

The Constitutional Case Against the Mandatory Vaccine Policy — An Interdisciplinary South African Perspective

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Abstract

In this article, I rethink the perceived/received wisdom of the mandatory vaccine policy which has been punted so ardently, largely uncritically, in South Africa. I investigate whether this line of argument could be justified from a comparative South African constitutional perspective. It became evident in the early stages of my research that the legal perspective is too narrow and constricting to allow for a proper understanding of the puzzle. Following Friedman's suggestion of the schism between Western-based curative medicine and preventive strategies, I employ a critical public health theoretical framework complemented by insights from the social sciences. Given that the vaccine is a product of an outdated paradigm, South Africa's erroneous approach to the pandemic led to disastrous consequences and fared less favourably than the rest of Africa. It is concluded that a mandatory vaccine policy is both unconstitutional and unjustifiable, in the wider view.

Keywords

Mandatory vaccine policy; constitutionality; curative medicine; preventive strategies; critical public health; social sciences complementarity; erroneous approach; South Africa/Africa.

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1 Introduction

On a state visit to the Ivory Coast on Thursday, December 2, 2021, South Africa's President Cyril Ramaphosa condemned world reaction to the newly evolved so-called Omicron virus strain as "health apartheid".¹

After South African scientists identified a mutated version of the COVID-19 virus, many countries closed their borders to flights to and from South Africa, shattering an already struggling hospitality industry.

Even though Ramaphosa was spot-on in his synopsis of an emerging health apartheid at the time, ironically, he was also painfully wrong in his subsequent support of local vaccine mandates – or enforced vaccination – which in themselves amount to a form of health apartheid. It is doubly ironic that the relatively new mutated strain of the COVID-19 virus greatly increased calls for enforced vaccination when mounting evidence was indicating that it was markedly less severe than the previous strain.

Ramaphosa was painfully correct in recognising the issue of health apartheid, something which the vaccine drive was perpetuating. Steven Friedman² has identified the gap in the literature/debate as a dearth in critical public health discourse. According to the Center for Critical Public Health,³ a US-based research group committed to changing the rules of engagement in favour of critical and marginalised perspectives on public health issues, critical public health is defined as an approach that challenges the status quo in public health, questions what have come to be defined as problems, and breaks down fundamental assumptions by considering them in the context of the social systems in which they are created. At present, critical perspectives in public health are often under-recognised and left at the margins. It is only later when their value is appreciated that they are adopted into the mainstream.⁴

As Friedman essentially embraces a critical public health paradigm (without identifying it as such), it is worth noting that he isolates at least five serious

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¹ Anon 2021 <https://english.alarabiya.net/coronavirus/2021/12/02/South-Africa-s-Ramaphosa-slams-COVID-19-health-apartheid->

² Friedman *One Virus, Two Countries* 4, 6-8, 12, 24.

³ Center for Critical Public Health date unknown <https://criticalpublichealth.org/about/>.

⁴ Center for Critical Public Health date unknown <https://criticalpublichealth.org/about/>.

if not fundamental mistakes in the South African government's approach to the COVID-19 scourge, which I enumerate below:

- 1 South Africa embraced the Western-centred curative medicine approach (which emphasises treating those who were already sick) rather than the communitarian approach of pro-active prevention (which meant "smashing" the curve rather than merely "flattening" it) championed by many African countries, East Asia and New Zealand.⁵
- 2 The South African government neglected an early lockdown strategy to "smash the curve". Instead, they sought to "prepare the health system" for a deluge of cases on the mistaken assumption that the country could not prevent a serious pandemic.⁶ A significant issue was the substantial backlog in the national pathology laboratory, rendering any "track and trace" efforts to isolate manageable COVID-19 cases (almost, if not entirely) futile.⁷
- 3 South Africa neglected the invaluable trove of experience available from other African countries with previous pandemics, such as Ebola and typhus, resulting in disastrous consequences.⁸
- 4 The South African government made the erroneous assumption that the majority of South Africans (the much punted "poor" or "Third World") were unwilling and/or unable to protect themselves from the virus. Consequently, the army was employed to enforce the lockdown. This was a serious miscalculation as the evidence shows not only that this section of society favoured lockdowns, but also that there could have been significant benefits gained from cooperation with the populace to fight the pandemic.⁹ This misguided thinking on the part of the authorities included the mistake of not encouraging the poor to

⁵ Friedman *One Virus, Two Countries* 123, 125.

⁶ Friedman *One Virus, Two Countries* 95, 97.

⁷ Friedman *One Virus, Two Countries* 97.

⁸ Bernault 2020 <https://africanarguments.org/2020/06/some-lessons-from-the-history-of-epidemics-in-africa/>; Friedman *One Virus, Two Countries* 124; Patterson and Balogun 2021 *African Studies Review*.

⁹ Bank 2021 <https://africanarguments.org/2021/02/the-sociology-of-ground-zero-south-african-variant-and-colonial-prejudice/>; Bank 2021 <https://dev.dailymaverick.co.za/article/2021-02-24-ground-zero-deep-seated-colonial-era-prejudice-fuelled-the-pandemic-in-rural-eastern-cape/>; Friedman *One Virus, Two Countries* 117, 126-127.

save themselves¹⁰ by way of governmental financial support¹¹ to ensure that they were able to stay home, if need be, rather than risk violating lockdown rules. This was a preferred course of action to the huge and largely unwise investment in several vaccines that were never utilised in this country.

