nov. 22, 2020), https://www.aier.org/article/asymptomatic-spread-revisited/.

[38] *See* Will Feuer & Noah Higgins-Dunn, *Asymptomatic Spread of Coronavirus is 'Very Rare,' WHO says*, CNBC (June 8, 2020, 1:05 PM), https://www.cnbc.com/2020/06/08/asymptomatic-coronavirus-patients-arent-spreading-new-infections-who-says.html.

[39] *See* Berkeley Lovelace et al., *WHO Walks Back Comments On Asymptomatic Coronavirus Spread, Says Much is Still Unknown*, CNBC (June 9, 2020, 10:07 AM), https://www.cnbc.com/2020/06/09/who-scrambles-to-clarify-comments-on-asymptomatic-coronavirus-spread-much-is-still-unknown.html.

[40] *See* Shiyi Cao et al., *Post-lockdown SARS-CoV-2 Nucleic Acid Screening In Nearly Ten Million Residents of Wuhan, China*, NATURE COMMC'NS (Nov. 20, 2020), https://www.nature.com/articles/s41467-020-19802-w.

[41] *See* John P. Ioannidis, *Infection Fatality Rate of COVID-19 Inferred from Seroprevalence Data*, WHO (Oct. 14, 2020), https://www.who.int/bulletin/online_first/BLT.20.265892.pdf.

[42] *Id.*

season in the U.S. show an IMR of between 0.1 and 0.2 percent.[43] In short, COVID-19 is definitely dangerous for people over seventy years old. For everyone else, it is proving to be on par with the seasonal flu.[44] By comparison, the top infectious disease killer is tuberculosis. WHO reports that 10 million people fell ill with TB in 2018, with a mortality rate of three percent—figures that dwarf COVID-19 in every way, but with no commensurate public outcry or public health mobilization, let alone attempts to shut down schools and economic activity.[45]

Getting an accurate aggregate portrait of how COVID-19 illnesses are being treated is difficult. Despite the obsessive focus on vaccination as the only viable solution to COVID-19, numerous effective and cost-efficient treatments are available, backed up by both scientific studies and emergent clinical evidence.[46] With the understanding that specific patient care protocols are case contingent, I simply list here some of the treatment options discussed in the scientific literature, including azithromycin, bromhexine, heparin, intravenous ascorbic acid (quercetin and vitamin C), ivermectin, nitric oxide nasal spray, thiamine, vitamin D, steroids, and zinc, among others.[47] One of the most salient

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[43] *See Past Seasons Estimated Influenza Disease Burden*, CDC (Oct. 1, 2020), https://www.cdc.gov/flu/about/burden/past-seasons.html.

[44] Much has been made of the effect of co-morbidities, or the various factors compromising immune system efficacy—and rightly so. Comorbidities play crucial roles in health outcomes—this goes for any disease, COVID-19 is not unique in this way. But it is important to recognize here that these infection mortality rates for COVID-19 and influenza are aggregate statistics, which means that are *inclusive* of all the various comorbidities in the population. And still the IMR for people under 70 years old with COVID-19 is essentially the same as that for seasonal influenza.
People at High Risk for Flu Complications, CDC (Feb. 11, 2021), https://www.cdc.gov/flu/high-risk/index.htm; *People with Certain Medical Conditions*, CDC (Apr. 29, 2021), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html [hereinafter *Certain Medical Conditions*].

[45] *See Global Tuberculosis Report 2019*, WHO, https://www.who.int/teams/global-tuberculosis-programme/tb-reports/global-report-2019 (last visited May 30, 2021); *Global Health Observatory (GHO) Data*, WHO, https://www.who.int/gho/tb/epidemic/cases_deaths/en/ (last visited May 30, 2021); Devan Cole, *Fauci: Science Shows Hydroxychloroquine is Not Effective as a Coronavirus Treatment*, CNN (May 27, 2020, 3:43 PM), https://www.cnn.com/2020/05/27/politics/anthony-fauci-hydroxychloroquine-trump-cnntv/index.html.

[46] *See Frontline COVID-19 Critical Care Alliance*, FLCCC ALLIANCE, https://covid19critical-care.com/ (last visited May 30, 2021) (providing resources on treatment protocols supported by scientific literature and clinical evidence).

[47] *See* Pierre Kory et al., *Review of the Emerging Evidence Demonstrating the Efficacy of Ivermectin in the Prophylaxis and Treatment of COVID-19*, FLCCC ALLIANCE (Jan. 16, 2021), https://covid19criticalcare.com/wp-content/uploads/2020/11/FLCCC-Ivermectin-in-the-prophylaxis-and-treatment-of-COVID-19.pdf; *see also* Yaseen M. Arabi et al., *The Ten Reasons Why Corticosteriod Therapy Reduces Mortality in Severe COVID-19*, 46 INTENSIVE CARE MED. 2067, 2067–70 (2020); Ruben Manuel Luciano Colunga Biancatelli et al., *Quercetin and Vitamin C: An Experimental, Synergistic Therapy for the Prevention and Treatment of SARS-CoV-2 Related Disease (COVID-19)*, 11 FRONTIERS IN IMMUNOLOGY 1451 (2020), https://www.frontiersin.org/articles/10.3389/fimmu.2020.01451/full; Ning Tang et al., *Anticoagulant Treatment is Associated with Decreased Mortality in Severe Coronavirus Disease 2019 Patients with Coagulopathy*, 18 J. THROMBOSIS AND HAEMOSTASIS 1094, 1094–99 (2020); Ali Daneshkhah et al., *The Possible Role of Vitamin D in Suppressing Cytokine Storm and Associated Mortality in COVID-19 Patients*, MEDRXIV (May 18, 2020), https://www.medrxiv.org/content/10.1101/2020.04.08.20058578v4;

treatment issues for our investigation here of the pandemic police power is hydroxychloroquine (HCQ). Dr. Anthony Fauci, Director of the National Institutes of Allergy and Infectious Diseases (NIAID), told the nation in May 2020 that HCQ was not effective in treating COVID-19, while some European nations moved to ban its use altogether.[48] At the same time, Trump was touting the drug's effectiveness, saying that he used it successfully to treat his infection.[49] The official opposition of most Western governments to treating COVID-19 with HCQ is curious given the drug's longstanding use (it has been approved by the FDA and in widespread use worldwide since the 1950s) as an effective and cost-efficient treatment for a range of both autoimmune diseases and viral infections that impact the upper respiratory system. In 2005, for instance, a study funded by Fauci's NIAID found the drug to be a "potent inhibitor of SARS coronavirus infection and spread," and findings from 2020 show fewer hospitalizations for patients treated with HCQ.[50] Despite this proven track record, there appears to be a concerted effort to dissuade use of the treatment. Two scientific articles were hurriedly published claiming that HCQ does not work in treating COVID-19—only to be swiftly retracted when the studies were subsequently shown to be erroneous.[51] Nevertheless, the fact that the fallacious

New Nasal Spray Proven to Kill 99.9% of the Coronavirus that Causes Covid-19 is Being Trialled in the UK, ROYAL HOLLOWAY UNIVERSITY OF LONDON (Jan. 12, 2021), https://www.royalholloway.ac.uk/research-and-teaching/departments-and-schools/biological-sciences/news/new-nasal-spray-proven-to-kill-999-of-the-coronavirus-that-causes-covid-19-is-being-trialled-in-the-uk/; Ari Moskowitz & Michael W. Donnino, *Thiamine (Vitamin B1) in Septic Shock: A Targeted Therapy*, 12 J. THORAC. DIS. S78, S78–83 (2020); Aartjan J W te Velthuis et al., *Zn(2+) Inhibits Coronavirus and Arterivirus RNA Polymerase Activity In Vitro and Zinc Ionophores Block the Replication of These Viruses in Cell Culture*, PLOS PATHOGENS (Nov. 4, 2010), https://journals.plos.org/plospathogens/article?id=10.1371/journal.ppat.1001176; Peter A. McCullough, *Pathophysiological Basis and Rationale for Early Outpatient Treatment of SARS-CoV-2 (COVID-19) Infection*, AM. J. MED. (2020), https://aapsonline.org/mccullough-protocol-3-page.pdf.

[48] *See* Cole, *supra* note 45.

[49] *See* Nikki Carvajal & Kevin Liptak, *Trump Says he is Taking Hydroxychloroquine Though Health Experts Question its Effectiveness*, CNN (May 19, 2020, 4:58 AM), https://www.cnn.com/2020/05/18/politics/donald-trump-hydroxychloroquine-coronavirus/index.html.

[50] *See* Andrew Mark Miller, *Study Finds 84% Fewer Hospitalizations for Patients Treated with Controversial Drug Hydroxychloroquine*, WASH. EXAM'R (Nov. 25, 2020, 3:02 PM), https://www.washingtonexaminer.com/news/study-finds-84-fewer-hospitalizations-for-patients-treated-with-controversial-drug-hydroxychloroquine. *See generally* Martin J. Vincent et al., *Chloroquine is a Potent Inhibitor of SARS Coronavirus Infection and Spread*, 2 VIROL J. 69 (Aug. 22, 2005). For effectiveness of HCQ in treating influenza, see generally Eng Eong Ooi et al., *In Vitro Inhibition of Human Influenza A Virus Replication by Chloroquine*, 3 VIROL J. 39 (May 29, 2006). For effectiveness on a range of viral infections, see also *id.*; Andrea Savarino et al., *Effects of Chloroquine on Viral Infections: an Old Drug Against Today's Diseases?*, 11 LANCET INFECTIOUS DISEASE 722 (2003); *Real-Time Database and Meta Analysis of 322 COVID-19 Studies*, COVID-19 STUD., https://c19study.com/ (last visited May 30, 2021) (tracking global HCQ COVID-19 treatment studies).

[51] *See* Alexandre B. Cavalcanti et al., *Hydroxychloroquine With or Without Azithromycin in Mild-to-Moderate Covid-19*, 383 NEW ENGLAND J. OF MED. 2041 (Nov. 19, 2020); Sarah Boseley & Melissa Davey, *Covid-19: Lancet Retracts Paper That Halted Hydroxychloroquine Trials*, THE GUARDIAN (June 4, 2020, 3:43 PM), https://www.theguardian.com/world/2020/jun/04/covid-19-

studies were published in the world's two most prominent medical science journals, *The New England Journal of Medicine* and *The Lancet*, garnered extensive media attention, combined with the schizoid Janus Head leadership from the U.S. government, seems to outweigh the preponderance of scientific findings showing that HCQ does work. Needless to say, the media hardly covered the studies' retraction, the fraudulent research methods employed, and the scandalous rush to publication by the two leading scientific literature outlets. Then in January 2021, right after the U.S. presidential election of Joe Biden, the *American Journal of Medicine* recommended HCQ, along with azithromycin and zinc, for the treatment of COVID-19.[52] HCQ is merely one among a whole host of effective and inexpensive treatment options, but the way it has been suppressed illustrates how basic medical care is being impacted by the many political interests entangled in the medical industrial complex.

The primary method promoted for preventing COVID-19 transmission, face masks, is another example of how the pandemic police power flaunts scientific reason. In many places it is perfunctory to have to wear masks whenever you are in public or around anyone outside of your family. Some people even wear masks when alone in their own cars. In other places, masks are relatively uncommon. While many people have taken to heart the messaging that masks prevent transmission of the virus, many other people wear masks simply because of the social pressures to do so. Mask wearing is the perfect example of how science takes a backseat to politics and cultural constructs in the COVID-19 response.[53] At different points in the Pandemic Year, Fauci, then U.S. Surgeon General Dr. Jerome Adams, the White House Coronavirus Task Force, WHO, the CDC, and the *Journal of the American Medical Association* all urged healthy people to *not* wear masks; and the messaging was rarely consistent, with Fauci later advocating mask-wearing for all, while the CDC and WHO were still saying masks only for sick people and their caretakers.[54] Through it all, the science has never changed. It is becoming more widely known that the masks most people are wearing are ineffective in preventing viral transmission, for the simple fact that the virus particles are so small that they easily go through and around the masks. Coronaviruses and influenza viruses are approximately 0.12 microns, while even the heavy-duty medical N-95 masks are only tested

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lancet-retracts-paper-that-halted-hydroxychloroquine-trials; Daniel Espinosa, *Lancetgate: Why Was This "Monumental Fraud" Not a Huge Scandal?*, DISSIDENT VOICE (Aug. 20, 2020), https://dissidentvoice.org/2020/08/lancetgate-why-was-this-monumental-fraud-not-a-huge-scandal/.

[52] *See The American Journal Of Medicine Now Recommends HCQ For COVID19*, PRINCIPIA SCI. INT'L (Jan. 26, 2021), https://principia-scientific.com/the-american-journal-of-medicine-now-recommends-hcq-for-covid19/.

[53] *See* Christine Favocci, *Confusion: WHO Disagrees with CDC Recommendations, Says No Need for Healthy People to Wear Masks*, W. J. (June 1, 2020, 1:05 PM), https://www.westernjournal.com/confusion-disagrees-cdc-recommendations-says-no-need-healthy-people-wear-masks/ (showing examples of the many contradictions and reversals regarding mask-wearing).

[54] *Id.*

effective to 0.3 microns. While there remains debate as to whether the virus size is the only factor that matters, this debate is largely fueled by opinions, not by research findings.[55] As for the scientific data, a review of the research literature, including seventeen of the best studies, found that, "None of the studies established a conclusive relationship between masks/respirator use and protection against influenza infection."[56] Additional studies corroborate this finding, confirming that hygiene, face masks, and respirators are ineffective in protecting against common cold viruses, influenza, and COVID-19.[57] Absent a sound scientific basis, then, it would appear that mask mandates are naked social control measures that fuel paranoia and social disconnection.

The data reviewed here shows that the COVID-19 pandemic is not what it has been made out to be. If COVID-19 illness has been grossly overestimated due to the fallacies of PCR testing; if a significant percentage of the population already has natural immunological recognition of the virus; if the virus is no more dangerous a health risk than annual influenza, with 99.95 percent of infected people surviving; and if numerous effective and low-cost treatment options exist, then why is there a need for vaccination?

IV. WHY OR WHY NOT VACCINES?

Based on the analysis in the preceding section, the pandemic lockdowns have nothing to do with public health needs. Lockdowns themselves are incredibly immune suppressive for a whole host of reasons, not the least of which are the toxic effects of stress, hunger, isolation, fear, inactivity, homelessness, poverty, and anxiety. People with comorbidities, those deemed most vulnerable to the virus, are harmed the most by these lockdown toxicities. The promotion of vaccination as the solution to the pandemic, and thus the means by which the poison of lockdown will be ended, is therefore a fraught and multi-layered problem central to how the pandemic police power works. No topic is perhaps more convoluted politically, with anti-vaccination positions more commonly associated with the Right's anti-big government skepticism, while the Left promotes vaccination as vital to public health and smears its critics as "conspiracy

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[55] *See* Eric Litke, *Fact Check: No, N95 Filters Are Not Too Large to Stop COVID-19 Particles*, USA TODAY (June 12, 2020, 11:36 AM), https://www.usatoday.com/story/news/factcheck/2020/06/11/fact-check-n-95-filters-not-too-large-stop-covid-19-particles/5343537002/.

[56] *See* Faisal Bin-Reza et al., *The Use of Masks and Respirators to Prevent Transmission of Influenza: A Systematic Review of the Scientific Evidence*, 4 INFLUENZA OTHER RESPIRATORY VIRUSES 257, 257 (June 6, 2012).

[57] *See* Joshua L. Jacobs et al., *Use of Surgical Face Masks to Reduce the Incidence of the Common Cold Among Health Care Workers in Japan: A Randomized Controlled Trial*, 37 AM. J. OF INFECTION CONTROL 417 (June 3, 2009); Vittoria Offeddu et al., *Effectiveness of Masks and Respirators Against Respiratory Infections in Healthcare Workers: A Systematic Review and Meta-Analysis*, 11 CLINICAL INFECTIOUS DISEASE 1934 (Nov. 17, 2017); Christopher R. Friese et al., *Respiratory Protection Considerations for Healthcare Workers During the Covid-19 Pandemic*, 3 HEALTH SEC. 237 (Apr. 22, 2020); B J Cowling et al., *Face Masks to Prevent Transmission of Influenza Virus: A Systematic Review*, 138 EPIDEMIOLOGY & INFECTION 449 (Jan. 22, 2010).

theorists" or "anti-vaxxers."[58] Since the arrival of COVID-19, however, room for critical thought on vaccines appears to have shrunk even further. For instance, the socialist organization Science for the People's position on COVID-19 vaccines amounts to: we need them, and they should be available to all free of charge.[59] For a group with radical origins in the anti-war movement of the 1960s that sought to contest the military industrial complex's control over scientific inquiry, #FreeTheVaccine is a shockingly shallow position to take on one of the most salient issues in contemporary science.[60]

The polarity of vaccine discourse, of course, is wholly unproductive—but then that is precisely the point of the pandemic police power. State power loves a dichotomy because it divides people and facilitates social control. In the interest of busting up dichotomous thinking and establishing the case for vaccine mandates as unconstitutional I explore three questions about vaccines that have been largely swept aside in the current pandemic climate. First, what is a vaccine and how does it work? Of particular importance here is the role of zoonotic diseases, xenotransplantation and chimeric research, and retroviruses in vaccine production. Secondly, the development of vaccines leads immediately into the question of what kind of medical and public health model relies on vaccination to solve health problems? Like everything else in medical science these days, vaccines are lucrative features of the medical industrial complex, and as such, arise at a particular historical moment as an expression of the relations of power seeking to shape the social order. Subtending the production of vaccines, then, is a confrontation between Western culture's attempt to manipulate nature to control humankind's interaction with some of the viruses and bacteria that share our world. Third, what is a COVID-19 injection and what unique challenges does this new form of vaccination present to immunological health?