- 5 The government (as did the opposition DA) stressed individual responsibility in protecting against COVID-19 infection rather than focussing on the many ways in which the authorities could halt the spread.¹²

One reason for this lamentable state is the fact that the debate about the approach to COVID-19 was dominated by conventional medicine to the exclusion of the valuable contribution of the social sciences. Friedman¹³ explains the great benefit which could be derived from the social sciences in the management of a pandemic, by contending that stopping COVID-19's spread "depended ... on influencing human behaviour, and so knowledge of society and the perspectives of the key citizens' [sic] groups would be at least as valuable as the advice of the *medical scientists who, given Covid-19's novelty, had little science to offer.*"¹⁴ (emphasis in the original)

My contribution to the debate involves exploring the input of several social sciences (notably anthropology, history, politics, philosophy, and criminology) in the context of an exploration of the constitutionality of the vaccine mandate. In particular, I argue that certain questions in constitutional law, notably whether or not a mandatory vaccine policy passes constitutional muster, must be framed and answered in a broader framework of the social sciences.

I attempt to explore the case against vaccine mandates from various perspectives (in the social sciences) employing a critical public health framework as suggested by Sarah S Willen, Abigail Williamson, Colleen Walsh, Mikayla Hyman and William Tootle Jr,¹⁵ albeit in a different context. Steven Friedman¹⁶ makes a convincing case for adopting a critical health perspective informed by the social sciences in this contribution. By way of

¹⁰ Friedman *One Virus, Two Countries* 114, 125; Kent 2021 <https://www.theguardian.com/commentisfree/2021/jan/22/funding-self-isolate-covid-rampant>.

¹¹ Friedman *One Virus, Two Countries* 105-106.

¹² Friedman *One Virus, Two Countries* 113-116.

¹³ Friedman *One Virus, Two Countries* 32.

¹⁴ Emphasis added.

¹⁵ Willen *et al* 2022 *SSM - Mental Health*.

¹⁶ Friedman *One Virus, Two Countries* 32-33.

parallel example, I also reference Angela Davis's very readable work, *Are Prisons Obsolete?*¹⁷ where she explains the irrational, unconscious set of assumptions that drives mass incarceration.

She poses the question about the extent to which Big Pharma's¹⁸ vested interest in enforcing the distinction between legal/illegal drugs in the US drove the notorious US governmental war on drugs from the 1970s. This push led, at least in part, to the largest experiment in mass incarceration in years attempting to understand and come to terms with the vested interests ensconced in phenomena such as the prison-industrial complex.

Taking our cue from Angela Davis's provocative line of argument, we might expand her thought to ask to what extent, if any, the drive for vaccine mandates was motivated by irrational, unstated and certainly unexamined motives. Even though the State of Disaster was officially rescinded by the South African government in early April 2022, vaccine mandates have remained in place in some workplaces and at several universities throughout South Africa. A number of minor remnants from Level One COVID-19 restrictions — such as the requirement to wear masks indoors and a reduced capacity for mass gatherings — remained undisturbed for a considerable period. In this vein, I should stress that I am not in the least concerned with an examination of the argument for voluntary vaccination against COVID-19, which may or may not be constitutionally justified or, said in another way, which passes constitutional muster under South African law, but I do not express a view on this score unless it impacts my theoretical framework or paradigm, which is critical public health. But the issue of a vaccine mandate has already impacted South Africans in several important ways. The Commission for Conciliation, Mediation and Arbitration has ruled in more than one case that an employee who refuses to subject her- or himself to vaccination may be lawfully terminated.¹⁹ Several tertiary institutions, notably Rhodes University, have remained resolute in refusing to admit students and/or staff unless they can produce a vaccination certificate. In my view there is no doubt that this is indeed a constitutional issue and notable scholar Bert Olivier²⁰ has set the parameters of the debate as the "ever-widening chasm between those people who follow what

¹⁷ Davis *Is the Prison Obsolete?*

¹⁸ Big Pharma is a reference to the pharmaceutical industry as a whole and in particular its "negative public image" (notably aggressive pricing) and lack of "prioritizing socially responsible practices" (Chen 2021 <https://theconversation.com/big-pharmas-covid-19-reputation-boost-may-not-last-heres-why-162975>).

¹⁹ *Bessick v Baroque Medical (Pty) Ltd* (WECT 13083 of 21) [2022] ZACCMA 1 (9 May 2022).

²⁰ Olivier 2021 *Phronimon* 21.

their arguably authoritarian governments dictate ... and those who appeal to their constitutionally embedded right to choose what to do about the so-called 'pandemic'".

Government clearly had its eye on the management of future pandemics. Xi Jinping, for example, has staked his legacy on eliminating COVID-19 in China.²¹ It has also been argued that economic restructuring during COVID-19 in South Africa was used by the political and business elite as a form of disaster capitalism for personal self-enrichment.²² For this reason alone, it is worth exploring the question of whether or not a vaccine mandate will pass constitutional muster under South African law. In doing so I argue that this issue cannot possibly be sensibly answered in the rather narrow confines of the law itself, but only in the wider context of a critical public health perspective, complemented by the social sciences. I also, however, consider comparative constitutional instruments in other parts of the world. Such rulings are those on its constitutionality by the United States Supreme Court regarding Biden's vaccine mandates, and decisions by the High Court of New Zealand on the vaccine mandate in that jurisdiction. I have chosen to consider the latter two examples since these jurisdictions have liberal democracies and are as good as any other. There is obviously no point in considering the constitutionality of the vaccine mandate in authoritarian countries such as China and Russia. Olivier²³ remarks that during the "pandemic", "people in virtually every country [have been] showing all the familiar signs of obedience to authority, even when these authorities ride roughshod over the civil rights embedded in the constitutions of (probably) most countries [including an increasingly authoritarian South African government]."

I shall first consider my methodology and theoretical framework before going on to briefly traverse the argument against the vaccine mandate in general terms – since the counterargument that it happens to be "safe and effective" is too vague and unsubstantiated – before considering its constitutionality along three axes. These are pronouncements by the US Supreme Court on the Biden mandates (one for medical workers funded by the federal government and the other for general workers), rulings by the New Zealand High Court and finally the position under South African

²¹ Li 2022 <https://www.nytimes.com/2022/04/13/business/china-covid-zero-shanghai.html>.

²² Lötter 2022 *Phronimon*.

²³ Olivier 2021 *Phronimon* 20.

constitutional law. A critical discussion precedes the conclusion and recommendations.

2 Methodology and theoretical framework

Olivier²⁴ argues that poststructuralism's "linguistic turn", methodologically speaking in terms of its more inclusive "neither/nor" (or, alternatively, "both/and") approach to theory appropriation, greatly contributed to the considerable advantage of this method over the traditionalist "either/or" approach bequeathed to us by Aristotle. Alternatively, Olivier²⁵ suggests that poststructuralism²⁶ provides great "ontological registers from the complex intertwinement of which human subjectivity (or 'being' for that matter) can be understood." This tendency of the social world to present itself as a complex phenomenon²⁷ raises enigmatic problems.

I argue that the value of adopting an eclectic approach (which the situation calls for) rather than employing a monochromatic theoretical lens, is a profound consideration in favour of adopting post-structuralism as a methodology. The former has a decided preference for methodological pragmatism over (unexamined) dogmatism in its scholarly work. Another reason that poststructuralism ties in well with my subject matter is that it lends itself to accommodating a nuanced narrative. Faye Sayer,²⁸ for example, makes a case for rejecting Nigeria's official version of the trans-Atlantic slave trade by arguing that a nuanced version has greater value than the former, since "deliberate erasure has deep roots in imperialist and eurocentric agendas." Angela Duckworth²⁹ suggests that while novelty makes for interesting reading, the expert is instead attuned to nuance. I note the preference for nuance here, since I find that my topic demands that I adopt this approach. This methodological lens allows for apparently incompatible views to co-exist. This is important since I consider a number of divergent perspectives in this contribution, namely the way or ways in which the social sciences can contribute to a critical public health paradigm. This line of thinking also ties in beautifully with an idea which I borrowed from Jacques Lacan, namely that it is salutary to "forge a theory that will

²⁴ Olivier 2015 *Alternation*.

²⁵ Olivier 2015 *Alternation* 349.

²⁶ Lacan, Derrida, Rancière.

²⁷ Hurst *Thinking about Research* 7, 9-10.

²⁸ Sayer 2021 <https://theconversation.com/nigerian-museums-must-tell-stories-of-slavery-with-more-complexity-and-nuance-169785>.

²⁹ Duckworth *Grit* 137.

admit death into its midst."³⁰ Said in another way, contradiction and nuance are the name of the game.

My methodology must obviously also meaningfully complement my chosen theoretical framework, which is critical public health. As Friedman³¹ points out, there were or are two global public health paradigms during the pandemic, namely a Western-centred technology-based curative medicine approach and a communitarian approach of pro-active prevention. With its First World mindset, South Africa was one of those countries that followed the disastrous former route, while many countries in East Asia (South Korea, Taiwan, Singapore, Vietnam, Thailand and China), New Zealand and almost the entirety of Africa followed the latter. The call for mandatory vaccinations or what Leslie Bank³² calls "the approved vaccines in the Global North" must also be seen in this context. According to Friedman³³ vaccines were "loudly championed" because they emanate from the curative medicine paradigm so valued in the Global North. "Vaccines", argues Friedman,³⁴ "are a product of curative medicine and so they were trusted [in South Africa] while public health measures [i.e. pro-active preventative measures] were not." As noted above, this mindset had disastrous consequences for South Africa, while the rest of Africa largely managed to evade the worst consequences of the pandemic. Friedman³⁵ argues persuasively that there had been no critical assessment of the role of the conventional medical paradigm in the management of COVID-19 in South Africa.

By way of example, the medical profession's insistence on flattening the curve rather than smashing it, which was informed, at least in part, by the erroneous assumption that a serious pandemic in South Africa was unavoidable, as well as their fascination with Western curative medicine (noted above) led to untold misery and death in this country. The curative approach was described by Dr Tedros Adhanom Ghebreyesus,³⁶ Director-General of the World Health Organisation (WHO), who himself hails from

³⁰ Payne "Introduction" 10.

³¹ Friedman *One Virus, Two Countries* 42.

³² Bank 2021 <https://africanarguments.org/2021/02/the-sociology-of-ground-zero-south-african-variant-and-colonial-prejudice/>.

³³ Friedman *One Virus, Two Countries* 44, 94.

³⁴ Friedman *One Virus, Two Countries* 108.

³⁵ Friedman *One Virus, Two Countries* 92.

³⁶ Ghebreyesus 2020 <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---12-october-2020>.

the Democratic Republic of Congo (DRC) in central Africa, as being "wrong and dangerous".

These remarks tie in well with the proposed use of a critical public health theoretical framework and against this background I proceed to consider the argument against a mandatory vaccination policy.

3 The argument against

The argument which I explore in this paper is the following: could the "need" to reinvent apartheid thinking (the infamous "versus them" narrative) also have driven the mainstream narrative around vaccine mandates? Davis³⁷ refers to this phenomenon as the "malleability of history", albeit in another context. I make this observation since an examination of the available evidence in favour of vaccine mandates does not demonstrate the assertion that the unvaccinated are/were more likely than the vaccinated to transmit the COVID-19 virus. Indeed, in the perceptive words of Bert Olivier,³⁸ "after all, a vaccine - such as that against smallpox, for example - provides immunity against a disease, and therefore prevents one from being infected, while the COVID-19 'vaccines' do nothing of the sort." Friedman³⁹ notes that vaccines are normally tested and adjusted by experience over several years and not months.