Western science's notion that germs are enemies to be fought at all costs led to the concept of a "germ-free" body, with an immune system that functions to repulse invading microbes through effective immune reactions. In part, vaccines are the product of this way of thinking. Over the years, science learned what the ancients already knew, that the notion of "germ-free" is both erroneous *and* harmful to our health. Moreover, a healthy host does not always fight germs, but instead lives symbiotically with some of them.[61] The concept of symbiosis between host and microbes was first accepted for bacteria (the "microbiome") and more recently has been applied to viruses as well (the

[58] *See generally* JONATHAN M. BERMAN, ANTI-VAXXERS: HOW TO CHALLENGE A MISINFORMED MOVEMENT (2020).

[59] *See* Nafis Hasan, *#FreeTheVaccine to End the Pandemic*, SCI. FOR THE PEOPLE (June 25, 2020), https://magazine.scienceforthepeople.org/?s=vaccine.

[60] I would argue that racism, capitalism, state power, and cultural chauvinism are the problems with science. But in terms of the world's most pressing issues involving science today, a good starting list might be: environment and energy, food-water-seed justice, vaccines, internet and social media, and war.

[61] *See* Andrea Lisco et al., *War and Peace Between Microbes: HIV-1 Interactions With Coinfecting Viruses*, 6 CELL HOST & MICROBE 403, 403 (2009).

"virome").[62] The body is thus a medium for microbes to maintain themselves, but more to the point, these germs also shape our physiology, especially the immune system.[63]

> In a healthy human body, microbes live in a dynamic equilibrium with the host []. Each new invading microbe—in particular, a virus (or viruses) —resets this balance in an attempt to create favorable conditions for its own existence, leading to beneficial or detrimental conditions for other microbes. In response to some invading microbes, however, the host fails to reset this equilibrium, and such microbes become pathogens. From this perspective, the difference between "symbiotic" and "pathogenic" microbes is related to their ability to establish a new equilibrium with the host rather than to inherited "pathogenic" or "nonpathogenic" features. For a particular microbe, this ability may also depend on the body compartment. Nevertheless, some microbes are never capable of establishing such an equilibrium and are invariably harmful, whereas others are harmless under most conditions. Because the establishment of such an equilibrium is evolutionarily beneficial, human pathogens often become less pathogenic with time.[64]

The corona and influenza viruses are naturally occurring organisms that have co-existed with humans for millennia. The fact of co-existence tells us that these particular viruses are not killers because they need humans to survive; they have developed in a way that they do not kill their hosts. Exposure to such viruses, in fact, enhances the chances of human survival by strengthening our immune responses to the environment. It is not a parasitic situation. On the contrary, there is a dialectical relationship between viruses and the human immune system, with each developing through its interaction with the other.

In theory, a vaccine can be a prophylactic to maintain equilibrium in the body's virome, and to mitigate viral spread throughout a community. In practice, however, a vaccine disrupts the natural occurring symbiotic system in two ways. First, vaccination itself is a challenge to the immune system because it introduces a weakened version of the virus, or its blueprint, into the body. The problem is that the vaccine enables the virus to bypass some of the normal protective features of the body's immune system. The equilibrium is disrupted as

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[62] *See generally* Herbert W. Virgin et al., *Redefining Chronic Viral Infection*, 138 CELL 30 (2009).
[63] *See* Erik S. Barton et al., *Herpesvirus Latency Confers Symbiotic Protection From Bacterial Infection*, 447 NATURE 326, 329 (2007). *See generally* Katie L. Mason et al., *Overview of Gut Immunology*, *in* 635 GI MICROBIOTA AND REGULATION OF THE IMMUNE SYSTEM (ADVANCES IN EXPERIMENTAL MEDICINE AND BIOLOGY) (Gary B. Huffnagle & Mairi C. Noverr eds., 2008); Emil R. Unanue, *Viral Infections and Nonspecific Protection—Good or Bad?*, 357 NEW ENGLAND J. OF MED. 1345 (2007).
[64] Lisco et al., *supra* note 61, at 403.

the body reacts to the vaccine, but without its full complement of resources; and if the vaccine introduces multiple viruses at once, the disequilibrium is compounded. More to the point, since vaccination is *not* the same thing as viral infection, it does not produce a natural immune response. The vaccine compels the body to reset the balance with its virome, but in so doing, detrimental conditions are created for other microbes that were previously in equilibrium with the host environment. In other words, viruses, bacteria, or toxins that were not a problem to the body prior to the vaccine may become a problem after vaccination due to the uncontrolled replication of previously symbiotic microbes. Immunologists analogize the immune system in this situation to an orchestra without its conductor. The conductor is not one entity that serves as the operator of the system; rather, the conductor is the dynamic between the body and its natural exposure to the environment, which includes viruses. When this natural dynamism is interrupted—when the orchestra loses its conductor—the music continues, but it will be off key and out of sync or the wrong melody: "the immune system continues to play out a chaotic and ineffective attack against microbes."[65] Researchers are only beginning to understand the differences between a vaccine-boosted immune system and naturally acquired immunities. It is clear, however, that not only do natural exposures produce lifelong immunity, unlike the short-lived boost of a vaccine, but it also tunes the system to make it less vulnerable to health problems down the road, whereas the vaccinated system continues down an out-of-tune pathway with its inevitable associated health issues.

The second way vaccines disrupt the body's equilibrium is because of what they contain. All vaccines introduce elements that would not otherwise be entering the human body. A recent inquiry in December 2018 by the Italian lab Corvela on the GlaxoSmithKline vaccine Priorix Terta enumerated the various ingredients.

> We continued the investigation, both chemical and biological, on the Priorix Tetra, quadrivalent against measles, rubella, mumps and varicella . . . we have found . . .Proteobacteria, Platyhelminthes worms and Nematoda, 10 more ssRNA viruses, Microviridae (bacterial viruses or phage) and numerous retroviruses including endogenous human and avian retroviruses, avian viruses, human immunodeficiency virus and immunodeficiency virus of monke (if inserted into the database turn out to be fragments of HIV and SIV), murine virus, horse infectious anemia virus, lymphoproliferative disease virus, Rous sarcoma virus . . . alphaendornavirus, hepatitis b virus, yeast virus.[66]

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[65] *Id.*

[66] *See Metagenomic Analysis Report on Priorix Tetra*, CORVELA (Dec. 24, 2018), https://www.corvelva.it/en/speciale-corvelva/vaccinegate-en/metagenomic-analysis-report-on-priorix-tetra.html.

To this list we can add the various metals, toxins, and chemical preservatives that have been proven to be harmful.[67] To weaken a virus so that a human will produce an effective immune response to protect the host rather than injure or kill the host requires passing the virus isolate repeatedly through animal tissue in the lab until it becomes tolerable. When viruses cross species, their genetic structure undergoes changes that can make them either more benign or more lethal. The problem is that in trying to conquer one disease, research scientists may inadvertently create another. Scientists became aware of this potential problem as early as the 1950s. At the time, the yellow fever vaccine had been in use for over a decade and the polio vaccine was still in development. A Rockefeller Institute researcher investigating efforts to lower the virulence of the yellow fever vaccine made a presentation to WHO in 1953 in which he noted the following:

> [T]wo main objections to this vaccine have been voiced, because of the possibility that: (i) the mouse brains employed in its preparation may be contaminated with a virus pathogenic for man although latent in mice…or may be the cause of demyelinating encephalomyelitis; (ii) the use, as antigen, of a virus with enhanced neurotropic properties may be followed by serious reactions involving the central nervous system[.][68]

Every species has its own virome, and in animals like mice, monkeys, and humans—the most commonly interacting species in the laboratory environment—viruses ensconce themselves into tissues. When these tissues (mouse brain tissue, in the case of the early yellow fever virus above) are used to create vaccines, viruses extant in the tissues also enter the vaccine. The Rockefeller scientist noted that although the virus existed in equilibrium with mice, it can produce disease and autoimmune dysfunction in humans. Demyelinating encephalomyelitis is the degradation of the myelin sheaths which coat neurons, leading to brain and spinal cord inflammation. Multiple sclerosis is the most common manifestation of encephalomyelitis, but myelitis is also linked to autism spectrum disorder.[69] Not incidentally, the AstraZeneca COVID-19 vaccine trial was halted in early September 2020 because trial subjects developed the serious side effect of transverse myelitis, featuring inflammation on both sides of the spinal

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[67] *See generally* Neil Z. Miller, *Aluminum in Childhood Vaccines is Unsafe*, 21 J. OF AM. PHYSICIANS & SURGEONS 109 (2016).

[68] *See* G. Stuart, *The Problem of Mass Vaccination Against Yellow Fever*, WHO (Aug. 20, 1953), https://apps.who.int/iris/bitstream/handle/10665/75301/WHO_YF_20_eng.pdf.

[69] *See* BaDoi N. Phan et al., *A Myelin-Related Transcriptomic Profile is Shared by Pitt-Hopkins Syndrome Models and Human Autism Spectrum Disorder*, 23 NATURE NEUROSCIENCE 375, 384 (2020).

cord that potentially causes paralysis.[70] Moreover, the Rockefeller scientist noted the possibility that the vaccine, precisely because of the compounded viral load it contains, might make the body overreact, provoking autoimmune disease in which the body attacks not an invader, but rather turns on itself.[71]

Vaccine development continued undeterred, however, with the polio vaccine becoming the most prominent and prolific disseminator of animal viruses. The science is still unfolding in this area, probably disincentivized by the considerable financial and political weight behind vaccination, but there is enough evidence to point to connections between vaccinations and myalgic encephalomyelitis (ME), more commonly mis-labeled as "chronic fatigue syndrome," the emergence of "stealth adapted viruses," HIV, autism, and cancer.[72] The known cause of ME is xenotropic murine retrovirus (XMRV). Xenotropic refers to the replication of cells in tissue of an organism other than its normal host—such as in the production of vaccines wherein murine (mouse) tissues are introduced into humans. A retrovirus is a virus that evades the immune system and lodges itself into the body's tissues. When the immune system is activated at some later point—as a result of vaccination, for instance—the retrovirus is activated, either sending the immune system into overdrive, as in ME, or suppressing its functioning, as with HIV. Since XMRV is known to be the result of viral transmission from mouse to human, and humans and mice have coexisted for thousands of years without direct transmission, it seems most likely that it is the result of laboratory-created biological products, which has only occurred since the 1930s and the steady expansion of Western medicine's vaccination program in the late twentieth and early twenty-first centuries.[73] Between 1989 and 2008, every known outbreak of Ebola virus was connected to laboratories

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[70] *See* Jackie Salo, *What is Transverse Myelitis? The Illness That Halted AstraZeneca Vaccine Trial*, N.Y. POST (Sept. 9, 2020, 4:23 PM), https://nypost.com/2020/09/09/transverse-myelitis-the-illness-that-halted-astrazeneca-vaccine-trial/.

[71] *See* KENT HECKENLIVELY & JUDY MIKOVITS, PLAGUE: ONE SCIENTIST'S INTREPID SEARCH FOR THE TRUTH ABOUT HUMAN RETROVIRUSES AND CHRONIC FATIGUE SYNDROME (ME/CFS), AUTISM, AND OTHER DISEASES 67 (Skyhorse rept., 2017) (2014).

[72] *See* HECKENLIVELY & MIKOVITS, *supra* note 71 (providing a comprehensive analysis of the links between ME, XMRV, autism, and vaccinations). On "stealth adapted viruses" and the vaccination connection, see generally W. JOHN MARTIN, STEALTH ADAPTED VIRUSES; ALTERNATIVE CELLULAR ENERGY (ACE) & KELEA ACTIVATED WATER: A NEW PARADIGM OF HEALTHCARE (2014). On the connection between the polio vaccine and cancer, see also generally Eric A. Engels, *Cancer Risk Associated With Receipt of Vaccines Contaminated With Simian Virus 40: Epidemiologic Research*, 19 ANTICANCER RSCH. 2173 (1999); HILLARY JOHNSON, OSLER'S WEB: INSIDE THE LABYRINTH OF THE CHRONIC FATIGUE SYNDROME EPIDEMIC (1996) (regarding the history of myalgic encephalomyelitis); ANNIE JACOBSEN, THE PENTAGON'S BRAIN: AN UNCENSORED HISTORY OF DARPA, AMERICA'S TOP-SECRET MILITARY RESEARCH AGENCY (2015); Steve Haltiwanger et al., *Stealth Viruses: The Hidden Epidemic*, PULSED TECH.'S RSCH. (July 15, 2001), http://www.pulsedtechresearch.com/wp-content/uploads/2013/04/Stealth-Viruses-Hidden-Epidemic-Haltiwanger-Martin-Kholos.pdf.

[73] *See* Antoinette Cornelia van der Kuyl et al., *Of Mice and Men: On the Origin of XMRV*, 1 FRONTIERS IN MICROBIOLOGY 1, 4–5 (2011).

experimenting with monkeys.[74] Similarly, HIV is known to be derived from SIV, simian immunodeficiency virus, and is usually attributed to Africans hunting and eating chimpanzees, combined with African promiscuity and bestiality. The classic antiblack racism of this colonial discourse remains largely taken for granted to this day.[75] The more likely explanation of the jump from monkeys to humans came during the polio vaccine campaigns in the Belgian-controlled Congo from 1957 to 1960 in which more than five hundred chimpanzees and bonobos (pygmy chimpanzees) were slaughtered to harvest their kidney cells and sera to grow the oral polio vaccine.[76]

Much of this information is not widely known by the public that must make regular decisions about whether to vaccinate or not. The polarity of the vaccine debate largely devolves into its connection to autism. The 2008 Nobel Prize winner for his discovery of HIV, Luc Montagnier has noted, "Many parents have observed a *temporal* association, which does not mean causation, between a vaccination and the appearance of autism symptoms." "Presumably," he continues, "vaccination, especially against multiple antigens, could be a trigger of a pre-existing pathological situation in some children."[77] Given the ubiquity of xenotropic viruses, retroviruses, and numerous other toxins introduced into humans via vaccination, autism need not be directly caused by a vaccine jab in order for it be causally connected. For some children who develop autism, the immune challenge of vaccination could have activated a retrovirus from hiding; for others, it could have been activated by a fever; a similar immune challenge to the mother during pregnancy could have also stimulated a retrovirus to rampage and affect the child from birth.[78]

The problem with vaccines, in sum, is the problem of xenotransplantation, the transplantation of living cells from one organism to another. The result of xenotransplantation is a chimera, named after the Greek mythological hybrid monster usually depicted as a lion with the head of a goat protruding from its back and a snake for a tail. Vaccines are chimeras, and as the non-human RNA combines with human DNA, vaccines produce human chimeras. As we will see momentarily, the COVID-19 vaccines are certainly chimeras in that they rely entirely on biotechnology to approximate virus RNA, since there is no virus

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[74] *See* Suresh Rewar & Dashrath Mirdha, *Transmission of Ebola Virus Disease: An Overview*, 80 ANNALS OF GLOB. HEALTH 444, 446 (2014). *See generally* JUDY MIKOVITS & KENT HECKENLIVELY, PLAGUE OF CORRUPTION: RESTORING FAITH IN THE PROMISE OF SCIENCE (2020).
[75] *See* Richard Knox, *Origin of AIDS Linked to Colonial Practices in Africa*, NPR (June 4, 2006, 8:00 AM), https://www.npr.org/templates/story/story.php?storyId=5450391.
[76] *See* Edward Hooper, *The Origins of the AIDS Pandemic: A Quick Guide to the Principal Theories and the Alleged Refutations*, AIDS ORIGINS (Apr. 25, 2012), http://www.aidsorigins.com/the-origins-of-the-aids-pandemic/#more-200. *See generally* HOOPER, THE RIVER: A JOURNEY TO THE SOURCE OF HIV AND AIDS (1999).
[77] *See* Declan Butler, *Nobel Fight Over African HIV Centre*, 486 NATURE 301, 301–02 (2012).
[78] *See generally* MIKOVITS & HECKENLIVELY, *supra* note 71.

isolate available.[79] The dangers of xenotransplantation have been widely shared within the medical research community, to little effect.[80] In fact, the state drives chimeric research through the public health establishment's opaque relationship to the Defense Department, illuminating a key backstory for COVID-19. The Army's premier biological laboratory at Ft. Detrick, MD has been at the heart of the U.S. bioweapons program from 1943 to 1969 and is now the center of its "biodefense" program. Central to so-called biodefense is "gain-of-function" research, where scientists attempt to increase the virulence, ease of spread, or host range of dangerous pathogens. Safety concerns led the CDC to close gain-of-function research on anthrax and influenza at Ft. Detrick and at its Atlanta labs twice in the past seven years after accidents.[81] Indeed, it was Ft. Detrick that supplied virus samples for a NIAID funded study, under Fauci's direction, of bat coronaviruses. The research team included U.S.-based scientists and researchers from the Wuhan Institute of Virology in China, and it succeeded in creating a chimeric virus, a hybrid microorganism based off a bat coronavirus and an adapted SARS virus, that proved capable of infecting human cells.[82] This record of U.S.-China collaboration in bio-engineering with coronaviruses, combined with the conveniently unavailable COVID-19 isolate, raises as yet unanswerable questions as to what the COVID-19 virus really is.[83] But in the least, it exposes the duplicity of the public health establishment. What does it mean that Fauci oversaw the gain-of-function research that allowed the corona virus to jump from bats to humans—and now oversees the development and dissemination of its vaccine?

In the wake of the COVID-19 pandemic, there should be a moratorium on all "gain-of-function" research, at minimum. When the Bush Administration's torture regime in Abu Ghraib, Guantanamo, and other unnamed CIA-operated black sites came to light, there was intense pressure put on the lawyers and psychologists who played critical roles in legitimating torture. Deputy Assistant Attorney General John Yoo, Assistant Attorney General Jay Bybee, and Acting

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[79] *See Understanding mRNA COVID-19 Vaccines*, CDC (Mar. 4, 2021), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html.

[80] *See* Jonathan P. Stoye & John M. Coffin, *The Dangers of Xenotransplantation*, 1 NATURE MED. 1100, 1100 (1995).

[81] *See* Denise Grady, *Deadly Germ Research Is Shut Down at Army Lab Over Safety Concerns*, N.Y. TIMES (Aug. 5, 2019), https://www.nytimes.com/2019/08/05/health/germs-fort-detrick-biohazard.html; Donald G. McNeil, Jr., *C.D.C. Closes Anthrax and Flu Labs After Accidents*, N.Y. TIMES (July 12, 2014), https://www.nytimes.com/2014/07/12/science/cdc-closes-anthrax-and-flu-labs-after-accidents.html.

[82] Vineet D. Menachery et al., *A SARS-Like Cluster of Circulating Bat Coronaviruses Shows Potential for Human Emergence*, 21 NATURE MED. 1508, 1508 (2015). This was actually the *second* successful gain-of-function collaboration between U.S. researchers and the Wuhan lab to show bat coronavirus can be made adaptable to humans. *See* Ge Xing-Yi et al., *Isolation and Characterization of a Bat SARS-Like Coronavirus That Uses the ACE2 Receptor*, 503 NATURE 535 (2013).

[83] *See* Declan Butler, *Engineered Bat Virus Stirs Debate Over Risky Research*, NATURE (Nov. 12, 2015), https://www.nature.com/news/engineered-bat-virus-stirs-debate-over-risky-research-1.18787.

Assistant Attorney General for the Office of Legal Counsel Steven Bradbury, supported by White House Counsel Alberto Gonzales, authored the notorious "torture memos" used to bypass both international treaty prohibiting torture and federal anti-torture law to create a legal scaffolding under which detainees could be tortured without calling it torture. Over the outcry from within the legal community and from the general public, the authors of the torture memos, like their superiors in the Bush Administration, were never held accountable, despite an internal Justice Department investigation by an Obama Administration that was in the midst of its own equally invidious circumlocution of international and federal laws in order to prosecute its unprecedented drone killing program around the world.[84] Today, Yoo enjoys a successful career at UC Berkeley School of Law, Bybee is a federal judge on the U.S. Court of Appeals for the Ninth Circuit, Bradbury served in various high-level positions in the Trump Administration, and Gonzales became Attorney General under Bush and is currently Dean of Belmont University College of Law. More importantly, however, the Bush lawyers cited each of the Supreme Court's seven Eighth Amendment decisions between 1976 and 1994 as laying the legal foundation for the U.S.'s treatment of detainees—*and* Guantanamo and the many CIA black sites continue to operate with impunity to this day.[85] In other words, the lawyers only had to rely upon the Supreme Court's own evisceration of the meaning of "cruel and unusual punishment" across its Eighth Amendment corpus to justify torture. It was psychologists, however, who devised many of the torture methods that the lawyers' creative terminology of "enhanced interrogation" tried to obfuscate. The American Psychological Association and its member psychologists faced intense scrutiny, but no accountability, for their role in crafting and implementing torture techniques at Abu Ghraib and Guantanamo—not to mention culpability for their decades long collaboration with the CIA going back at least to the early Cold War.[86]

The point here is that once abuse of power is institutionalized by the state, no matter the disciplinary fields from which it issues, it becomes nigh-

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[84] *See* Richard A. Serrano, *Waterboarding Memo Authors Committed No Misconduct, Report Says*, L. A. TIMES, (Feb. 20, 2010, 12:00 AM), https://www.latimes.com/archives/la-xpm-2010-feb-20-la-na-interrogation-memo20-2010feb20-story.html; *see also* Christopher Anders, *Obama's Drone Killing Program Slowly Emerges from the Secret State Shadows*, ACLU (Mar. 28, 2013, 11:11 AM), https://www.aclu.org/blog/national-security/targeted-killing/obamas-drone-killing-program-slowly-emerges-secret-state.

[85] These cases, which decided when punishments are judged as cruel and unusual, are *Estelle v. Gamble* 429 U.S. 97 (1976); *Rhodes v. Chapman* 452 U.S. 337 (1981); *Whitley v. Albers* 475 U.S. 312 (1986); *Wilson v. Seiter* 501 U.S. 294 (1991); *Hudson v. McMillian* 503 U.S. 1 (1992); *Farmer v. Brennan* 511 U.S. 825 (1994); *Hope v. Pelzer* 536 U.S. 730 (2002).

[86] *See* Gregg Levine*, Psychologists worked with CIA, Bush Administration to Justify Torture*, AL JAZEERA AMERICA (Apr. 30, 2015, 5:14 PM), http://america.aljazeera.com/blogs/scrutineer/2015/4/30/psychologists-worked-with-cia-bush-administration-to-justify-torture.html; *see also* Alfred W. McCoy, *The CIA's Secret History of Psychological Torture*, SALON (June 11, 2009, 2:15 PM), https://www.salon.com/2009/06/11/mccoy/.

impossible to eradicate. The Bush Administration's controversial warrantless surveillance program is now, for all intents and purposes, effectively insulated from scrutiny (and now wholly devoid of controversy) through the Foreign Intelligence Surveillance Court.[87] In the biological sciences, "gain-of-function" is a post-Cold War euphemism for bioweapons research and if the COVID-19 pandemic does not provide sufficient justification to shut it down entirely, then we are in for much worse to come.

We will consider in due course some provisional answers to the question of how Fauci can support "gain-of-function" bioengineering on coronaviruses, and at the same time, oversee (and hold patents on) biotechnology developed to inoculate against same said viruses. But now we arrive at the second problem for the pandemic police power that is raised by vaccines, which is the kind of public health model that relies upon vaccination. As the foregoing analysis demonstrates, vaccination itself presents numerous serious costs to public health. What does this tell us about the approach to public health that we are facing? The pandemic police power rests on the so-called germ theory of disease, in which disease is understood as the result of random attacks on the body by external agents—germs, bacteria, and viruses.[88] From this perspective, disease indicates a dangerous environment, and the antidote requires an external intervention: vaccines, drugs, surgery. This approach has its roots in the rise of Western science and was given its specific elevation by the findings of Louis Pasteur, the nineteenth century French chemist who demonstrated the existence of micro-organisms and claimed that they were pathogenic. Blaming germs for illness was coincident to the rise of the medical profession, and we largely turned over responsibility for our health to modern medicine. Ironically, Western science has always had a dissenting vein, and it was a contemporary of Pasteur's, Antoine Béchamp, who found that germs change from one type of organism to another depending on their conditions, leading to the understanding that the conditions are more important than the germs themselves.[89] Or as Florence Nightingale is supposed to have said, "There are no specific diseases, there are [only] specific disease conditions."[90] Today this is referred to as the terrain theory of disease. According to the germ theory, the fish tank is dirty so we must vaccinate the fish; whereas the terrain theory says, if the tank is dirty, then clean the tank and the fish will be healthy.

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[87] *See* Charlie Savage, *Court Approves Warrantless Surveillance Rules While Scolding F.B.I.,* N.Y. TIMES (Sep. 5, 2020), https://www.nytimes.com/2020/09/05/us/politics/court-approves-warrantless-surveillance-rules-while-scolding-fbi.html.

[88] *See generally* JOSHUA LEDERBERG, ENCYC. OF MICROBIOLOGY (M. Alexander et al. eds., 2d ed. 2000).

[89] *See* Keith Manchester, *Antoine Béchamp: Père de la Biologie. Oui ou Non?*, 25 ENDEAVOUR 68, 68, 70, 72 (June 1, 2000).

[90] *See* Joe Dubs, *The Fallacious Germ Theory*, √ø∑DUBS (Apr. 24, 2013), https://joedubs.com/the-fallacious-germ-theory/.

The dissenting voice in modern medicine included the persistence of ancient knowledge that had to be controlled in order that the medical model could fully take over. Biomedical advancement at the turn of the twentieth century proceeded apace with capitalist expansion, and in particular, innovations in petroleum industry derivatives—pharmaceuticals and plastics. The encroachment of capitalist technological advancements exerted tremendous and comprehensive pressures on how medicine was practiced in the early part of the century. These pressures were encapsulated in the 1910 publication of *Medical Education in the United States and Canada*, which came to be known as the Flexner Report after its author Abraham Flexner. The Flexner Report did not create the germ theory of disease nor was it primarily responsible for disseminating it; but it was instrumental in institutionalizing the germ theory in the form of research science-based medicine.[91] Commissioned by the Carnegie Foundation, the Flexner Report sought to align medical education under a set of norms based on laboratory research and on patenting the medical innovations it produces. The consequences for health care were manifold, including the underdevelopment of patient care. Reflecting at the Flexner Report's centennial, Thomas Duffy of the Yale School of Medicine observed:

> There was maldevelopment in the structure of medical education in America in the aftermath of the Flexner Report. The profession's infatuation with the hyper-rational world of German medicine created an excellence in science that was not balanced by a comparable excellence in clinical caring. Flexner's corpus was all nerves without the life blood of caring. Osler's warning that the ideals of medicine would change as "teacher and student chased each other down the fascinating road of research, forgetful of those wider interests to which a hospital must minister" has proven prescient and wise.[92]

This is classic economic-scientific overdevelopment and politico-cultural underdevelopment.[93] As racism and capitalism produced increasingly unhealthy environments to live in, modern medicine touted treatments for the symptoms of this lifestyle, which in turn produced a new set of symptoms requiring further treatment. The stage was thus set for the re-education of the American public, "with a view to turning it into a population of drug and medico dependents, with the early help of the parents and the schools, then with direct advertising and,

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[91] *See* Abraham Flexner, *Medical Education in the United States and Canada; a Report to the Carnegie Foundation for the Advancement of Teaching*, CARNEGIE FOUND. (1910), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/Carnegie_Flexner_Report.pdf.

[92] *See* Thomas P. Duffy, *The Flexner Report—100 Years Later*, 84 YALE J. OF BIOLOGY & MED. 269, 275–76 (2011).

[93] *See* JAMES BOGGS, RACISM AND THE CLASS STRUGGLE: FURTHER PAGES FROM A BLACK WORKER'S NOTEBOOK, 133 (1970).

last but not least, the influence the advertising revenues had on the media-makers."[94] This is the policing power of the nascent medical industrial complex.

In addition to disempowering patients, professionalizing biomedicine, and promoting pharmacological intervention, the coup de grace of the medical model's maldevelopment of clinical care was to render natural medicine marginal and illegitimate.[95] In the mid-nineteenth century, homeopathic practitioners outnumbered allopathic doctors almost two to one, with the various disciplines of what today would be called alternative medicine taught at most medical schools. The Flexner Report marked a drastic reversal in all of this. Any methods not based on Western scientific research, and that did not advocate vaccines as treatment, were construed as quackery and charlatanism. Schools were forced to drop the non-allopathic programming and eventually most closed their doors altogether. In 1906 there were 162 medical schools; after the Flexner Report, the number was reduced by fifty percent. As a result, naturopathy, holistic, integrative, or alternative medicines are entirely segregated from the professionalized teaching of medical care. The ancient healing arts and their integration with modern science yield a uniquely balanced, perceptive, and effective methodology for healthcare—especially for poor and oppressed communities without access to health insurance. The Flexner Report was equally destructive to non-white doctors. Five of the seven black medical schools were forced to shut their doors, leaving thousands of black medical students with no viable alternative. It is estimated that as many as 35,000 black medical doctors would have entered the workforce during the century between the closing of these schools and today were the black medical schools not forced to close.[96] The Report also further entrenched racist stereotypes about black people, both as patients and as healthcare professionals.[97] The institutionalizing force of the Report lay in its control over pedagogy, and the simultaneous expulsion of blacks and naturopathy from medical education under the guise of scientific professionalization pathologized the former and made out the latter to be the province of the uncivilized. The groundwork for today's racist healthcare system was effectively enhanced.

At the risk of understatement, the transformations in healthcare since the early twentieth century have been extraordinary—but the costs of these changes, including what has been lost in terms of knowledge, have been equally

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[94] *See* Hans Ruesch, *The Truth About the Rockefeller Drug Empire: The Drug Story*, WHALE, http://www.whale.to/b/ruesch.html (last visited May 30, 2021).

[95] *See generally* Frank W. Stahnisch & Marja Verhoef, *The Flexner Report of 1910 and Its Impact on Complementary and Alternative Medicine and Psychiatry in North America in the 20th Century*, 2012 EVIDENCE-BASED COMPLEMENTARY ALT. MED. (2012).

[96] *See* Elizabeth Hlavinka, *Racial Bias in Flexner Report Permeates Medical Education Today*, MEDPAGETODAY (June 18, 2020), https://www.medpagetoday.com/publichealthpolicy/medicaleducation/87171.

[97] *See* Elizabeth Hlavinka, *Study Backs Flexner Report's Negative Impact on Black Physicians*, MEDPAGETODAY (Aug. 20, 2020), https://www.medpagetoday.com/publichealthpolicy/medicaleducation/88176/.

remarkable. There are many ways of measuring the high costs of modern medicine, but one of the more invisible costs is "iatrogenic death," modern medicine *as the cause of death*. A *Journal of the American Medical Association* article in 2000 revealed that iatrogenic death is easily the third leading cause of death, behind heart disease and cancer with 225,000 total in-patient deaths annually. The breakdown is as follows:

- *12000 deaths/year from unnecessary surgery*
- *7000 deaths/year from medication errors in hospitals*
- *20000 deaths/year from other errors in hospitals*
- *80000 deaths/year from nosocomial infections in hospitals*
- *106000 deaths/year from non-error, adverse effects of medications*[98]

To what extent has modern medicine already contributed to COVID-19 deaths in the Pandemic Year, and how much more death in the years to come will be linked to the new vaccine created to combat the virus? One example is the inappropriate but widespread use of mechanical ventilators for hospitalized COVID-19 patients, with an almost ninety percent mortality rate for ventilated patients.[99]

In response to the disastrous results of initial COVID-19 treatments, and in the face of federal public health and hospital-level "supportive care only" directives that restricted the use of proven therapies such as corticosteroids, HCQ, ivermectin, and azithromycin, the Front-Line COVID-19 Critical Care Alliance (FLCCC) of experienced clinicians created a treatment protocol for hospitalized patients based on the core therapies of methylprednisolone (steroid), ascorbic acid (quercetin and vitamin C), thiamine (vitamin B_1), heparin (anti-coagulant), and co-interventions (MATH+).[100] In their research and clinical rationale published in late 2020 in the *Journal of Intensive Care Medicine*, the FLCCC reviews the published in-vitro, pre-clinical, and clinical data in support of each medicine in their recommended protocols, with a special emphasis on studies supporting their use in the treatment of patients with viral syndromes and COVID-19 specifically. They find that the MATH+ outcomes compare favorably with published multi-national COVID-19 mortality data. After Indian doctors began implementing MATH+ protocols with dramatic success, the Indian health ministry recommended in April 2021 the use of HCQ and ivermectin

[98] *See* Barbara Starfield, *Is U.S. Health Really the Best in the World?*, 284 J. AM. MED. ASS'N 483–84 (2000).

[99] *See* Robert Preidt, *Study: Most N.Y. COVID Patients on Ventilators Died*, WEBMD, https://www.webmd.com/lung/news/20200422/most-covid-19-patients-placed-on-ventilators-died-new-york-study-shows#1 (last visited May 30, 2021).

[100] *See* Pierre Kory et al., *Clinical and Scientific Rationale for the "MATH+" Hospital Treatment Protocol for COVID-19*, 36 J. OF INTENSIVE CARE MED., 135, 135–56 (2021).

treatments.[101] Despite preliminary evidence of precipitous declines in COVID-19 cases with the new treatments, WHO pressured the Indian government to rescind its guidelines.[102] It is telling that Merck, the pharmaceutical company that once owned the now-expired patent on ivermectin, says that the drug should not be used in COVID-19 treatment, falsely claiming that there is "no meaningful evidence" and "no scientific basis" for its clinical efficacy.[103]

The foregoing analysis amplifies what it means to say that comorbidity has been the key in COVID-19-related deaths, and that since an agent cannot be causative of a disease unless every case with the infected agent gets the disease, people are dying *with* COVID-19 (at best), not *of* it. Or, in terms of the equilibrium discussed earlier, comorbidities are simply manifestations of an out-of-balance immune system. Again, it is the plethora of environmentally induced underlying conditions that lead to the fatal cases, not the virus itself, as is also the case with influenza and coronaviruses generally. In this light, COVID-19's greatest service will hopefully be to shed light on how vaccination has become a costly all-or-nothing approach to public health in an era where a large percentage of the global population is not in good health, does not live in healthy conditions, or does not have healthy practices. Since the virus is actively mutating as it progresses through the global population, the effectiveness of any vaccine now being developed will be limited by the time it is available, thus necessitating constant updates. From the standpoint of the pharmaceutical industry, constant updates plus the negligible efficacy of many vaccines equates to constant demand. A good year for the flu shot is only a forty-five percent effective rate, and studies show that the influenza vaccine actually *increases* the rate at which recipients are affected by upper respiratory diseases.[104] This should be unsurprising given the foregoing analysis in which comorbidities are the lynchpin between, on the one hand, infection and an effective immune response, or on the other hand, infection and disease: a vaccine for influenza means injecting a person with a live upper respiratory infection, and therefore, vaccination is less

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[101] *See Revised Guidelines for Home Isolation of Mild /Asymptomatic COVID-19 Cases,* COVID BLOG (Apr. 28, 2021), https://thecovidblog.com/wp-content/uploads/2021/05/Revised-India-COVID-guideline.pdf.

[102] *See* Tamil Nadu, *Ivermectin Dropped as COVID-19 Drug,* HINDU (May 14, 2021), https://www.thehindu.com/news/national/tamil-nadu/tn-drops-ivermectin-as-covid-19-drug/article34561235.ece; *see also WHO Warns Against the Use of Ivermectin a Day After GOA Approves Use for Treating COVID-19,* MONEYCONTROL NEWS (May 11, 2021, 4:36 p.m.), https://www.moneycontrol.com/news/trends/who-recommends-against-the-use-of-ivermectin-says-chief-scientist-soumya-swaminathan-6880501.html.