Even if one accepts that vaccines are in principle safe and effective, concerns have been expressed. This point is poignantly illustrated by the fairly recent case in 2021 of an office party for the (only) vaccinated in Norway which was attended by 120 office workers and which turned into a super-spreader event.⁴⁰ At least half of those who attended were found to be COVID-19-positive subsequent to attending the function. But this is also not an isolated case. In the United States in Boston, Massachusetts in April (2021) almost three-quarters (74%) of those fully vaccinated who attended an event were affected by an outbreak of the coronavirus disease [COVID-19].⁴¹

³⁷ Davis *Is the Prison Obsolete?* 50.

³⁸ Olivier 2021 *Phronimon* 21.

³⁹ Friedman *One Virus, Two Countries* 30.

⁴⁰ Erdbrink *et al* 2021 https://www.fairlyw.nytimes.com/2021/12/03/world/Omicron-norway-christmas-party.html?campaign_id=57&emc=edit_ne_20211203&instance_id=46990&nl=evening-brie.

⁴¹ Lovelace 2021 <https://www.cnn.com/2021/07/30/cdc-study-shows-74percent-of-people-infected-in-massachusetts-covid-outbreak-were-fully-vaccinated.html>.

This raises the question of how credible the mainstream narrative is. To this question one may add the rider that the Omicron variant which entered the fray in November 2021 and the additional sublineages of the Omicron variant (of which BA.4 and BA.5 appear to be the latest) represent a much-diluted form of the circulating virus, even if more contagious. Accordingly, I argue that there is certainly even less cause for a call to make the vaccine mandatory.

The problem with an unqualified or undebated vaccine drive is that evidence is coming to light that the vaccine offers little protection against self-infection or infection of others. Also, there have been some worrying reports in the US of a rash of side-effects presenting in vaccinated individuals from a diverse range of communities, according to molecular biologist Dr. Aditi Bhargava,⁴² the director of laboratory research at the University of California at San Francisco (UCSF), which develops mRNA technology. These have occurred in a cluster of incidents along a three-tiered axis of heart disease, neurological ailments and autoimmune compromise (such as newly emerged allergies, non-existent prior to taking the vaccine), the only common denominator amongst these individuals being that they have taken the vaccine.

It has been suggested that the above-mentioned damage could be because of the spike protein embedded in the vaccine acting as a "promiscuous key" and unlocking access to many organs in the human body. Its fine-tuned ability to cause human devastation certainly highlights the case that the COVID-19 virus could well be a natural virus culled from bats or an intermediate host such as pangolins, and was subsequently manipulated in a laboratory environment to ensure its capacity for human infection in particular.⁴³

The problem/issue of significant and widespread vaccine injury is compounded by the fact that a fairly recent Harvard study⁴⁴ found that the mandatory reporting of side effects as demanded by the Vaccine Adverse Events Reporting System (VAERS) in the US, reflects that between 1% and 10% of vaccine injuries are actually reported, which means that as many as 99% go unreported. To put this in perspective, the 800 000 reports of COVID-19 vaccine injuries which found their way into VAERS could very

⁴² Bhargava 2021 <https://www.youtube.com/watch?v=5coAP9BLZOk>.

⁴³ Kormann 2021 <https://www.newyorker.com/science/elements/the-mysterious-case-of-the-covid-19-lab-leak-theory>.

⁴⁴ Ross and Klompas 2010 <https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf>.

well have been a good 8 million in total, if the unreported cases were also considered. This is in the US alone. In South Africa a COVID-19 vaccine compensation scheme was hurriedly introduced in April 2021 to provide a no-fault compensation for anyone suffering "serious" injury as a result of receiving a vaccine, a precondition set by vaccine manufacturers Johnson & Johnson, as well as Pfizer, for the vaccine roll-out.⁴⁵ According to the South African government, 55 claims of serious side-effects submitted have "qualified" and although no one has reportedly been paid compensation as yet, a budget of 150 million rands has been allocated to the fund.

The VAERS is a passive surveillance system monitoring vaccine injuries and deaths and requiring doctors and other physicians to report vaccine injuries. Despite their official position regarding the efficacy and/or safety of the "vaccines", the American Centers for Disease Control and Prevention (CDC)⁴⁶ admits that:

Covid-19 vaccines are effective. However, a small percentage of people who are fully vaccinated will still get Covid-19 if they are exposed to the virus that causes it. These are called 'vaccine breakthrough cases.' This means that while people who have been vaccinated are much less likely to get sick, it will still happen in some cases. It's also possible that some fully vaccinated people might have infections, but not have symptoms (asymptomatic infections).

If the vaccinated are prone to spread the virus amongst themselves, how can the discrimination and marginalisation against the unvaccinated be rationally justified? These considerations are important from a constitutional law perspective since, as I argue below, unless the mandate can be shown to be both reasonable and justifiable, it will not pass constitutional muster under South African positive law. The threat of discrimination and stigmatisation is highlighted by Ramaphosa's "health apartheid"-statement and represents a real danger for people who prefer to think for themselves, question inconsistencies in the official narrative and demand a say in their bodily integrity. In this regard, section 19 of the *New Zealand Bill of Rights Act* entrenched the right against discrimination and is a worthy instrument to protect against authoritarianism in that country.

⁴⁵ Khoza 2022 <https://www.timeslive.co.za/news/south-africa/2022-04-13-covid-19-vaccine-compensation-scheme-investigating-55-claims/>.

⁴⁶ CDC 2021 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measureeffectiveness/breakthrough-cases.html>.

Considering Big Pharma's long and dirty history, fuelled by profits⁴⁷ and vested interests (notably its aggressive pricing policy),⁴⁸ we have to ask, in agreement with Davis's remark mentioned earlier, whether a nefarious agenda is not driving the vaccine enforcement narrative.