[103] *See Merck Statement on Ivermectin Use During the COVID-19 Pandemic,* MERCK (Feb. 4, 2021, 11:45 AM), https://www.merck.com/news/merck-statement-on-ivermectin-use-during-the-covid-19-pandemic/.

[104] *See generally* Fatimah S. Dawood et al., *Interim Estimates of 2019-20 Seasonal Influenza Vaccine Effectiveness—United States, February 2020*, 69 MORBIDITY MORTALITY WKLY. REP. 177 (2020); Greg G. Wolff, *Influenza Vaccination and Respiratory Virus Interference Among Department of Defense Personnel During the 2017-2018 Influenza Season*, 38 VACCINE 350 (2020).

likely to work in people vulnerable to upper respiratory infection—in short, in the very people presenting with the various key comorbidities.

Nonetheless, in 2019 WHO defined anti-vaccination as one of the top ten gravest threats to global health.[105] It also asserted that vaccination is one of the most cost-effective ways of avoiding disease. In light of the dynamics noted above, this claim should be read as only applying to the individual, not to the collective. This is an example of how neoliberalism contorts social thinking and policy: public health only has meaning at the level of society, not the individual, and at the social level the focus on vaccination over healthy environments should be seen as both costly and ineffective, as the current pandemic is bearing out. COVID-19 mortality, inflated statistics aside, is an expression of a public health model that produces unhealthy environments, both in our communities and in people's bodies. The zeal for vaccine solutions to social problems is no more glaring than in Fauci's plan to develop a vaccine to "treat opioid disorder."[106] Again, our standard should be not what is good for the healthy and wealthy, but rather what is good for all, including the millions of people around the world who face structural impediments to enjoying health and wealth. Vaccines may sometimes aid the former, but the costs of our lack of investment in healthy environments are disproportionately borne by the latter. Ironically, anti-vaccination has become associated with a far right or religious fundamentalist fringe: "anti-vaxxers" is used as a slur construing all resistance to, or even critical inquiry into, vaccination as sociopathic.[107] Unfortunately, this dogmatic treatment of questions about state power reinforces shoddy science and neoliberal social policy which leaves us all less safe.

The third matter for examination regarding vaccination is, what exactly is the COVID-19 vaccine and what are the issues it raises? Everything and anything said at this point—*by anybody*—about the COVID-19 vaccine must be taken as preliminary and conditional. Since the vaccines have only been in existence for less than a year, let alone in use, there has not been *nearly* enough time and data to make solid claims about their efficacy or safety. Typical vaccines take ten to fifteen years of development and testing before they become FDA-approved. The COVID-19 vaccines are being used under FDA emergency use authorization (EUA) because they have not been sufficiently studied and verified as efficacious and safe. As we will see in the following section on the law, the experimental status of these vaccines *alone* means they cannot be mandated. But the provisional data examined in the remainder of this section strongly suggests that, at this point, the potential harmful effects of this new

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[105] *See Ten Threats to Global Health in 2019*, WHO, https://www.who.int/news-room/spotlight/ten-threats-to-global-health-in-2019 (last visited May 30, 2021).

[106] *See A Shot Against Opioids*, NAT'L INST. HEALTH (Oct. 20, 2020), https://heal.nih.gov/news/stories/OUD-vaccine.

[107] *See* Jason Wilson, *U.S. Was Warned of Threat from Anti-Vaxxers in Event of Pandemic*, THE GUARDIAN (Apr. 27, 2020, 6:30 AM), https://www.theguardian.com/us-news/2020/apr/27/us-warning-pandemic-anti-vaxxers.

vaccine outweigh the potential harmful effects from acquiring the disease. To be clear, given the data on COVID-19 infection, treatment, and mortality reviewed in the previous section, which shows that infection and mortality rates are commensurate with annual influenza, and that fairly simple, effective, and cost-efficient treatments are widely available, a COVID-19 vaccine is unnecessary. Any such vaccine would therefore need to be bulletproof, with one hundred percent certainty of preventing disease infection, death, and spread, with no harmful effects. Of course, no vaccine can offer that degree of guaranteed efficacy, but this context is important to keep in mind while reviewing the following provisional data because it makes the case against a COVID-19 vaccine mandate a slam dunk. There is simply no reasonable justification to require people to take the chance of incurring the variety of potential problems posed by this vaccine.

In evaluating the COVID-19 vaccine, we need to examine three issues. First, how this vaccine works differently from all other vaccines; second, the potential modes of injury this unique biotechnology presents; and third, the early warning signs provided by the vaccine's injury data profile, less than six months into widespread usage. The preceding part of this section analyzes the problems associated with the history of vaccines. This problematic history is what passes for "normal" vaccine production. In other words, until 2020, all vaccines were based on injecting a foreign matter in the form of a minor disease course to stimulate the body's production of antibodies, but not enough virus is injected to cause the disease. This attenuated form of the actually occurring virus, or viral bits, is meant to trigger the body's immune response to generate antibodies that ward off the immune challenge of the virus contained in the vaccine, and that promote the cellular memory that protects the body if and when it encounters the virus "in the wild," as it were, through a normal environmental encounter with the pathogen. In short, a normal vaccine is expected to (1) develop antibodies that give immunity to the virus being vaccinated against; (2) protect against getting infected by the virus; (3) reduce the number of deaths from that virus; (4) reduce circulation of the virus; and (5) reduce transmission or spread of the virus.

According to these standards, the COVID-19 injections are not vaccines because they are a genetic manipulation tool that do not follow any of the criteria for vaccines. Using attenuated virus is not possible since the virus has not been isolated in the lab (at least as far the public has been made aware). The COVID-19 injections, therefore, use an mRNA platform that has never before been used in human subjects on a global scale for the purpose of inoculation against viral infection. DNA serves as the basis for life, its blueprint if you will, and it gets transcribed into mRNA which then translates into proteins, which are described as the building blocks of life.

The new COVID-19 biotechnology utilizes this system within our host cells. The mRNA template in the shot is allegedly encoded for the spike protein

that the body would encounter if infected by COVID-19 virus. We must say "allegedly" here because the pharmaceutical companies will not release the sequence of these synthetic mRNAs so we do not know what they will actually encode in our bodies. We do know with some certainty, however, that the mRNA is synthetic for two reasons. First, the drug companies and the government have both applied for patents for these new biologicals, and it is illegal to patent nature; they can only patent the technology if it is not naturally occurring. In fact, the technology used to create the COVID-19 shots is based on earlier technologies which are patented by various biotech firms, universities, governments, and researchers, and sublicensed to the developers of the COVID-19 biologicals. For instance, 2017 filings with the Securities and Exchange Commission indicate that the University of Pennsylvania exclusively licensed their mRNA patents to RiboTherapeutics, which then sublicensed them to its affiliate CellScript, which in turn, sublicensed the patents to Moderna and BioNTech.[108] Secondly, mRNAs are unstable, especially in aqueous solution, meaning that they have limited lifetimes in which to alter protein synthesis. The pharmaceutical companies have all disclosed that their products utilize a modified spike protein developed by the National Institutes of Health (NIH) geared to stabilize the mRNAs.[109]

The mRNAs are delivered in the shot wrapped in lipid nanoparticles to enable them to get into the cells and attached to polyethylene glycol to protect them. In certain cells the mRNA then gets released from its package and is translated into the spike protein that ostensibly registers as the COVID-19 virus to the body's immune system. The body becomes the manufacturing site for this exogenous protein, which will then resemble, at least in theory, an actual spike protein from wild COVID-19 virus such that if you meet this antigen protein in the future, your body will recognize it. Again, because this mRNA technology has never before been used to function like a vaccine, there is no evidence that it will meet the five aforementioned criteria by which we have come to recognize something as a vaccine. The pre-market trials did *not* test to see if the mRNA injections will reduce deaths from COVID-19, and they did *not* test to see if the shots will reduce the circulation of the virus nor its spread throughout the population. The trials did *not* include people with existing immune deficiencies or autoimmune conditions, children, women who are breast feeding or pregnant, people with cancer, the elderly, people with comorbidities, and so forth—the trial exclusion list was lengthy.

The list of concerns with this new technology begins with the fact that there is no actual virus isolated in any lab anywhere (again, as far as we have been told). Without virus isolate, not only is there no actual virus in the shot, but the

[108] The patent numbers are redacted on the SEC filings, however, making it impossible to specify the technology contained in the COVID-19 products. *See* Mario Gaviria & Burcu Kilic*, A Network Analysis of COVID-19 mRNA Vaccine Patents,* 39 NATURE BIOTECHNOLOGY 546, 546–48 (2021).
[109] *Id.*

synthetic spike protein is not coded to the actual COVID-19 virus. This may or may not be a problem. One potential risk is that the similarities in proteins between the synthetic spike protein and the antibody that is made, and those in organ tissues throughout the body, may lead the body to not only mount an immune response against the synthetic spike protein, but also against tissue that is very similar to it in the lungs, kidneys, brain, heart, and reproductive system. This situation is known by a number of terms that are more or less synonymous, such as "cytokine storm" or "pathogenic priming." Pathogenic priming is marked by a dangerous and uncontrolled increase in inflammation and the potential for autoimmune dysfunction. Ironically, this potential situation mirrors an observable clinical effect of COVID-19 infection itself.[110] A possible explanation for this situation lies with the potential for the anti-spike protein to damage the body's anti-inflammatory responses, an effect observed with severe acute respiratory syndrome coronavirus (SARS-CoV) and Middle Eastern respiratory syndrome (MERS-CoV).[111] Recent findings also inform the concern that the cross-reaction between the anti-spike proteins and human tissue can lead to multi-systemic disorders and autoimmune disease.[112]

Finally, there is potential for harmful reactions to the polyethylene glycol (PEG) and to the flagellin adjuvant used in the shot. PEG has never before been used in a vaccine and therefore there is no safety data. Allergic reactions to the COVID-19 shots may be due to the PEG.[113] Severe allergic reactions to the Moderna shot led California to temporarily suspend injections in January 2021.[114] Adjuvants are added to vaccines for the purpose of increasing immune response.[115] Flagellin is an "entirely novel protein," and has never been tested in humans.[116] The only existing trials have been in chicken vaccines. The chicken trials have shown flagellin increases cytokines, which given the above noted limiting effect of the anti-spike protein on the body's anti-inflammatory

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[110] *See* Mehmet Soy et al., *Cytokine Storm in COVID-19: Pathogenesis and Overview of Anti-Inflammatory Agents Used in Treatment*, 39 CLINICAL RHEUMATOLOGY 2085, 2085–94 (2020).

[111] *See generally* Li Liu et al., *Anti-Spike Igg Causes Severe Acute Lung Injury by Skewing Macrophage Responses During Acute SARS-Cov Infection,* 4 JCI INSIGHT 1 (2019).

[112] *See* Aristo Vojdani et al., *Reaction of Human Monoclonal Antibodies to SARS-CoV-2 Proteins With Tissue Antigens: Implications for Autoimmune Diseases*, FRONTIERS IN IMMUNOLOGY (Jan. 19, 2021), https://www.frontiersin.org/articles/10.3389/fimmu.2020.617089/full.

[113] *See* Tom Shimabukuro, *Allergic Reactions Including Anaphylaxis After Receipt of the First Dose of Moderna COVID-19 Vaccine — United States, December 21, 2020 – January 10, 2021*, CDC (Jan. 29, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7004e1.htm; Tom Shimabukuro, *Allergic Reactions Including Anaphylaxis After Receipt of the First Dose of Pfizer-BioNTech COVID-19 Vaccine — United States, December 14–23, 2020*, CDC (Jan. 15, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7002e1.htm.

[114] Catherine Ho, *Allergic Reactions at One San Diego Site Led State To Shelf 330,000 Vaccine Doses*, S.F. CHRON. (Jan. 18, 2021, 8:53 PM), https://www.sfchronicle.com/bayarea/article/Allergic-reactions-that-caused-state-to-halt-15879657.php.

[115] *See Adjuvants and Vaccines*, CDC (Aug. 14, 2020), https://www.cdc.gov/vaccinesafety/concerns/adjuvants.html.

[116] Zaria Gorvett, *The Surprising Ingredients Found in Vaccines*, BRITISH BROAD. CORP. (Oct. 27, 2020), https://www.bbc.com/future/article/20201027-what-is-added-to-vaccines.

response, could be a serious source of harm to recipients of the COVID-19 shots. There is no way of knowing how long the synthetic proteins will remain in the body and to what effect.

While these concerns are scientifically founded, based as they are on pre-existing studies and clinical data, they nonetheless remain suggestive until fully investigated. The Vaccine Adverse Event Reporting System (VAERS) is operated jointly by the CDC and the FDA, and serves as a "national early warning system to detect possible safety problems in U.S.-licensed vaccines."[117] An adverse event (AE) is defined as any unfavorable medical occurrence, including any abnormal physical exam or laboratory finding, symptom, or disease, temporally associated with the person's vaccination. A serious or severe adverse event (SAE) is defined as any adverse event that results in death, is life threatening, or places the person at immediate risk of death from the event, requires prolonged hospitalization, causes persistent or significant disability or incapacity, results in congenital anomalies or birth defects, or is another condition which investigators judge to represent significant hazards.[118] According to the VAERS handbook, on average approximately fifteen percent of reported AEs are classified as severe.[119] It is a passive reporting system in that it relies on people who have experienced an adverse event from vaccination to report their experience. Anyone can file a report, but healthcare professionals and vaccine manufacturers are required to report events that come to their attention. CDC and FDA officials review and investigate reports; only a fraction of all reports to VAERS get recorded as official adverse events in the database, and studies have shown that only 1-10 percent of all adverse events are actually reported. While VAERS data is likely a significant underestimation of adverse events with vaccines, it can illuminate possible trends that may signal problems with the vaccines or with the vaccination process (who receives it and when).

The only comprehensive analysis to date of the VAERS database reveals a strong signal of caution regarding the safety of the mRNA shots. Twenty percent of all VAERS reports for the entirety of 2020 were COVID-19-related, despite the shot only being administered fourteen days of the year (beginning December 17th). As of early May 2021, the data files for COVID-19-related AEs almost surpass that for all vaccines for all of 2020.[120] This reflects the high numbers of COVID-19 injections compared with all other vaccines, and the accordingly increased rate of adverse events. We are interested in serious or

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[117] *About VEARS*, VACCINE ADVERSE EVENT REPORTING SYS., https://vaers.hhs.gov/about.html (last visited May 30, 2021).

[118] *See NIA Adverse Event and Serious Adverse Event Guidelines*, NAT'L INST. ON AGING, https://www.nia.nih.gov/sites/default/files/2018-09/nia-ae-and-sae-guidelines-2018.pdf (last visited May 30, 2021).

[119] *See VAERS Data Use Guide*, VACCINE ADVERSE EVENT REPORTING SYS., https://vaers.hhs.gov/docs/VAERSDataUseGuide_November2020.pdf (last visited May 30, 2021).

[120] Jessica Rose, *A Report on the U.S. Vaccine Adverse Event Reporting System (VAERS) of the COVID-19 Messenger Ribonucleic Acid (mRNA) Biologicals*, 2 SCI. PUB. HEALTH POL'Y, & L. 59, 60, 64 (2021).

severe adverse events (SAEs) for the COVID-19 shots: SAEs account for twenty-six percent of all AEs, which is almost twice the normal estimate in the VAERS handbook.[121] The VAERS data as of May 14, 2021 is 182,559 total AE reports, including 4,015 deaths, 12,000 hospitalizations, and 24,000 emergency room visits. When the AEs are grouped into categories, the VAERS data reveals 31,400 cardiovascular events, 20,000 neurological events, and 68,836 immunological events. Spontaneous abortions, which are not counted as deaths, total 138 thus far, and there have been 843 anaphylaxis reactions to the shot. A "breakthrough infection" is when a vaccinated person becomes infected with the virus against which they had been previously vaccinated. The VAERS data shows 3,317 people received the COVID-19 injection, and subsequently became infected with the virus. Of those breakthrough infections, 179 people died.[122]

The VAERS site warns the public not to conclude that the adverse event reports are causally connected to the vaccines, and yet analysis of the time duration between vaccination date and onset of symptoms provides strong evidence for causation. For every single category of AE, the average time frame post-vaccination is between day 0 and day 1. If there was no causation, the adverse events reported would not systematically cluster around day 0-1. For instance, if the deaths following COVID-19 injections were not causally linked, the reported percentages of deaths should be equally distributed across the days after the vaccination date.[123] Most reports were thus made right away, and strongly correspond to the traditional epidemiological standards for gauging causality.[124]

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[121] Rose, *supra* note 120. Rose reports that AEs for COVID-19 biologicals are increasing by as much as thirty-six percent *each week* (VAERS data is updated each Friday). This means that the data from early April contained in her peer-reviewed journal article published in mid-May significantly understates the current statistical portrait of adverse events. Rose has given interviews and presentations on VAERS that present more current data, and I cite to those sources as well as to her published article. Her interviews and presentations are summaries of her published article, only with the most up-to-date data. While only the published article has been peer-reviewed, readers of this article should follow up on this data using her talks as supplements to the article. For a presentation of the same graphs contained in her article, but with updated data, see Mordechai Sones, *Study: Analysis Suggests The Vaccines Are Likely Cause Of Reported Deaths, Spontaneous Abortions, Anaphylactic Reactions, Cardiovascular, Neurological, And Immunological Adverse Events*, AMERICA'S FRONTLINE DR. (May 19, 2021), https://www.americasfrontlinedoctors.org/frontline-news/study-analysis-suggests-the-vaccines-are-likely-cause-of-reported-deaths-spontaneous-abortions-anaphylactic-reactions-cardiovascular-neurological-and-immunological-adverse-events; and for her most recent interview, see also *The Gary Null Show – 05.19.21*, PROGRESSIVE RADIO VOICES, https://prn.fm/gary-null-show-05-19-21/ (last visited May 30, 2021).