The industry is known to dominate medical science. Ray Moynihan,⁴⁹ a scholar of the business of medicine specialising in the field of over-diagnosis, mentions two examples of this unholy alliance between Big Pharma and the medical profession, which illustrates this point beautifully.

In 2013, Johnson & Johnson paid out US\$2.2 billion in civil and criminal fines for putting 'profit over patients' health. The company had illegally promoted powerful anti-psychotic drugs as behaviour control for the elderly and most vulnerable, overstating benefits and playing down dangerous side effects, including stroke.

Other court documents around the same time exposed how the giant global company Merck used dirty tricks to try and defend its controversial anti-arthritis drug Vioxx. Merck created a fake medical journal and drew up secret lists of academic critics to 'neutralize' and 'discredit'. In the end, Vioxx was taken off the market because it was causing heart attacks, with estimates in *The Lancet* suggesting it may have led to 140,000 cases of serious coronary heart disease.

The problem of Big Pharma's less than impeccable record is compounded by the fact that universities and other think-tanks on public medical policy are heavily invested in by Big Pharma and other business interests. As a result, more often than not these role players neglect to declare conflicts of interest when making pronouncements on the efficacy and/or the safety of the vaccines which they punt to an unsuspecting and largely credulous public.⁵⁰ On the one hand, bearing in mind that this article is framed within a critical public health paradigm, it is worth noting Arthur Schafer's⁵¹ contention in favour of a defence of the sequestration thesis ("which counsels the outright elimination of corporate sponsorship") as opposed to the reformist thesis in view of biomedical conflicts of interest. This perspective is sadly confirmed by the work of Jon Jureidini and Leemon

⁴⁷ Moynihan 2021 https://theconversation.com/covid-vaccines-offer-the-pharma-industry-a-once-in-a-generation-opportunity-to-reset-its-reputation-but-its-after-decades-of-big-profits-and-scandals-165082?utm_med.

⁴⁸ Chen 2021 <https://theconversation.com/big-pharmas-covid-19-reputation-boost-may-not-last-heres-why-162975>.

⁴⁹ Moynihan 2021 https://theconversation.com/covid-vaccines-offer-the-pharma-industry-a-once-in-a-generation-opportunity-to-reset-its-reputation-but-its-after-decades-of-big-profits-and-scandals-165082?utm_med.

⁵⁰ Classen 2021 *Trends Int Med*; Merchant 2021 *J Pharm Policy Pract*.

⁵¹ Schafer 2004 *Journal of Medical Ethics* 8.

McHenry⁵² by their arguing that vested interests represented by the pharmaceutical funding of clinical trials have resulted in the suppression of negative results, the underreporting of adverse events and an unwillingness to share raw data with the academic research community. They conclude that so-called evidence-based medicine is nothing but an illusion. On the other hand, as one of my reviewers reminded me, state or government sponsorship is equally fraught with pitfalls. Funding, after all, drives innovation. Perhaps the answer to this dilemma lies in part not so much in the elimination of state or corporate sponsorship but in a critical awareness of the way or ways in which vested interests of this nature are bound to skew pharmaceutical research adversely. To this view I should add the caveat that transparency (regarding both trials and side-effects)⁵³ in both corporate and/or government funding must be paramount and this critical mindset must insist on vested interests being thoroughly scrutinised.

Vested interests are also discernible in the prison industry which, curiously, overlaps with Big Pharma's agenda. In her book mentioned in the introductory remarks the (in)famous prison abolition activist, Davis,⁵⁴ shows how in the twentieth and twenty-first centuries the prison system has become a continuation of racism (as well as the reinvention of slavery) and asks a pertinent question about the role of Big Pharma in the shaping of public policy, which should similarly stand central in our deliberations on the mandatory vaccination debate.

Apart from Big Pharma's undeniable vested interests in driving and otherwise perpetuating a vaccine mandate, it is also worth asking whether humanity is facing a mere epidemic rather than a pandemic. The Merriam-Webster Online Dictionary⁵⁵ draws a sharp but overlapping distinction between a pandemic, on the one hand, and an epidemic, on the other, in the following manner:

An epidemic is defined as 'an outbreak of disease that spreads quickly and affects many individuals at the same time.' A pandemic is a type of epidemic (one with greater range and coverage), an outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population. While a pandemic may be characterized as a type of epidemic, you would not say that an epidemic is a type of pandemic.

⁵² Jureidini and McHenry *Illusion of Evidence-Based Medicine*.

⁵³ Weijer 2020 <https://theconversation.com/how-pharma-can-build-trust-in-covid-19-vaccines-transparency-on-trials-and-side-effects-150270>.

⁵⁴ Davis *Is the Prison Obsolete?* 29-36.

⁵⁵ Merriam-Webster Online Dictionary date unknown <https://www.merriam-webster.com/words-atplay/epidemic-vs-pandemic-difference>.

Clearly, if we are dealing with a mere epidemic rather than a pandemic, the call for a mandate loses a great deal of its currency. I argue, as does Bert Olivier,⁵⁶ that there is a case to be made for problematising the assertion that COVID-19 is a pandemic in the sense referred to above. One cannot but agree with Olivier's⁵⁷ argument that "COVID-19 displays high contagion, combined with a very low mortality rate" (emphasis deleted) since at least 99.9% of patients have recovered from this terrible disease. Compare these figures with that of the Bubonic Plague (also known as the Black Death) during the 14th century⁵⁸ which presented with a mortality rate as high as 50%⁵⁹ and could have killed as many as 200 million people around the globe, including at least a third of Europe's entire population.⁶⁰ During the 1918 Spanish flu pandemic, an estimated 500 million people worldwide caught the virus and around 50 million may have died from it.⁶¹ That being said, at the time of writing (April 13, 2022), the *New York Times*⁶² reports that at least 500 million people around the globe have had COVID-19. According to the latest figures released by WHO, at least 15 million people might have died from COVID-19, while WHO estimates that more than 65% of all Africans (which presumably means people living on the African continent and not the wider African diaspora) have been infected. This might be so, but in the light of the African success story in largely defeating the COVID-19 pandemic, while South Africa fared miserably, this figure sheds another light on the received wisdom of Western-centred curative medicine.