[122] For the statistics in this paragraph as reported by Rose, see PROGRESSIVE RADIO VOICES, *supra* note 121, at 07:35.

[123] *See* Rose, *supra* note 120, at 69–71.

[124] *See* Michal Shimonovich, et al., *Assessing Causality in Epidemiology: Revisiting Bradford Hill to Incorporate Developments in Causal Thinking*, EUR. J. EPIDEMIOLOGY (Dec. 16, 2020), https://doi.org/10.1007/s10654-020-00703-7.

An immunological event in the context of a treatment or vaccination is an important sign, and the fact that immunological AEs occur with the COVID-19 biologicals at over twice the rate of other kinds of events raises serious concerns about the injection's safety. Pathogenic priming may explain the high number of immunological AEs. A 2012 study of the trial vaccine developed in response to SARS-CoV found that the vaccine induced antibody responses in mice and protection against infection.[125] But the mice also developed diseased lungs within two days of vaccination, demonstrating the pathogenic priming risk of such vaccines. In other words, the vaccine "worked," but the antibody dependent response it created killed the mice. These findings have thwarted the successful developed of a vaccine for coronaviruses. A recent study from April 2020 verifies this data, finding that one-third of the immunogenic proteins in the SARS and MERS viruses have potentially problematic homology to proteins key to the human adaptive immune system, confirming the reason for the failures of the SARS and MERS vaccines.[126] This may be the reason behind some of the COVID-19 injection deaths and the numerous immunological AEs. In order to meet minimal medical ethics requirements, consequently, researchers are calling for clarifying informed consent disclosures for the public that the mRNA products may worsen COVID-19 disease upon exposure to challenge or circulating virus post-vaccination.[127]

Given the extremely high numbers of people who have received the COVID-19 products thus far, the incidence of AEs recorded in the VAERS database is small in terms of a percentage of the overall injected population. However,

> [t]he weekly releases of VAERS data do not include all of the reports made to date—they are all the reports the CDC has processed to date—and the backlog is likely to be staggering. Thus, due to both the problems of under-reporting and the lag in report processing, this analysis reveals a strong signal from the VAERS data that the risk of suffering an SAE following injection is significant and that the overall risk signal is high. Analysis suggests that the vaccines are likely the cause of reported deaths, spontaneous abortions, and anaphylactic reactions in addition to cardiovascular, neurological, and immunological AEs. Based on the precautionary principle, since there is

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[125] *See* Chien-Te Tseng et al., *Immunization with SARS Coronavirus Vaccines Leads to Pulmonary Immunopathology on Challenge with the SARS Virus*, PLOS ONE (Apr. 20, 2012), https://doi.org/10.1371/journal.pone.0035421.

[126] *See* James Lyons-Weiler, *Pathogenic Priming Likely Contributes to Serious and Critical Illness and Mortality in COVID-19 Via Autoimmunity*, J. TRANSLATIONAL AUTOIMMUNITY (Apr. 9, 2020), https://doi.org/10.1016/j.jtauto.2020.100051.

[127] *See* Timothy Cardozo & Ronald Veazey, *Informed Consent Disclosure to Vaccine Trial Subjects of Risk of COVID-19 Vaccines Worsening Clinical Disease*, INT'L J. CLINICAL PRAC. (Oct. 28, 2020), https://doi.org/10.1111/ijcp.13795.

> currently no precedent for predictability with regards to long-term effects from mRNA injections, extreme care should be taken when making a decision to participate in this experiment. mRNA platforms are new to humans with regard to mass injection programs in the context of viruses. There is currently no way to predict potential detrimental outcomes with regards to SAE occurrences in the long-term. Also, with regards to short-term analysis, this data is limited based on reporting that likely significantly underestimates actual events.[128]

Behind each statistic, moreover, is a life irreparably altered or prematurely ended unnecessarily. Three healthcare workers, Shawn Skelton, Angelia Desselle, and Kristi Simmonds were among the earliest to receive mRNA injections. Within days of their shots, each of them became wrought by full-body, uncontrollable convulsions.[129] Three themes emerge from these women's stories: each woman lost her job; each woman was met with medical professionals who sought to suppress the fact of her mRNA injection injury, and who claimed that her condition was psychological, not physiological; and each woman discovered that the medical profession has no clue how to treat serious adverse effects from the COVID-19 shots. These themes resonate with the experiences of people injured by other vaccines. The mRNA products are meant to prevent or mitigate harm from COVID-19, but it appears from this analysis they are, in fact, doing more harm than good when considering the early trends in the data. The *maximum* observation period for safety assessment of these products before receiving FDA emergency use authorization was six months—and in only *two* months, we have seen all of the above noted damage. If any other product caused this much damage in the first two months of being on the market, it would surely be pulled from use. People should weigh the evidence and the risks very carefully before making their decisions. In the very least, the decision to get the shot or not should not be mandated.

V. LAW-MATTERS?

It may seem somewhat tautological to consider law-matters within the context of pandemic police powers. We established at the outset that policing precedes law, that law conforms to the police power in every area of society. The pandemic police power would therefore drive law as it pertains to public health protocols, not the other way around. Indeed, a cursory review of vaccination law and legal discourse during the Pandemic Year affirms the essential alignment between legal and medical discourse. This assessment may seem simplistic or reductive to both lawyers and medical professionals, both of whom are

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[128] Rose, *supra* note 120, at 73.

[129] *See They Don't Want to See People Like Us*, THE HIGHWIRE (Apr. 30, 2021), https://thehighwire.com/videos/they-dont-want-to-see-people-like-us/.

well versed in the ways in which the day-to-day job of healthcare provision takes place within a highly technical legal universe. The standard employed in this article, however, is the analysis that the police power is essential to the reproduction of a society structured in dominance.[130] I evaluate the legal discourse regarding vaccination law, followed by the potential legal case against the pandemic police power and the specific legal problems implicated in a COVID-19 injection mandate. The point here, again, is to demonstrate law's purpose *within* the pandemic police power, not external to or in any way a check on it.

As with science, so too with law: both are intrinsically open-ended and subject to constant evaluation and revision. The problem with "consensus" in science has its parallel with "settled" law. Nevertheless, there is very little debate within the legal community regarding vaccination. The Supreme Court's 1905 decision in *Jacobsen v. Massachusetts* is widely regarded as establishing the states' police powers to include compulsory vaccination.[131] In challenging a Massachusetts smallpox vaccine mandate, Jacobsen argued that "compulsion to introduce disease into a healthy system is a violation of liberty."[132] But the Court held that the police power includes a community's "right to protect itself against the epidemic of disease which threatens the safety of its members." The Court would go on to analogize compulsory vaccination to the military draft, arguing that just like a citizen "compelled, by force if need be, against his will and without regard to his personal wishes" to serve in the army and "risk the chance of being shot down in its defense," so too may such a citizen forfeit "control of one's body upon his willingness to submit to reasonable regulations established by the constituted authorities . . . for the purpose of protecting the public collectively against such danger."[133] The decision galvanized the formation of the Anti-Vaccination League of America under the principle that "'health is nature's greatest safeguard against disease and that therefore no State has the right to demand of anyone the impairment of his or her health,' and aimed 'to abolish oppressive medical laws and counteract the growing tendency to enlarge the scope of state medicine at the expense of the freedom of the individual.'"[134] Similar organizations had formed in Europe with the attempted introduction of compulsory vaccination programs there.[135] Although these organizations are portrayed as anti-science by contemporary historians, they were in

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[130] *See generally* Stuart Hall, *Race, Articulation and Societies Structured in Dominance*, *in* SOCIOLOGICAL THEORIES: RACE AND COLONIALISM (1980).

[131] *See* Jacobsen v. Massachusetts, 197 U.S. 11, 37 (1905).

[132] *See* Nicholas Mosvick, *On This Day, the Supreme Court Rules on Vaccines and Public Health*, NAT'L CONST. CTR. (Feb. 20, 2021), https://constitutioncenter.org/blog/on-this-day-the-supreme-court-rules-on-vaccines-and-public-health.

[133] *Id.*

[134] *Id.*

[135] Robert M. Wolfe & Lisa K. Sharp, *Anti-Vaccinationists Past and Present*, 325 *BRITISH MED. J.* 430, 430–31 (2002).

fact merely resistant to what they perceived as the state's misuse of power.[136] Their stance against science, therefore, is properly understood not as anti-science *per se*, but rather as a critique of science as a discourse of state power. It is this resistant take on science, nature, and production that the Carnegies, Rockefellers, and Morgan's sought to overcome through the Flexner Report.

Harvard Law Review published a *Note* in 2008 that argued *Jacobsen* was no longer relevant to today's needs.[137] It did not, interestingly, pin *Jacobsen*'s irrelevance on the fact that the Court's analogy to the military draft was outdated. Instead, it asserted that vaccination campaigns today are no longer focused on infectious viruses, arguing that *Jacobsen* provides little guidance on the controversial hepatitis B and HPV vaccines. *HLR* suggested that vaccine law distinguish between vaccines that are medically necessary (for which there is no alternative) and those that are practically necessary (viable alternatives exist but are not taken up by most people). Presumably, *HLR* was eating its words during the Pandemic Year, not because we are now faced with a serious public health threat from an infectious virus, which as we have seen in preceding sections of this article is not in fact the case—but rather, because the current season of vaccination is showing that there is no real difference between "medical necessity" and "practical necessity" when it comes to the state's promotion of vaccines. *HLR*'s assessment of vaccine law typifies legal discourse in the matter in that the politics of science are taken at face value, leaving the problem with vaccination as state power beyond the grasp of many legal scholars.

In 2014-2015 there was a minor outbreak of measles in southern California, centered at Disneyland.[138] California responded in June 2015 by passing more stringent compulsory vaccination laws, eliminating personal and religious belief exemptions for children enrolled in school or daycare.[139] Under California's SB 277, parents can decline to vaccinate their children only if the child is enrolled in a home-based private school or off-campus independent study program. Moreover, unvaccinated children can utilize their exemptions obtained before 2016 until they enter either kindergarten or the seventh grade, depending on their age. Additionally, parents may still obtain medical exemptions for their children and the law permits doctors to take family history or sibling health into account in deciding whether to issue a medical exemption. California's SB 277 survived its first legal challenge, with the Second Appellate District's Court of Appeals upholding the law in July 2018.[140] The events of 2014-2015 spawned

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[136] *See* Kim Tolley, *School Vaccination Wars: The Rise of Anti-Science in the American Anti-Vaccination Societies, 1879-1929*, 59 HIST. EDUC. Q. 161, 161–63 (2019).

[137] *See Toward a Twenty-First-Century Jacobsen v. Massachusetts*, 121 HARV. L. REV. 1820, 1821 (2008).

[138] *See* Adeel Hassan, *Disneyland Visitor With Measles May Have Exposed Hundreds to Infection*, N.Y. TIMES (Oct. 24, 2019), https://www.nytimes.com/2019/10/23/us/disneyland-measles.html.

[139] S.B. 277, 2015-2016 Leg., Reg. Sess. (Cal. 2015) (approved by Governor Jerry Brown on June 30, 2015).

[140] *See* Dorit Reiss, *California Court of Appeal Rejects Challenge to Vaccine Law*, BILL OF HEALTH (July 30, 2018),

a response of their own from legal scholars. Although my review was not exhaustive, I did not find any legal scholarship arguing against compulsory vaccination, only different takes on how to utilize law to achieve vaccine compliance.[141] Erwin Chemerinsky and Michele Goodwin, for instance, argue that the new California law does not go far enough.

> Our position is that every state should require compulsory vaccination of all children, unless there is a medical reason why the child should not be vaccinated. In other words, there should be no exception to the compulsory vaccination requirement on account of the parents' religion or conscience or for any reason other than medical necessity. Simply put, the government's interest in protecting children and preventing the spread of communicable disease justifies mandatory vaccinations for all children in the United States.[142]

Goodwin and Chemerinsky even go so far as to suggest that parents who do not vaccinate their children should be charged with criminal negligence.[143] Who gets to decide "medical necessity?" In a world governed by the police power of the medical industrial complex, biotechnology, and medical science's germ theory, presumably the answer would be the public health establishment. Do judges get to decide? Parents? At some point, people outside of medical science will have to study the science for themselves. Instead of independently evaluating the science on their own, however, Chemerinsky and Goodwin rely on CDC claims that vaccination prevented the deaths of 732,000 U.S. children between 1994 and 2014.[144] These statistics are spurious on their face because they are entirely based on a hypothetical world, and as such, the numbers of children saved by vaccine can be neither verified nor impugned. More importantly, referencing the CDC as the authority on vaccine safety and efficacy is like going to the Department of Justice for the final word on whether or not there is a crime problem and to verify how many lives have been saved by locking people up in prisons and jails. Indeed, it is precisely the hypothetical of preemptive incapacitation that justified the notorious "three strikes" sentencing

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https://blog.petrieflom.law.harvard.edu/2018/07/30/california-court-of-appeal-rejects-challenge-to-vaccine-law/.

[141] *See generally* Giovanni Rezza & Walter Ricciardi, *No Jab, No Pay, and Vaccine Mandates: Do Compulsory Policies Increase Vaccination Coverage? The Italian Experience*, 38 VACCINE 5089 (2020); Maxwell J. Mehlman & Michael M. Lederman, *Compulsory Immunization Protects Against Infection: What Law and Society Can Do*, 5 PATHOGENS IMMUNITY J. 1, 1–7 (2020); Marie Killmond, *Why is Vaccination Different? A Comparative Analysis of Religious Exemptions*, 117 COLUM. L. REV. 913 (2017).

[142] Erwin Chemerinsky & Michele Goodwin, *Compulsory Vaccination Laws Are Constitutional*, 110 NW. U.L. REV. 589, 595 (2016).

[143] Michele Goodwin & Erwin Chemerinsky, *No Immunity: Race, Class, and Civil Liberties in Times of Health Crisis*, 129 HARV. L. REV. 956, 958 (2016).

[144] *Id.* at 600.

laws passed in the 1990s that sent third-time felony offenders to prison for life without the possibility of parole, regardless of the offense.[145] Lock them up forever to prevent future crime and mayhem, was the argument at the time. The state has been thoroughly exposed over the past couple of decades for its use of criminology discourse to legitimate law-and-order policies that have built a massive prison industrial complex; it is time that the state be similarly exposed for its use of immunology discourse to legitimate public health policies that have built a massive medical industrial complex. The former has conjured problems in order to fit its preferred solutions of policing, punishment, and incapacitation; with those kinds of solutions, the range of permissible questions is severely restricted. The latter similarly conjures problems that fit its preferred solutions of vaccination, drug intervention, and health disempowerment; these kinds of solutions, again, are meant to keep people from asking the questions that could actually produce healthy lives in the long run.

Chemerinsky and Goodwin illustrate how the state's narrative of public health is advanced through the legal and medical literature. They claim that the science on vaccinations is water-tight:

> Strong and irrefutable medical and scientific evidence demonstrates that there is no less restrictive alternative except to require every person to be vaccinated. Only vaccinations can protect children from communicable diseases. Only by vaccinating every child who medically can be inoculated, can there be protection for those who cannot be vaccinated, whether by reason of being too young or it being medically inadvisable.[146]

If it is irrefutable, then it is not science; that would be faith or myopia, which are intrinsically uncontestable because they are not formed through reason. Or, as the preferred term these days regarding public health decisions would have it: the "scientific consensus."[147] The late Michael Crichton once had this to say about scientific consensus:

> I want to pause here and talk about this notion of consensus, and the rise of what has been called consensus science. I regard consensus science as an extremely pernicious development that ought to be stopped cold in its tracks. Historically, the claim of consensus has

[145] In 2012, California voters passed Proposition 36, the Three Strikes Reform Act, to eliminate life sentences for non-violent offenses and provide parole opportunities for other inmates serving life under three strikes sentencing rules. *See Three Strikes Basics*, STANFORD L. SCH. THREE STRIKES PROJECT, https://law.stanford.edu/three-strikes-project/three-strikes-basics/ (last visited May 30, 2021).

[146] *Id.* at 614.

[147] *See* Ethan Siegel, *What Does 'Scientific Consensus' Mean?*, FORBES (June 24, 2016, 11:00 AM), https://www.forbes.com/sites/startswithabang/2016/06/24/what-does-scientific-consensus-mean/.

> been the first refuge of scoundrels; it is a way to avoid debate by claiming that the matter is already settled. Whenever you hear the consensus of scientists agrees on something or other, reach for your wallet, because you're being had.[148]

The work of science has nothing to do with consensus. Chemerinsky and Goodwin arrogantly endorse the general elitist dismissal of the many people concerned about vaccine safety and efficacy by stating that the evidence in support of it is "irrefutable." Since science, by definition, must be subject to constant challenge, critique, and revision, the best the law could do is to state *for now* vaccinations are scientifically valid, or *until competing evidence emerges*—which, as we have seen, it already has. We can go to the experts in law and medicine for the legal and medical arguments for vaccination, but in so doing, we must check two things at the door. First, we must set aside our knowledge that state power is never benign because it is a social control apparatus. Second, we must suspend our awareness of the fact that the scientific and medical establishments are comprised of institutions that *are* the state, and as such, they present agendas that compete with and sometimes directly conflict with scientific inquiry and medical health. Since we are aware of how both of these issues are driving the suppressed history of vaccination, as the preceding pages have sought to illuminate, we have to read legal scholars like Chemerinsky and Goodwin as disseminating state narratives.

As of the time of my writing, the COVID-19 shots are not mandated at a federal or state level, despite some calls to make them so.[149] The Australian Prime Minister proclaimed that the vaccine "would be as mandatory as you can possibly make it," before he had to walk back that statement.[150] A new law in Israel allows the Health Ministry to share the personal info of people who decline the vaccine.[151] And already the use of "vaccine passports" is in the works in the U.S.[152] These new vaccines have only received emergency use

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[148] Michael Crichton, *Aliens Cause Global Warming*, *in* THREE SPEECHES 1, 6 (Dec. 9, 2009), http://scienceandpublicpolicy.org/commentaries-essays/commentaries/crichton-three-speeches. This speech was delivered at California Institute of Technology, Pasadena, California and focuses on the "historical approach detailing how over the last thirty years scientists have begun to intermingle scientific and political claims".

[149] *See* Michael Lederman et at., *Defeat COVID-19 By Requiring Vaccination for All. It's Not Un-American, It's Patriotic.*, USA TODAY (Aug. 10, 2020, 12:28 AM), https://www.usatoday.com/story/opinion/2020/08/06/stop-coronavirus-compulsory-universal-vaccination-column/3289948001/.

[150] *Could the Government Make a COVID-19 Vaccine Mandatory in Australia?*, ABC NEWS (Sept. 15, 2020, 7:57 PM), https://www.abc.net.au/news/2020-09-16/fact-file-mandatory-vaccination-is-it-possible/12661804?nw=0.

[151] Michal Ben-Gal, *New Law Lets Israeli Health Ministry Share Personal Info of Citizens Who Decline COVID Vaccine*, CBS NEWS (Feb. 25, 2021, 9:19 AM), https://www.cbsnews.com/news/covid-vaccine-israel-law-personal-information-privacy/.

[152] Shannon McMahon, *Everything Travelers Need to Know About Vaccine Passports*, WASH. POST (Feb. 25, 2021), https://www.washingtonpost.com/travel/2020/12/08/vaccine-passport-immunity-app-covid/.

authorization from the FDA (an issue to which we will return shortly), and a nation-wide adult vaccine mandate would be the first of its kind. *Jacobsen* only upheld a local vaccine mandate with conditions, and it is not clear that the case would support a broad law mandating compulsory vaccination nationwide, especially if lesser measures were not tried first. Compulsory vaccination is more likely to come through tailored local, institutional, or employer-based mandates, much like the targeted vaccination laws for schoolchildren, military personnel, and healthcare workers.[153] Universities and colleges have already begun announcing that students must receive a COVID-19 injection in order to return to campus in the fall, and numerous employers are also requiring their employees to receive the shot in order to keep their jobs. Health insurers are already ending cost-sharing waivers for COVID-19 treatment while covering vaccine costs in full. At the same time, there are increasing reports of health care workers opting out of the shot. In Los Angeles County, up to forty percent of frontline healthcare workers have refused the COVID-19 injections, while sixty percent of homecare workers in Ohio have declined.[154] As one nurse put it, "I am not an anti-vaxxer, I have every vaccine known to man, my flu shot, I always sign up right there, October 1, jab me. But for this one, why do I have to be a guinea pig?"[155] Indeed, the long-term effects of the COVID-19 injections will not be known for years, and its development timeline was unprecedented, something that did not play out well at all the last time such a tactic was attempted.[156]

Jacobsen has been interpreted by the courts in ways that may lend support for such implementation of a limited vaccine mandate. In *Zucht v. King*, the Court held that vaccination of schoolchildren is justified even if there is no immediate threat, as there was with smallpox in *Jacobsen*.[157] In the recent case of *Workman v. Mingo County Board of Education*, the U.S. Court of Appeals for the Fourth Circuit upheld as constitutional a West Virginia law requiring all schoolchildren to be vaccinated, with no exemption for religious reasons.[158] In its decision, the appeals court cited a prior holding by the Supreme Court that religious freedom must yield to the compelling state interest of preventing disease: "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill

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[153] *See* Jillian Kramer, *COVID-19 Vaccines Could Become Mandatory. Here's How It Might Work.*, NAT'L GEOGRAPHIC (Aug. 19, 2020), https://www.nationalgeographic.com/science/article/how-coronavirus-covid-vaccine-mandate-would-actually-work-cvd.

[154] Amanda Holpuch, *'I'm Not an Anti-Vaxxer, But...' US Health Workers' Vaccine Hesitancy Raises Alarm*, THE GUARDIAN (Jan. 10, 2021), https://www.theguardian.com/world/2021/jan/10/coronavirus-covid-19-vaccine-hesitancy-us-health-workers.

[155] *Id.*

[156] *See* Michael Rosenwald, *The Last Time the Government Sought A 'Warp Speed' Vaccine, It Was A Fiasco*, WASH. POST (May 1, 2020, 1:20 PM), https://www.washingtonpost.com/history/2020/05/01/vaccine-swine-flu-coronavirus/.

[157] Zucht v. King, 260 U.S. 174 (1922).

[158] *See generally* Workman v. Mingo Cnty. Bd. of Ed., 419 F. App'x 348 (4th Cir. 2011).

health."[159] The argument that compulsory vaccination violates parents' constitutional right to control the upbringing of their children may have a stronger foundation than free exercise claims, but even there the courts have found that parenting rights are not absolute and the state can interfere to protect the interests of the child.[160]

Despite the lack of debate in the legal community regarding vaccine law, *Jacobsen* raises three serious objections with respect to COVID-19. First, the immunological evidence reviewed in the previous sections reveals how profoundly out of sync *Jacobsen* is with emergent science. Jacobsen argued that vaccinations could be harmful and that it would be impossible to tell in an individual case whether a vaccination would be beneficial at all. The Court held that because the defendant "was himself in perfect health and a fit subject of vaccination," his argument was not persuasive.[161] What the *Jacobsen* Court could not have known, but what the scientific evidence now strongly suggests, is that healthy individuals can indeed experience harmful consequences from vaccines, but that the negative effects may not be immediately apparent. Furthermore, the consequences of vaccination can take a variety of forms down the road, from autoimmune dysfunction to neurological disorder to cancer. Second, preventing disease outbreaks is a compelling state interest, but strict scrutiny requires the state to show that vaccination is the least restrictive means for accomplishing this goal. It is tortured reasoning or dogged myopia to maintain that there is no less restrictive alternative to injecting people with chimeric biotechnology and its panoply of zoonotic diseases, bacteria, retroviruses, and toxins, let alone with the experimental mRNA product. The legal scholarship on vaccine law does not acknowledge, let alone factor into its analysis, the long history of vaccine injury and the dangers of xenotransplantation—such as the CDC's response to the 1976 swine flu outbreak in which a swiftly produced vaccine that was administered to fifty million Americans resulted in at least six hundred cases of paralysis, seventy-four deaths, and a cascade of lawsuits.[162] What about investing in nutrition, healthy homes and communities, universal healthcare, and medicine uncoupled from the profit-motive? As demonstrated in the previous sections, the reliance on vaccination is a sign of a public health *failure*. At best, vaccination is a stop-gap measure propping up the medical industrial complex: vaccination as public health funnels resources away from actual healthy publics, pulling us deeper into biotech-driven medicine that leaves us communally un-well.

The third objection to *Jacobsen* is that the landmark decision in vaccine law undermines the status of scientific evidence altogether. The Court held that

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[159] Prince v. Massachusetts, 321 U.S. 158, 166–167 (1944).
[160] *See* Meyer v. Nebraska 262 U.S. 390, 403 (1923). *See generally* Pierce v. Soc. of Sisters, 268 U.S. 510 (1925); Wisconsin v. Yoder, 406 U.S. 205 (1972).
[161] *Jacobsen*, 197 U.S. at 39.
[162] CELIA FARBER, SERIOUS ADVERSE EVENTS: AN UNCENSORED HISTORY OF AIDS 14 (2006).

vaccine skepticism by individuals or medical professionals was not grounds for voiding the mandatory law as long as it was the "common belief" of other people that vaccines are safe and do effectively prevent disease. In rejecting Jacobsen's arguments against vaccination, the Court elevated what we might call "official knowledge":

> Those offers in the main seem to have had no purpose except to state the general theory of those of the medical profession who attach little or no value to vaccination as a means of preventing the spread of smallpox, or who think that vaccination causes other diseases of the body. What everybody knows the court must know, and therefore the state court judicially knew, as this court knows, that an opposite theory accords with the common belief, and is maintained by high medical authority.[163]

"What everybody knows" is a decidedly unscientific basis for knowledge about medical science. Evidence-based objections to the science of vaccination, the Court is saying, are insufficient. The objections must also be grounded in "what everybody knows." Going back to flat Earth theory and the Church's efforts to suppress the Copernican Revolution, human history is replete with the gross scientific errors of "common belief." The Court essentially endorses groupthink and the "tyranny of the majority":

> A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts…The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action, for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not.[164]

Indeed, on this score *Jacobsen* could not have been more prescient for our Pandemic Year: whether there is in fact a pandemic or not, whether there is a public health crisis or not, whether lockdowns and quarantines are warranted or not,

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[163] *Jacobsen*, 197 U.S. at 30.
[164] *Id.* at 35.

whether school closures are justified or not, whether vaccines are safe, effective, and sound public health policy or not—if "common belief" holds that they are, then so be it.

What qualifies as "common belief" is political, of course, and indicts untoward uses of majoritarian power. As legal scholar Lani Guinier explained almost thirty years ago with respect to representative democracy, voting rights are null and void if the minority is structurally prevented from achieving electoral representation. In Tyranny of the Majority: Fundamental Fairness in Representative Democracy, which curates her major law review articles on the subject, Guinier shows how minorities are effectively disenfranchised, despite the trappings of equal citizenship, because they cannot elect what voting rights law calls "representatives of their choice."[165] The tensions between procedural fairness and whether or not minorities have a fair chance to have their policy preferences satisfied remain hotly contested and underwrite the myriad attempts at voter suppression today. The lessons from voting rights point to the anti-democratic and anti-scientific tenets of the *Jacobsen* decision. Unsurprisingly, the decision let loose this "tyranny of the majority" in short order. In the 1927 case of *Buck v. Bell*, the Court upheld a Virginia law permitting compulsory sterilization of persons who state officials deemed "feebleminded."[166] Feeblemindedness, or imbecility, was turn-of-the-century scientific discourse for cognitive impairment. State science at the time of *Buck* claimed that heredity played a key role in the spread of cognitive impairment, social unfitness, and insanity. The Court relied upon its ruling in *Jacobsen* to reason that if states could vaccinate against viruses like smallpox, then they could "immunize" against social traits like intergenerational poverty. Justice Oliver Wendell Holmes concluded, "It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind…Three generations of imbeciles are enough."[167]

For Goodwin and Chemerinsky, *Buck* "offers a chilling glimpse into the extremes of protecting the public's health in times of perceived crisis."[168] But Goodwin and Chemerinsky are retroactively imputing twenty-first century sentiment onto a prior historical context that was saturated with eugenicist ideology and policies. Six states had already passed compulsory sterilization legislation for the "mentally unfit" by 1911; after *Buck*, twenty states instituted eugenicist sterilization laws, resulting in as many as 100,000 sterilizations by 1950.[169]

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[165] *See generally* LANI GUINIER, TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY (1994).
[166] Buck v. Bell, 274 U.S. 200, 200 (1927).
[167] *Id.* at 207.
[168] Goodwin, *supra* note 143, at 959.
[169] *See* HARRIET A. WASHINGTON, MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT 202–03

Both Ellis Island on the East Coast and Angel Island on the West Coast functioned as eugenicist immigrant filters. The point is that law is never extreme at the time; *Buck* is merely an acute expression of early twentieth century scientific racism. Medical science had long sought to control black, American Indian, Mexican, and Puerto Rican reproduction. In 1903, the influential physician Charles S. Bacon advocated that "the Black Belt will be defined by the government as a negro reservation similar to Indian reservations…the plan that has worked so well in its treatment of the Indian question until it has practically eliminated the question with the race."[170] Eugenics was the unifying discursive thread connecting questions of race, health, poverty, welfare, intelligence, crime, and immigration throughout much of the twentieth century. Margaret Sanger, perhaps the most famous American eugenicist (and founder of the organization that would become Planned Parenthood), strategically enlisted prominent black leaders such as W. E. B. DuBois, Charles S. Johnson, and Adam Clayton Powell, Jr. for her Negro Project aimed at reducing the black population. Black elite complicity in eugenicist policy is testament (in the least) to the hegemony of science as an objective and rational form of knowledge. Sanger noted, "The most successful educational approach for the Negro is through a religious appeal…We do not want the word to get out that we want to exterminate the Negro population, and the minister is the man who can straighten out that idea if it occurs to any of their more rebellious members."[171] The practice of rendering black women infertile without their knowledge during other surgery was so common that the procedure was called a "Mississippi appendectomy," although it was equally frequent in the North and West up through the 1970s. Between 1930 and 1970, nearly one-third of all Puerto Rican women and a quarter of indigenous women were forcibly sterilized.[172] Throughout the 1980s and 1990s, poor women of color were subjected to the toxic contraceptives Depo-Provera and Norplant, and black women in particular continue to this day to face coerced sterilization and other forms of reproductive control as condition for welfare, probation, or parole.[173] Recent whistleblower allegations of forced sterilization at ICE detention facilities confirm that these longstanding eugenicist practices are not over.[174] Trump's xenophobia made for an easy

(Doubleday ed., 2006). *See generally* Roberta Cepko, *Involuntary Sterilization of Mentally Disabled Women*, 8 BERKELEY WOMEN'S L.J. 122 (1993).

[170] *See* WASHINGTON, *supra* note 169, at 199 (quoting Charles S. Bacon).

[171] *Id*. at 197.

[172] *See* Katherine Andrews, *The Dark History of Forced Sterilization of Latina Women*, PANORAMAS SCHOLARLY PLATFORM (Oct. 30, 2017), https://www.panoramas.pitt.edu/health-and-society/dark-history-forced-sterilization-latina-women; Jane Lawrence, *The Indian Health Service and the Sterilization of Native American Women*, 24 AM. INDIAN Q. 400 (2000).

[173] *See* DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 104 (1997).

[174] *See* Priscilla Alvarez, *Whistleblower Alleges High Rate of Hysterectomies and Medical Neglect at ICE Facility*, CNN (Sept. 16, 2020, 4:34 AM), https://www.cnn.com/2020/09/15/politics/immigration-customs-enforcement-medical-care-detainees/index.html.

target during 2020, but the more consequential racism is embedded within the urgency to vaccinate itself, as this response to COVID-19 draws sustenance from the implicit racialism of the polluted body and a virus that supposedly originated in China. COVID-19 presents a panoply of racialized fears of contagion that are attached to immigration, foreignness, the racial other within the national body, and class status within the national community, and that get articulated through medical tropes.

The ramifications of the *Jacobsen* Court's subordination of science—and the censorship of the open-ended debate intrinsic to the scientific method—to the "common belief" that people hold regardless of supporting evidence are rampant during the Pandemic Year. In late 2020, a trio of scientists proposed a "middle ground" approach to COVID-19. Their proposal, "Focused Protection: The Middle Ground Between Lockdowns and 'Let It Rip,'" aims "to minimize overall mortality" from COVID-19 and other diseases "by balancing the need to protect high-risk individuals from COVID-19 while reducing the harm that lockdowns have had on other aspects of medical care and public health. It recognizes that public health is concerned with the health and well-being of populations in a broader way than just infection control."[175] Their proposal led to the creation of the Great Barrington Declaration to collectively explore an alternative and less harmful approach to public health than the mass quarantine and lockdown protocols levied during the Pandemic Year.[176] Thousands of scientists have joined the Declaration as signatories. Sunetra Gupta, one of the authors of "Focused Protection," argues that lockdown "is a blunt, indiscriminate policy that forces the poorest and most vulnerable people to bear the brunt of the fight against coronavirus."[177] Gupta reports, however, that despite the reasoned and evidence-based argument presented in "Focused Protection," it has garnered mostly vitriolic hate in response. Rather than engage in serious rational (i.e., scientific) discussion, critics of "Focused Protection" have simply dismissed the proposal as "pixie dust," "wishful thinking," "not in the national interest," "fringe," and "dangerous." As Gupta explains,

> "[F]ringe" is a ridiculous word, implying that only mainstream science matters. If that were the case, science would stagnate. And dismissing us as "dangerous" is equally unhelpful, not least because it is an inflammatory, emotional term charged with implications of irresponsibility. When it is hurled around by people with influence, it becomes toxic. But this pandemic is an international crisis. To

[175] Jay Bhattacharya et al., *Focused Protection: The Middle Ground Between Lockdowns and 'Let it Rip'*, GREAT BARRINGTON DECLARATION (Nov. 25, 2020), https://gbdeclaration.org/wp-content/uploads/2020/12/Focused-Protection-is-the-Middle-Ground-v7-clean.pdf.

[176] *See generally* GREAT BARRINGTON DECLARATION, https://gbdeclaration.org/ (last visited May 30, 2021).

[177] Sunetra Gupta, *A Contagion of Hatred and Hysteria*, AM. INST. ECON. RSCH. (Nov. 1, 2020), https://www.aier.org/article/a-contagion-of-hatred-and-hysteria/.

> shut down the discussion with abuse and smears — that is truly dangerous.[178]

Or, in *Jacobsen*'s terminology, only the "common belief" about science matters. The *British Medical Journal* echoed Gupta's observations in an editorial published in November 2020 excoriating the corruption of science by the "medical-political complex."

> Science is being suppressed for political and financial gain. COVID-19 has unleashed state corruption on a grand scale, and it is harmful to public health. Politicians and industry are responsible for this opportunistic embezzlement. So too are scientists and health experts. The pandemic has revealed how the medical-political complex can be manipulated in an emergency—a time when it is even more important to safeguard science.[179]

The suppression of scientific inquiry by the "common belief" has also been confirmed by a recent study published by an international team of researchers. The experimental study shows that COVID-19 policies have become moralized, and as a result, "people are more likely to accept collateral damage from these efforts, such as social shaming, lost lives and illnesses, and police abuse of power. This moralization was so strong that people reacted negatively even when COVID-19 restrictions were merely questioned."[180] These findings are an alarming, but unsurprising, legacy for *Jacobsen*. They remind us that the police power of "common belief" is punitive and repressive even when the law is not. As Susan Sontag wrote in *Illness as Metaphor* almost fifty years ago, "nothing is more punitive than to give a disease meaning—that meaning being invariably a moralistic one."[181] It is this dogmatic tyranny of the majority that has given rise to the set of rich COVID-19 colloquialisms meant to describe the silencing of dissent and the strait-jacket of group-think in the time of the Pandemic Year: "flu d'etat," "Branch Covidians," "medical totalitarianism," "coup d'flu," and "covidiots."