By way of example, South Africa had almost double the number of cases and three and a half times the number of deaths of Morocco, which was ranked as being the worst affected country in Africa after South Africa.⁶³ Nigeria was ranked as being the worst affected country in sub-Saharan Africa after South Africa, with almost four times our population, but South

⁵⁶ Olivier 2021 *Phronimon*.

⁵⁷ Olivier 2021 *Phronimon* 7.

⁵⁸ Hdogar 2021 <https://medium.com/lessons-from-history/black-death-pandemic-that-killed-200-million-people-7d94f2753465>.

⁵⁹ Mark 2020 <https://www.worldhistory.org/article/1540/medieval-cures-for-the-black-death/>.

⁶⁰ Shipman 2014 <https://www.americanscientist.org/article/the-bright-side-of-the-black-death>.

⁶¹ Hodge 2022 <https://www.the-sun.com/news/184/spanish-flu-pandemic-1918-death-toll/>.

⁶² Anon 2022 <https://www.nytimes.com/news-event/coronavirus>.

⁶³ Johns Hopkins University Coronavirus Resource Center 2021 <https://coronavirus.jhu.edu/map.html>.

Africa had 33 times as many cases and 93 times as many deaths as that country.⁶⁴

On this note, China's insistence on so-called "zero-Covid" under Xi Jinping has been compared with Mao's disastrous "zero sparrow" campaign of 1958, in which at least 2 billion sparrows were killed in China at the Communist Party's whim (although it should be added that Mao was and still is seen as a Chinese God and certainly acted as an emperor).⁶⁵ This led to a plague of vermin which in turn, if at least in part, produced the Great Famine of 1959-1962, in which an estimated 45 million people died of hunger. It has been suggested that in the light of the virus' evolution into a milder strain, the better course of action would perhaps have been just to learn to "live with the virus", but the recent full or partial lock-down of at least "373 million people in 45 Chinese cities",⁶⁶ of which Shanghai (26 million inhabitants) is the biggest and most populated, has pointed to a more ideological rationale: killing off COVID-19 — assuming this is possible — would enhance the prestige of the Communist Party and especially Xi's leadership of it, despite the immense human suffering and the neglect of other terminal and chronic diseases in the process. The irony of this is that most Chinese support the government's policy of zero-Covid, largely as a result of an information clampdown.

In particular, one needs to question the effectiveness of pharmacovigilance if vaccine injuries and statistics are shrouded in secrecy and counter-narratives are routinely stigmatised and de-platformed. In this regard, Hong Kong-based journalist Verna Yu⁶⁷ contends in a write-up in *The Guardian* that if there was freedom of speech in China, the world would have been alerted to the emergence of COVID-19 in advance. Had the now-deceased whistleblower Chinese doctor Li Wenliang been allowed to do this, there may not have been a worldwide "pandemic" crisis. One may ask whether this is a repeat of the 2003 outbreak of the SARS (severe acute respiratory syndrome) epidemic, which also originated in China. Imperfect information and a misguided public health policy are not new phenomena nor are they limited to the Chinese authoritarian theatre. It is something which we in South Africa, even under a constitutional democracy, are only well aware.

⁶⁴ Johns Hopkins University Coronavirus Resource Center 2021
<https://coronavirus.jhu.edu/map.html>.

⁶⁵ Li 2022 <https://www.nytimes.com/2022/04/13/business/china-covid-zero-shanghai.html>.

⁶⁶ Li 2022 <https://www.nytimes.com/2022/04/13/business/china-covid-zero-shanghai.html>.

⁶⁷ Quoted in Žižek *Pandemic!* 7, original source not available to me.

Our guiding principle should be the ideal of critical rationality, once advocated by that famous philosopher of science, Karl Popper,⁶⁸ namely rigorous science justified in an open and democratic society.

Against this background, which emphasises the value of being able to think for oneself, a notion which was advocated by the famous German philosopher Kant, I would briefly like to explore the case regarding the vaccine mandate from a constitutional law perspective, first from an American constitutional law angle and then from a New Zealand constitutional point of view, before ventilating the matter from a South African perspective.

4 American and New Zealand constitutional law

The constitutional pronouncements on mandatory vaccine mandates by the Supreme Court of the United States have been bifurcated between health workers subsidised by the federal government and other general workers employed by private employers in America.

On the one hand, in *National Federation of Independent Business v Department of Labor*,⁶⁹ the majority opinion of the US Supreme Court ruled that the mandate "draws no distinctions based on industry or risk of exposure to COVID-19", adding the rider that the mandate was "a significant encroachment into the lives — and health — of a vast number of employees." The court also added the proviso that more detailed regulations may be lawful in different contexts, given that "most lifeguards and linemen face the same regulations as do medics and meatpackers."

On the other hand, in *Biden v Missouri*⁷⁰ the majority on the bench wrote that the health care mandate issued by the secretary of health was justified by considerations on the ground. The majority held:

All this is perhaps why healthcare workers and public-health organizations overwhelmingly support the Secretary's rule. See *id.*, at 61565–61566; see also Brief for American Medical Assn. et al. as *Amici Curiae*; Brief for American Public Health Assn. et al. as *Amici Curiae*; Brief for Secretaries of Health and Human Services et al. as *Amici Curiae*. Indeed, their support suggests that a vaccination requirement under these circumstances is a straightforward and

⁶⁸ Popper *Logic of Scientific Discovery*.