Although explicit eugenicist population control policies are no longer legitimate, they persist in the form of twenty-first century medical racism. Moreover, *Buck* shows that *Jacobsen* can be used in any way that the prevailing

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[178] *Id.*

[179] Kamran Abbasi, *COVID-19: Politicization, 'Corruption,' Suppression of Science*, 371 THE BMJ (Nov. 13, 2020), https://www.bmj.com/content/371/bmj.m4425.full.

[180] *Study highlights 'moralisation' of COVID Response and Restrictions*, UNIV. OF OTAGO NEWS (Dec. 9, 2020), https://www.otago.ac.nz/news/news/releases/otago758988.html; *see* Maja Graso et al., *Moralization of COVID-19 Health Response: Asymmetry in Tolerance for Human Costs*, 93 J. OF EXPERIMENTAL SOC. PSYCH. 1 (2021), https://www.sciencedirect.com/science/article/pii/S0022103120304248.

[181] SUSAN SONTAG, ILLNESS AS METAPHOR / AIDS AND ITS METAPHORS 58 (1989).

winds of the police power are blowing at a given point in time because it makes clear that what the law recognizes as "science" is itself subordinate to the police power of civil society, or what the Court termed "common belief." In the 2014 Ebola outbreak, racism led to the medical neglect of black patients, while public health hysteria produced a number of high-profile quarantines of people with connections to West Africa. In *Mayhew v. Hickox*, the Maine District Court overturned the forced quarantine of a Doctors Without Borders nurse, finding that "[t]he State has not met its burden…to prove by clear and convincing evidence that limiting [Hickox's] movements to the degree requested is 'necessary to protect other individuals from the dangers of infection.'"[182] Noting that Ms. Hickox did not show any symptoms of Ebola, the court declared that she was "not infectious."[183]

While the *Mayhew* court reasoned that Maine's quarantine orders in 2014 were scientifically unjustified, the nation-wide mass lockdown orders implemented during the Pandemic Year have not yet been successfully challenged in court on medical science grounds. As with vaccination, strict scrutiny means that the government must demonstrate that there is no other less restrictive means of protecting public health than quarantine and lockdown. There are such alternatives, however, and there would likely be many more were independent thinking not so severely punished in the Pandemic Year. In *Butler v. Wolf*, the federal district court in Western Pennsylvania held in late 2020 that certain COVID-19 mitigation policies implemented by Pennsylvania violated the First Amendment and the Due Process and Equal Protection clauses of the Fourteenth Amendment.[184] Since it found the state to be in violation of the U.S. Constitution, not merely the state constitution, the *Butler* decision has implications for public health protocols nationwide. In addition, *Butler* did not apply *Jacobsen*'s extraordinary deference standard to the public health policies, instead applying normal deference because of the broad and extended implementation of the mitigation measures. The punitive effect of COVID-19 moralizing is to dissuade serious objections, legal as well as scientific, to the pandemic police power.

Additional law-matters concern the legality of the pandemic itself. Following the argument against the PCR-based pandemic levied earlier in this article, we have a situation where the state is responsible for asserting false facts or misrepresentation. The PCR-based pandemic amounts to fraud: testing for a virus that has not been isolated with an instrument that cannot accurately find what it is looking for, and then calling healthy people "cases." Based on the rules of civil tort law, this translates into intentional infliction of damage and a duty to compensate for losses suffered as a result of lockdowns premised on the false information disseminated by entities like the CDC which acknowledges that

[182] Slip op. at 3, Mayhew v. Hickox, No. CV-2014-36 (Me. Dist. Ct. Oct. 31, 2014).
[183] *Id.*
[184] *See generally* Cnty. of Butler v. Wolf, 486 F. Supp. 3d 883, 891 (W.D. Pa. 2020).

PCR tests are inaccurate. An international legal group has proposed investigating the pandemic in terms of crimes against humanity as defined in international law.[185] The potential is there for a massive class action lawsuit. A current case in federal court in the Northern District of Ohio against that state's lockdown orders alleges fraud, house arrest without due process, future takings without just compensation, abuse of emergency declaration, violation of parental rights and of rights to privacy, free speech, assembly, and religion.[186] There is also the matter of HIPPA and ADA law. CDC guidelines state that people should not wear masks if it is medically inadvisable for them to do so, while HIPPA and ADA law protect an individual's medical or health privacy.[187] This means that asking a person why they are not wearing a mask could be a violation of their privacy rights under HIPPA or ADA.[188] While some argue that these laws take a back seat to the pandemic Executive Orders for mask wearing, these arguments collapse in light of the fraudulent claims driving the pandemic itself.[189]

Along the lines of mobilizing the law against the pandemic police power, there is the matter of contesting the legal scaffolding for the medical industrial complex. In the financial industry, we have the fateful repeal of Glass-Steagall in 1999 that deregulated Wall Street, and in criminal justice we have the 1994 Violent Crime Control and Law Enforcement Act that lowered the age at which youth can be tried as adults, provided incentives to prosecutors to charge youth in adult courts, enhanced sentencing, sent billions of dollars to states to hire thousands of new officers and build scores of new prisons, and established new anti-gang provisions, among other things, that facilitated the mass incarceration juggernaut and are currently being incrementally revised or thrown out. In medical science, two influential laws are the 1986 National Childhood Vaccine Injury Act (NCVIA) which, among other things, indemnified vaccine makers from liability when their products cause injury, and the Bayh-Dole Act, or the Patent and Trademark Laws Amendment Act of 1980, which changed the law to permit federal contractors to own patents on inventions made with federal funding.[190] Bayh-Dole fostered the biotech industry by allowing universities,

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[185] *See "Covid19 Crisis" is a Crime Against Humanity, German Corona Investigative Committee*, COVERT GEOPOLITICS (Oct. 26, 2020), https://geopolitics.co/2020/10/26/covid19-crisis-is-a-crime-against-humanity-german-corona-investigative-committee/.

[186] Complaint at 46–51, Renz v. Ohio, No. 3:20CV1948, 2021 WL 485534, *1 (N.D. Ohio Feb. 9, 2021) (No. 3:20 Civ. 1945), https://storage.courtlistener.com/recap/gov.uscourts.ohnd.269202/gov.uscourts.ohnd.269202.1.0.pdf.

[187] *See Certain Medical Conditions*, *supra* note 44.

[188] *Mask Mandate*, HIPPA SECURE NOW! (July 20, 2020), https://www.hipaasecurenow.com/index.php/mask-mandate/; *The ADA and Face Mask Policies*, SE. ADA CTR. 7–8 (July 2, 2020), https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/06/ada-and-face-mask-policies.pdf.

[189] *HIPAA and Mask Inquires: Is it a HIPAA Violation?*, COMPLIANCY GRP. (Aug. 3, 2020), https://compliancy-group.com/hipaa-and-mask-inquires-is-it-a-hipaa-violation/.

[190] National Childhood Vaccine Injury Act of 1986, H.R. 5546, 99th Cong. (1985–1986), https://www.congress.gov/bill/99th-congress/house-bill/5546 (last visited May 30, 2021); An Act

private industry, and even public entities to commercialize and profit off of research—including vaccines—funded by taxpayers, while the NCVIA removes a major source of accountability for the vaccine makers. These laws are major impediments to producing safe and accountable medical science. One of the major strikes against the prison industrial complex has long been the coupling of punishment and profits. Although private prisons have always been a fraction of the overall prison system, profit motives are realized at many different junctures in the criminal justice process.[191] NCVIA and Bayh-Dole are but the tip of a very large iceberg of profit in the medical science field that compromises healthcare, and the same analysis from the prison industrial complex applies. "The scientific-medical complex is a $2 trillion industry," says one former drug developer. "You can buy a tremendous amount of consensus for that kind of money." "Before the biotech boom," says another scientist, "we never had this incessant urging to produce something useful, meaning profitable. Everybody is caught up in it. Grants, millions of dollars flowing into laboratories, careers and stars being made. The only way to be a successful scientist today is to follow consensus."[192]

To say the least, the conflicts of interest are mind-boggling: public health leaders set policies on medical practice that features the use of biotech products for which they hold the patents.[193] Fauci directs a large portion of the overall medical science research conducted in the U.S. *and* holds a number of patents derived from this research.[194] Is it no wonder that they are pushing vaccines at the expense of actual healthy communities?

There are further legislative parallels between the state's pandemic response and the massive build-up of the prison industrial complex. Beginning with the Omnibus Crime Control and Safe Streets Act of 1968, each subsequent crime bill has devoted billions of dollars to law enforcement, directly creating mass incarceration. In particular, the 1994 crime bill featured financial incentives to encourage prosecutors to apply new federal drug statutes, send youth

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to Amend the Patent and Trademark Laws, H.R. 6933, 96th Cong. (1979–1980), https://www.congress.gov/bill/96th-congress/house-bill/6933 (last visited May 30, 2021).

[191] *See* Eric Schlosser, *The Prison-Industrial Complex*, THE ATL. (Dec. 1998), https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669/.

[192] Celia Farber, *Out of Control: AIDS and the Corruption of Medical Science*, HARPER'S MAG. 48–49 (Mar. 2006), https://www.immunity.org.uk/wp-content/uploads/2013/07/Harpers_Celia.pdf.

[193] The National Institutes of Health owns part of the patent for Moderna's COVID-19 vaccine. *See* Bob Herman, *The NIH Claims Joint Ownership of Moderna's Coronavirus Vaccine*, AXIOS (June 25, 2020), https://www.axios.com/moderna-nih-coronavirus-vaccine-ownership-agreements-22051c42-2dee-4b19-938d-099afd71f6a0.html. When *Axios* inquired about the Modern vaccine patent, NIH confirmed that it is seeking a stake in the patent for the vaccine. Bob Herman, *Statement from National Institutes of Health to Axios*, https://www.documentcloud.org/documents/6956323-NIH-Statement-to-Axios.html (last visited May 30, 2021).

[194] For a partial list of Fauci's patents see *Patents by Inventor Anthony S. Fauci*, JUSTIA PATENTS, https://patents.justia.com/inventor/anthony-s-fauci (last visited May 30, 2021); *see also Anthony S. Fauci, M.D.*, NIH, https://www.niaid.nih.gov/research/anthony-s-fauci-md (last visited May 30, 2021).

offenders to adult court, and to seek life without parole and the death penalty in cases where they would not previously have sought such sentences. The 1994 crime bill also provided $12.5 billion in incentive grants to fund prison expansion, with nearly 50 percent earmarked to states that adopted tough "truth-in-sentencing" laws that scaled back parole.[195] The 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act, similarly, provides twenty percent more reimbursement to hospitals for COVID-19 treatment than the usual Medicare reimbursements. "Hospital administrators might well want to see COVID-19 attached to a discharge summary or a death certificate. Why? Because if it's a straightforward, garden-variety pneumonia that a person is admitted to the hospital for—if they're Medicare—typically, the diagnosis-related group lump sum payment would be $5,000," explained Minnesota lawmaker and family practitioner Dr. Scott Jensen. "But if it's COVID-19 pneumonia, then it's $13,000, and if that COVID-19 pneumonia patient ends up on a ventilator, it goes up to $39,000."[196] In a July 31, 2020 hearing before Congress, CDC Director Robert Redfield acknowledged this financial incentive to inflate COVID-19 caseloads, noting the same thing happens with other diseases as well. "In the HIV epidemic, somebody may have a heart attack but also have HIV," Redfield explained. "The hospital would prefer the DRG [death report] for HIV because there's greater reimbursement. So I do think there is some reality to that."[197] The state also directly inflates the death rate through its official guidelines for determining a COVID-19 death. In an April 2020 news conference, Dr. Ngozi Ezike, Director of the Illinois Department of Health, explained that anyone who dies with a COVID-19 positive test on record is counted as a COVID-19 death—even if the actual cause of death is clearly something else:

> If you were in hospice and had already been given a few weeks to live, and then you also were found to have COVID, that would be counted as a COVID death. It means technically even if you died of a clear alternate cause, but you had COVID at the same time, it's still listed as a COVID death. So, everyone who's listed as a COVID death doesn't mean that that was the cause of the death, but they had

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[195] *See* Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, BRENNAN CTR. JUST. (Sept. 9, 2019), https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice.

[196] *See* Michelle Rogers, *Fact Check: Hospitals Get Paid More if Patients Listed as COVID-19, on Ventilators*, USA TODAY (Apr. 27, 2020), https://www.usatoday.com/story/news/factcheck/2020/04/24/fact-check-medicare-hospitals-paid-more-covid-19-patients-coronavirus/3000638001/.

[197] Oversight Committee, *Select Subcommittee Hearing "The Urgent Need for a National Plan to Contain the Coronavirus"*, YOUTUBE (July 31, 2020), https://www.youtube.com/watch?v=YkP1t_2u5B0.

COVID at the time of the death.[198]

This statement is remarkable in its naked admission of fraud and exposes the government's legal liability. Evidence for the legal case against the pandemic protocols is right there in the public record. What is even more incredible, however, is that so few people in the media and in society recognize such evidence of fraud for what it is. Just as the state has long been a dealer in crime by constructing new criminal categories and incentivizing jurisdictions to expand their carceral nets accordingly, so too the state is literally creating the pandemic through its construction of disease cases and morbidity.

Finally, the COVID-19 injections operate within a unique legal context. The government's declaration of a public health emergency, and subsequently, of the Public Readiness and Emergency Preparedness Act (PREP), creates a liability shield. PREP is a tort shield law that protects manufacturers, government, and healthcare providers from liability for "covered countermeasures" during a declared public emergency. The mRNA products have not been approved by the FDA, which means they are experimental. While some advocates for these products dispute this designation on the grounds that the biologicals were studied for 3-6 months prior to their release onto the market, the "experimental" label is as much a legal status as a scientific one. As an unapproved product, the mRNA injections raise three matters of law that support the argument against their mandated use.

First, unapproved products can only enter the market under emergency use authorization (EUA). Section 564 of the Federal Food, Drug, and Cosmetic Act states that the FDA Commissioner "may allow unapproved medical products or unapproved uses of approved medical products to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases *when there are no other adequate, approved, and available alternatives*."[199] As extensively documented in earlier sections of this article, there are numerous "adequate, approved, and available alternatives" to the mRNA products. EUA status should never have been granted to these products. Secondly, having conferred EUA status, however, the law clearly stipulates that any product with this designation must be voluntary and the risks must be clearly specified.[200] Federal law in this area trumps state law, so no state or local jurisdiction may mandate an EUA

[198] *See* Lauren Melendez, *IDPH Director Explains How Covid Deaths Are Classified*, WEEK.COM (Apr. 20, 2020, 2:13 AM), https://week.com/2020/04/20/idph-director-explains-how-covid-deaths-are-classified/.

[199] *Emergency Use Authorization*, U.S. FOOD & DRUG ADMIN. (May 21, 2021), https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.

[200] 21 U.S.C. § 360bbb–3.

product.[201] Private employers, such as a school or hospital, cannot mandate an EUA product, and an employee cannot be denied healthcare coverage for declining an EUA vaccine.[202] In fact, the law preventing mandates of EUA products is so explicit that there has only been one precedent case regarding an attempt to mandate an EUA vaccine, and the court held that the vaccine could not be mandated. In *Doe #1 v. Rumsfeld*, six soldiers successfully challenged the Department of Defense mandated experimental anthrax vaccine. The court decided that since the anthrax vaccine was an EUA product, the soldiers had the right to refuse or accept vaccination.[203] Third, the right to decline medical experimentation is also a matter of international law. The Nuremberg Code stipulates that "the voluntary consent of the human subject is absolutely essential."[204] The Code is a set of research ethics principles for human experimentation stemming from *U.S.A. v. Karl Brandt et al.*, the first of twelve trials for Nazi war crimes in Nuremberg, Germany at the end of World War II.

Lawsuits are beginning to emerge against public health policing. In New Mexico, *Legaretta, et al. v. Macias, et al.* challenges a Dona Ana County mandate requiring first responders to receive the COVID-19 shot as a condition of employment.[205] The lawsuit centers on the question of whether state and county agencies can bypass federal law that requires EUA biologicals to be voluntary, as noted above. A second lawsuit by New Mexico plaintiffs challenges the declaration of a public health emergency as invalid, arguing that the government's actions are based on unreliable data and have caused more harm than the disease itself.[206] Lawyers should continue to support people in standing up for their health rights, for students' right to an education without compromising their health status, and for workers' right to earn a living without being subjected to coercive public health policing.

VI. CONCLUSION: SCIENCE AND LAW FOR THE PEOPLE

The Pandemic Year has sharpened the question of policing into a holistic approach to the police power. We knew before that work kills, and that

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[201] *Emergency Use Authorization of Medical Products and Related Authorities*, U.S. FOOD & DRUG ADMIN. (Jan. 2017), https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities.

[202] Greg Glaser, *Under Federal Law, Can Your Employer Make You Get the COVID Vaccine*, THE DEFENDER (Jan. 29, 2021), https://childrenshealthdefense.org/defender/under-federal-law-can-your-employer-make-you-get-covid-vaccine/.

[203] Doe # 1 v. Rumsfeld, 297 F. Supp. 2d 119, 122 (D.D.C. 2003).

[204] ALEXANDER MITSCHERLICH & FRED MIELKE, DOCTORS OF INFAMY: THE STORY OF THE NAZI MEDICAL CRIMES xxiii-xxv (2010) (highlighting The Nuremberg Code).