⁶⁹ *National Federation of Independent Business v Department of Labor* (Supreme Court of the United States) Case No 21A244 (13 January 2022) I(B) and II(A).

⁷⁰ *Biden v Missouri* (Supreme Court of the United States) Case No 21A240 (13 January 2022) II(A).

predictable example of the 'health and safety' regulations that Congress has authorized the Secretary to impose.

Harmonising the two rulings, as the writer for the *New York Times*⁷¹ points out, seems to be the effort engaged in by the majority opinion of the court in the case regarding health care workers.

The challenges posed by a global pandemic do not allow a federal agency to exercise power that Congress has not conferred upon it. At the same time, such unprecedented circumstances provide no grounds for limiting the exercise of authority the agency has long been recognised to have.

This was despite the clear conservative bend of the US Supreme Court and its insistence, at least on the part of general employees who do not benefit from federal funding, that personal choice in matters of medical treatment ought to be respected. These remarks make for interesting reading alongside the constitutional deliberations of another liberal constitutional democracy, namely that of the New Zealand High Court.⁷²

New Zealand initially earned the reputation of containing or smashing the COVID-19 virus very successfully,⁷³ and a consideration of its constitutional jurisprudence around the issue should make for insightful reading. Constitutional pronouncements by the New Zealand High Court fall into two categories: before and after the emergence of Omicron, and are generally conservative; meaning that they bolstered the government's pro-vaccine stance until at least the less virulent strain of Omicron brought a more enlightened approach to the limitations on human rights justifiable in an open and democratic society. Although the New Zealand High Court has delivered several decisions over the past two years, none of these judgements seem to have reached the New Zealand Supreme Court on a higher appeal.

In considering the latest six rulings of the New Zealand High Court on mandatory vaccine policy, it is striking how the court seemed to constrain itself in its interpretations so as not to find the government's moves wanting. In *NZDSOS Inc & NZTSOS v Minister for COVID-19 Response & Attorney*

⁷¹ Liptak 2022 <https://www.nytimes.com/2022/01/13/us/politics/supreme-court-biden-vaccine-mandate.html>.

⁷² One of my reviewers has usefully pointed out that New Zealand's judiciary, unlike those in South Africa and the United States, is still in the unique position of being subject to parliamentary sovereignty rather than having constitutional independence. My criticism of the NZ High Court decisions should accordingly be understood in this context.

⁷³ Friedman *One Virus, Two Countries* 82.

General,⁷⁴ for example, per Cooke J, and in *Four Midwives, NZDSOS and NZTSOS v Minister for COVID-19 Response*,⁷⁵ per Palmer J, and in *KBLN v Minister of COVID-19 Response*,⁷⁶ also per Cooke J, the court's willingness to embrace the mainstream official narrative – which was that the vaccine limited the transmission of the virus and was by implication safe and effective – was alarming, as was its uncritical eagerness to bolster the government's response to the pandemic. These rulings are disturbing, bearing in mind that the Covid-vaccines doing the rounds were still in an experimental stage and that even informed consent (considered more fully under the section dealing with South African constitutional law) was impossible to obtain, even in principle. It is also revealing that despite the Nuremburg Laws (noted below) prohibiting the enforcement of experimental cures on unwilling people, the court went so far as to dispense with the very idea of consent in its entirety in *Nga Kaitiaki Tuku Iho Medical Action Society v Minister of Health*⁷⁷ per Ellis J, and to legitimate the entrenchment of these rules in subordinated legislation (*GF v Minister of COVID-19 Response*⁷⁸ per Churchman J) even though Cooke J, to his/her credit, in *KBLN v Minister of COVID-19 Response* ruled on the pressing need to deal with the issue of mandatory vaccine policy in primary rather than subordinated legislation. As Cooke J did in *NZDSOS Inc & NZTSOS v Minister for COVID-19 Response & Attorney General*, the court essentially upheld citizens' rights to refuse medical treatment when the right was not threatened, but not under circumstances when it was.

Finally, the overview of these New Zealand High Court decisions on the mandatory vaccine policy presents a few points of light and hope. By way of example, in two judgments Cooke J was prepared to place limits on government's administrative action in response to COVID-19 and to lend judicial protection to the rights to refuse medical treatment and against discrimination.⁷⁹ However, nowhere in these judgments did any of the judges question the official narrative in any meaningful way. In this way, I argue, that the New Zealand bench of the High Court reinforced rather than protected the right against discrimination – ostensibly a fundamental right under section 19 of the *New Zealand Bill of Rights Act* – or what Ramaphosa

⁷⁴ *NZDSOS Inc & NZTSOS v Minister for COVID-19 Response & Attorney General* [2022] NZHC 716 (8 April 2022).

⁷⁵ *Four Midwives NZDSOS and NZTSOS v Minister for COVID-19 Response* [2021] NZHC 3064 (12 November 2021).

⁷⁶ *KBLN v Minister of COVID-19 Response* [2021] NZHC 3012 (8 November 2021).

⁷⁷ *Nga Kaitiaki Tuku Iho Medical Action Society v Minister of Health* [2021] NZHC 1107 (18 May 2021).

⁷⁸ *GF v Minister of COVID-19 Response* [2021] NZHC 2526 (24 September 2021).

⁷⁹ Sections 11 and 19 of the *New Zealand Bill of Rights Act*, 1990.

perceptively called "health apartheid", as noted in my introductory remarks. I turn now to a consideration of the vaccine mandate from a South African constitutional law framework.