[205] Legaretta v. Macias, No. 21-cv-179 MV/GBW, 2021 U.S. Dist. LEXIS 44474 (D.N.M. Mar. 4, 2021).

[206] Complaint at 7, McKinley et al. v. Grisham et al., No. 1:30-CV-01331, 2020 WL 7624169 (D.N.M. Dec. 21, 2020), https://d697c6dd-b94d-4c338cefd36ec2a5eb54.filesusr.com/ugd/218232_58ca36485fac43d5aa3a457c5bab87b7.pdf.

worklessness has its own lethal methodology.[207] We have seen the new ways that "science" as a value and a discourse is used to sanction medical and public health corruption, profiteering, and widespread harm. We have also seen how the state-corporate nexus maneuvers public health paranoia into greater degrees of social control. High-level government, corporate, and academic leaders, including representatives from WHO and CDC, conducted a global pandemic simulation exercise called Event 201 *prior to* the appearance of COVID-19 in China, in October 2019.[208] The resemblance between Event 201's simulated outcome and the current trajectory of the COVID-19 pandemic is not an uncanny coincidence—it is called planning. In other words, in the face of an eventual pandemic, Event 201 did not focus on rebuilding public health institutions, amending the social costs of corporate practices that leave global society vulnerable to costly epidemic outbreaks, or even how to maintain safe workplaces during pandemic conditions. Instead, it called for vaccination, maintaining travel and trade, corporate partnerships that can temporarily fill in for the state, managing the media message, and the shoring up of "critical nodes of the banking system and global and national economies that are too essential to fail."[209] In planning terms, then, we are mostly on the neoliberal course laid out by Event 201: no public health preparedness to speak of, a massive corporate bailout ("too big to fail" all over again), an emphasis on vaccination, and a reliance on private sector responses to need. For instance, the Gates Foundation, through its Vaccine Alliance (Gavi) and its Coalition for Epidemic Preparedness Innovations (CEPI) worked with the pharmaceutical corporations to fund the biotech research for a COVID-19 vaccine, while Governor Cuomo of New York has invited Gates to reimagine NY education in light of the pandemic.[210]

Accordingly, we are learning more about how nimble the world's largest political economic institutions have become in the digital age. The International Monetary Fund (IMF) is now announcing a "new Bretton Woods moment" as central banks move towards digital currency that allows for total surveillance,

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[207] Data from the Great Depression parallels trends during severe economic recession: increases in life expectancy due to decline in accidents are off-set by increased suicides, with the pandemic lockdowns exacerbating these trends. *See Great Depression Did Not Significantly Improve Life Expectancy in United States, Study Finds*, SCI. DAILY (Mar. 28, 2011), https://www.sciencedaily.com/releases/2011/03/110324202055.htm.

[208] *See Event 201*, EVENT 201, https://www.centerforhealthsecurity.org/event201/ (last visited May 30, 2021).

[209] *See Public-Private Cooperation for Pandemic Preparedness and Response*, EVENT 201, https://www.centerforhealthsecurity.org/event201/recommendations.html (last visited May 30, 2021).

[210] Andrew Dunn, *A Coalition Backed by Bill Gates is Funding Biotechs That Are Scrambling to Develop Vaccines for the Deadly Wuhan Coronavirus*, BUS. INSIDER (Jan. 23, 2020), https://www.businessinsider.com/vaccines-for-wuhan-china-cornonavirus-moderna-inovio-cepi-2020-1?op=1; Peter Greene, *Why Bill Gates is Not the Man to Reimagine New York Education*, FORBES (May 8, 2020), https://www.forbes.com/sites/petergreene/2020/05/08/why-bill-gates-is-not-the-man-to-reimagine-new-york-education/#7b13905779cc.

real time adjustments to planning, and control over worldwide transactions.[211] Bretton Woods refers to the post-WWII economic planning meeting in New Hampshire that adopted a new monetary system with the U.S. dollar as the global currency and the IMF as the key international regulator. Since people are already conditioned to online and digital everything, these massive top-down systemic changes are happening backwards: getting everyone to buy into a solution by getting everyone online and digitized now as a necessary step for public health, before they can see where it is going to end up. All that appears new, however, is based in everything old, such as debt, in which the average person is now further entrapped and desperate for cash flow. Pandemic Year lockdowns also conveniently impacted many of the mass-based mobilizations afoot around the world, from anti-extradition in Hong Kong, to the yellow vest populism in France, to farmers in India, to pollution in Wuhan, to police violence, social spending cuts, and xenophobia in South Africa, Brazil, and the U.S.[212] These movements, and many others, are discrete manifestations of people's common objections to the police power; pandemic public health protocols make managing this dissent far easier than it was before COVID-19.

These larger realities are difficult to synthesize into one's localized experience living through a pandemic. I have sought to situate an awareness of the multiple levels of our social existence, both the micro and the macro, in terms of policing. The greatest pedagogical utility of the police is their ubiquity in modern culture. The police, or representations of the police, are everywhere; it does not take much effort to discover what they are about, should one desire to see clearly. At the same time, this ubiquity can also be a sleight of hand, if you will, enabling the true nature of police to remain hidden in plain sight. I aimed for a more accurate portrait of what policing is and how it works by turning our attention away from law enforcement and towards the socio-historical processes by which social control is sought and contested through non-criminal justice

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[211] *See* Kristalina Georgieva, *A New Bretton Woods Moment*, INT'L MONETARY FUND (Oct. 15, 2020), https://www.imf.org/en/News/Articles/2020/10/15/sp101520-a-new-bretton-woods-moment; *see also Central Bank Digital Currencies: Foundational Principles and Core Features*, BIS (Oct. 9, 2020), https://www.bis.org/publ/othp33.htm.

[212] *See Hong Kong Protests Explained*, AMNESTY INT'L, https://www.amnesty.org/en/latest/news/2019/09/hong-kong-protests-explained/ (last visited May 30, 2021); *see also* Jessie Yeung, *Farmers Across India Have Been Protesting for Months. Here's Why*, CNN (Feb. 14, 2021, 8:50 PM), https://www.cnn.com/2021/02/10/asia/india-farmers-protest-explainer-intl-hnk-scli/index.html; James Griffiths, *China Has Made Major Progress on Air Pollution. Wuhan Protests Show There's Still a Long Way to Go*, CNN (July 11, 2019), https://edition.cnn.com/2019/07/10/asia/china-wuhan-pollution-problems-intl-hnk/index.html; *Protesters Take to Brazil's Streets – in Pictures*, THE GUARDIAN (May 31, 2019, 1:02 AM), https://www.theguardian.com/world/gallery/2019/may/31/protesters-take-to-brazils-streets-in-pictures; Robin-Lee Francke, *Thousands Protest in South Africa Over Rising Violence Against Women*, THE GUARDIAN (Sept. 5, 2019), https://www.theguardian.com/world/2019/sep/05/thousands-protest-in-south-africa-over-rising-violence-against-women. *See generally* Niamh Kennedy & Rory Sullivan, *Yellow Vest Protesters Return to Paris For the First Time Since Lockdown*, CNN (Sept. 12, 2020, 1:22 PM), https://www.cnn.com/2020/09/12/europe/yellow-vest-france-protests-intl/index.html

institutions and processes. Policing is better conceived of socially as the police power organized to reproduce an antiblack world. The police power is central, while the police are peripheral.

My conception of the police power as the essential organizing methodology for antiblackness conjoins medical science's emergence as a key institution for reproducing racism. Analysis of the police power reminds us that each discrete institution is set up the way it is to advance the antiblack terms of society. Things are working as designed when black people are disproportionately represented in disease morbidity or incarceration statistics. If criminal justice is working as intended, then so too is medical science. Each facet of the police power equally comprises the whole. The state does not enact antiblack violence in one arena and not in another; it merely uses different methods and discourses to realize the same ends. Given the litany of injury experienced by black people at the hands of the Western world's medical science, it is testament to the ubiquitous and disarming reach of antiblackness that black people still look to Western medicine and state-defined public health. This needs to change in the same manner that people need to stop looking to the criminal justice system for "justice" and "security." This history and present reality of medical racism is very much informing black people's feelings on the current COVID-19 vaccine.[213] Suggestions that black people who decline the vaccine because they are "uninformed" are nothing more than antiblack racism's own ignorance. Ignorant of how the 1918-1919 Spanish Flu pandemic disproportionately impacted black families confined by segregation, lynching, and policing into cramped kitchenettes.[214] This geography of disease is replicated today in that the states with the highest rates of black COVID-19 cases are also the worst places for black people to live in terms of environmental toxins.[215]

Ignorant of Ft. Detrick's history conducting bioweapons studies on black communities. In the 1960s, a joint Army-CIA program bred more than four million mosquitoes per day and released them in hordes in black communities in Florida and Georgia to see if they could be used as first-strike biological weapons to spread yellow fever and other infectious diseases. Black residents were soon plagued by a rash of mysterious illnesses, including the symptoms of

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[213] *See* Saundra Young, *Black Vaccine Hesitancy Rooted in Mistrust, Doubts*, WEBMD (Feb. 2, 2021), https://www.webmd.com/vaccines/covid-19-vaccine/news/20210202/black-vaccine-hesitancy-rooted-in-mistrust-doubts.

[214] *See generally* ST. CLAIR DRAKE & HORACE R. CLAYTON, BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY (Harper & Row ed., 1st ed. 1945); RASHAD SHABAZZ, SPATIALIZING BLACKNESS: ARCHITECTURES OF CONFINEMENT AND BLACK MASCULINITY IN CHICAGO (2015).

[215] *See* John L. Warfield Center for African American Studies, *Critical Conversations: COVID-19 and the Structures of Crisis in the Black Community*, YOUTUBE (Apr. 11, 2020), https://www.youtube.com/watch?v=kUgaeZilGus; *see also* Emily Holden & Nina Lakhani, *Polluted US Areas Are Among Worst-Hit by Coronavirus – Putting People of Color Even More at Risk*, THE GUARDIAN (Apr. 14, 2020, 5:35 AM), https://www.theguardian.com/world/2020/apr/14/pollution-hotspots-hit-hardest-by-coronavirus-us.

dengue and yellow fever, and deaths.[216] Ignorant of Pfizer's poisoning of Nigerian children in 1996. During the height of a meningococcal meningitis epidemic, scientists offered parents in Kano, Nigeria Pfizer's experimental drug Trovan (floxacin). By the end of the experiment, over two hundred kids were disabled and eleven were dead.[217] Ignorant of how the Department of Health and Human Services passed 21 CFR 50.24 in October 1996, a regulation that permitted researchers to legally enroll seriously ill emergency room patients in medical research studies and test experimental therapies on them without their consent. Emergency room deaths followed shortly thereafter and did not stop until the Occupational Health and Hygiene Plan suspended a clinical trial in which many more had died from the experimental treatment than those receiving standard care. None of the deceased gave their consent to the treatments that killed them.[218] Ignorant, as well, of the waiver from the FDA successfully sought by the Department of Defense in 1990 to allow medical experimentation on its soldiers without their consent. Almost a million soldiers were forced to take the experimental anthrax vaccine, until hundreds of soldiers began refusing to comply, citing the devastating side effects and deaths associated with it. Black soldiers are twice as common in ground troops as in the overall American society.[219] Ignorant of how the lead poisoning of Washington, DC's water supply in 2004 was 20-30 times more extensive than the well-known crisis in Flint, MI a decade later, and of how at the height of the District's crisis, the CDC produced a falsified report claiming there was no toxic levels of lead in the water.[220] Ignorant of how GlaxoSmithKline and the New York City Administration for Children's Services used black foster children to test experimental AIDS drugs in 2003-2005. When children resisted, the powerful drugs were administered through gastronomy tubes inserted directly into their abdomens. Some children died but no autopsies were performed, and state and city agencies claimed that there was no evidence that any deaths were directly caused by the experimental treatments.[221] And ignorant of how the entire vaccine-autism controversy stems from a censored study of black boys in Atlanta. The 2004 study by the CDC of the measles-mumps-rubella vaccine found three times as many autism diagnoses in children who received the MMR vaccine on time, but the

[216] WASHINGTON, *supra* note 352, at 360–62.
[217] *Id.* at 392.
[218] *See Blood on Tap, Part 2: An Ethical Dilemma in Emergency Research*, EMS WORLD (Feb. 29, 2004), https://www.emsworld.com/article/10324840/blood-tap-part-2-ethical-dilemma-emergency-research.
[219] WASHINGTON, *supra* note 352, at 399.
[220] *See* Neal Augenstein, *Before Flint: D.C.'s Drinking Water Crisis Was Even Worse,* WTOP NEWS (Apr. 4 2016, 2:53 AM), https://wtop.com/dc/2016/04/flint-d-c-s-drinking-water-crisis-even-worse/.
[221] FARBER, *supra* note 345, at 266–73.

damning data was omitted, and the research plan was deviated to obscure the findings.[222]

COVID-19 is like the police: its ubiquity is both the perfect case study and a test of our analytic powers. The case against vaccine mandates is strong:

1. Faulty testing grossly overestimates the state of COVID-19 disease and mortality, making it appear far more dangerous than it is in reality.
2. Infection mitigation protocols cause more harm than good. They discount how viruses, bacteria, and germs circulate and co-produce with humans; and they ignore immunological insights about the importance of healthy conditions and systems, above all else. In so doing, the pandemic police power distracts and divests from the holistic production of actual healthy communities.
3. Effective and cost-efficient treatment options exist that pre-empt the necessity for emergency use authorization for experimental biotechnology. These treatment options are far less restrictive and invasive than requiring people to get a COVID-19 injection, meaning that a vaccine mandate would not meet strict scrutiny standards.
4. Emergency use authorization requires that taking the shot is voluntary and that accurate risks are disclosed to the public. Neither of these things are happening now: students and workers are being illegally forced to take the shot in order to continue in school or keep their jobs, and the risk for serious adverse effects from the mRNA injections is being suppressed. The thousands of deaths and serious adverse events from the mRNA injections are an utterly avoidable tragedy for a virus that has a survival rate of 99.95 percent.
5. Vaccine development since the mid-twentieth century has advanced according to the priorities of the medical

[222] For original CDC documents related to this case, see *The CDC Autism/MMR Files Released By Dr. William Thompson*, VAXXED, https://www.vaxxed.com/thompson-file-releases/ (last visited May 30, 2021). For the study as it was initially published, see Frank DeStefano et al., *Age at First Measles-Mumps-Rubella Vaccination in Children with Autism and School-Matched Control Subjects: A Population-Based Study in Metropolitan Atlanta*, 113 AM. ACAD. PEDIATRICS 259 (2004), https://pediatrics.aappublications.org/content/113/2/259. The CDC whistleblower William Thompson, before making his allegations about the censored study public, also published another paper that claims to have not found a causal relationship between thimerosal (the aluminum adjuvant used as a preservative in many vaccines) and autism, but nevertheless documents the many negative effects of the toxin on vaccinated children. *See generally* William W. Thompson, *Early Thimerosal Exposure and Neuropsychological Outcomes at 7 to 10 Years*, 357 N. ENGL. J. MED. 1281 (2007), https://www.nejm.org/doi/full/10.1056/NEJMoa071434.

industrial complex, which subordinates scientific inquiry and public health needs to profit and social control. Vaccination is not simply a neutral tool that can be wielded for good or for ill; it is symptomatic of a conception of biological beings that is intrinsically racialized and Westernized—meaning, it rests upon anti-democratic structures geared towards popular disempowerment.

6. Vaccine law has always relied upon an anti-scientific premise that insulates these racial and class hierarchies from critique and challenge. The reason for this is that law follows the police power, which goes a long way to explaining the paucity of legal challenges thus far to the current COVID-19 response. It also means that efforts to remedy the illegalities of the public health protocols ultimately amount to appeals to a superseding law that has already been superseded by the culture of politics. Redressing legal problems, therefore, cannot simply rely upon the law—because at root, they are cultural problems, not legal ones. A legal response to compulsory vaccination, for instance, must proceed with a clear and sober understanding of law's limits. It must, in other words, advance a political and cultural response, one that intervenes on the culture of politics, specifically, that takes medical disempowerment as unthought, natural responses to health and illness as illegitimate, and capital's interests as primary in the public health establishment.
7. To put it differently, vaccine mandates must be rejected because their purpose is primarily social control, not disease control. We are already seeing the creation of two classes of people: the vaccinated and the unvaccinated, with full social access restored to the former, while the latter remain excluded or marked out as different, risky, and undesirable. All the while, actual public health needs remain wanting.
8. The position against vaccine mandates cannot be dismissed as "anti-vax" or based on conspiracy theories. This schema is convoluted politically in the least because "conspiracy theory" was originally a label created by the Right to discount systems analysis from the Left that saw a fascistic and totalitarian dimension to Right-wing control over the state-corporate nexus. Things

> have not become inverted so much as the so-called Left has lost its structural critique as it has acquired a greater share of power. The number one failing across the literature on the so-called anti-vax movement is that it does not account for the state's track record in systematically creating harms for which it remains largely unaccountable. People who disparage "anti-vaxxers" basically trust the state and take its policies, its narratives, and its science at face value. For this reason alone, the discourse of "anti-vaxxers" should rightfully be understood as a state narrative. The fact that most of the discourse is contributed by non-state actors, such as journalists, university-based researchers, doctors, and everyday folk across society, is an example of how state power is most effective when people internalize it as their own story. The position against vaccine mandates is a critique of state science and its usurpation and corruption of science's democratic tenets.

In short, vaccine law, from *Jacobsen* on down, needs complete revision, and lawyers working for the people should inundate the courts with challenges to every facet of the pandemic police power, from vaccine mandates to takings without compensation. But to make the changes they produce lasting, these legal efforts need to follow a change in consciousness. People need to realize that their health is in their hands; when we cede this power to the medical and public health institutions, our communities end up suffering for it. COVID-19 shows that our society is not well: its susceptibility to dominance and disempowerment is as consequential as its degraded conditions for public well-being, all of which are far more consequential than this season's latest batch of circulating viruses