5 The South African Constitution

Having regard to a limited purview of constitutional views in two other liberal democracies, as constitutional challenges in South Africa are entitled to do in formulating their take on the constitutionality of a matter, I am now in a better position to consider the constitutionality of mandatory vaccinations under South African law than I would have been if I not taken the wider view in exploring the case for them.

A South African perspective on the constitutionality of mandatory vaccines appears to be much closer to the New Zealand bench than that of the Supreme Court of the United States, even though New Zealand's laws labour under parliamentary sovereignty and not constitutional supremacy (as mentioned above). In a memo to fellow judges in the Gauteng Division of the High Court, Deputy Judge President Judge Roland Sutherland⁸⁰ formulated the question of vaccinations in the workplace in the following terms:⁸¹

There has been, as yet, only mild protest that this [adopting a no-vaccination-no-entry policy] violates freedom of choice... in my view this is the wrong question. The proper question is whether or not an individual is sufficiently civic minded to appreciate that a duty of care is owed to colleagues and others with whom contact is made to safeguard them from harm. If one wishes to be an active member of a community, then the incontrovertible legitimate interest of the community must trump the preferences of the individual.

Sutherland DJP's views on the matter should not be accepted uncritically, though. In terms of the wording of section 36 of the South African *Constitution*, fundamental rights enshrined in the Bill of Rights might be limited only under the following circumstances:

Limitation of rights: -

⁸⁰ Quoted in Staff Writer 2022 <https://businesstech.co.za/news/business/562366/vaccine-mandates-in-south-african-workplaces-where-we-are-heading/>, original source not available to me.

⁸¹ One of my reviewers queried the nature of Sutherland DJP's memo, namely whether it was "simply one judge sharing a judicial opinion with colleagues, or is this the DJP using the seniority of their [sic] position to influence colleagues to rule on cases that come before them in a particular way?" The answer, in my view, in the context of the debate/confusion surrounding the issue of vaccination at the time that the learned judge chose to circulate his memo, is probably both.

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
 - a) the nature of the right;
 - b) *the importance of the purpose of the limitation;*
 - c) *the nature and extent of the limitation;*
 - d) *the relation between the limitation and its purpose; and*
 - e) less restrictive means to achieve the purpose. [emphasis added]
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

This test case was set to reach the Constitutional Court in Braamfontein, Johannesburg, at some point, but this now seems trite in view of subsequent developments. This turns on two key issues. Firstly, section 36 of the South African *Constitution* allows for a right to be limited if such a limitation is reasonable or justifiable in an open and democratic society. I suggest that even the most committed "vaxxer" would agree that something is amiss with the mandatory vaccination drive, in that the unvaccinated do not pose a threat to the vaccinated or, alternatively, that the threat is evenly spread between the two groups.

A vaccine mandate, therefore, is unreasonable. Germany and Austria have, however, issued nation-wide vaccine mandates and US President Joe Biden's national vaccine mandate for health workers was approved by the US Supreme Court. The question arises as to why governments would want to push segments of their populations through something for which there is no credible evidence. In fact, the evidence points in the opposite direction.

Big Pharma's unwillingness to take a balanced or comprehensive view of the pros and cons of the vaccine is unscientific – and certainly indicative of its vested interests. One could also argue that conventional medical science certainly does not have all the answers to the so-called pandemic, which is precisely my argument in this article, and that the social sciences have an invaluable contribution to make in the broader context of a critical public health (theoretical) perspective. In addition, Friedman⁸² argues that the science of the management of COVID-19 in South Africa is anything but settled. The German philosopher Jürgen Habermas⁸³ has referred to the

⁸² Friedman *One Virus, Two Countries* 32-33.

⁸³ Habermas *Knowledge and Human Interests* preface, 68ff.

idea that only science can peddle worthwhile and credible knowledge to the exclusion of other branches of knowledge as "scientism" and this mantra is as erroneous as it is misleading.

Secondly, the curious fact that conventional medicine in South Africa trumped valuable African experience in the management of previous pandemics, noted above, because it (wrongly) assumed that a serious pandemic was inevitable, yet again underscores the tremendous value of the social sciences in combatting pandemics. This assumption was expressed by no less a doyen of the medical fraternity than Professor Salim Abdool Karim, the chairman of the Ministerial Advisory Committee (MAC). The idea underpinning this disastrous policy is probably hidden from view and a cursory examination of this, namely the idea of guilt so deeply embedded in the Abrahamic tradition of religions⁸⁴ is required. This concept is perhaps best expressed by Slavoj Žižek⁸⁵ who suggests that we should resist the temptation to treat the ongoing epidemic as something that has a deeper meaning: namely, the cruel but just punishment of humanity for the ruthless exploitation of other forms of life on earth. If we search for such a hidden message, we remain pre-modern: we treat our universe as a partner in communication. Even if our very survival is threatened, there is something reassuring in the fact that we are punished, the universe (or even Somebody-out-there) is engaging with us. We matter in some profound way. The really difficult thing to accept is the fact that the ongoing epidemic is a result of natural contingency at its purest that it just happened and hides no deeper meaning. In the larger order of things, we are just a species with no special importance.

Philosophy's gloss on the spurious reasoning that informed policy formulation during the pandemic also underlines the benefit of a critical public health paradigm informed by the social sciences.

Thirdly, section 12(2) of the *Constitution* forbids the violation of bodily integrity (and by implication guarantees patient autonomy), which a vaccine mandate threatens to do. This section of the *Constitution* reads as follows:

- (2) Everyone has the right to bodily and psychological integrity, which includes the right-

(h) to security in and control over their body; and

⁸⁴ Judaism, Christianity and Islam.

⁸⁵ Žižek *Pandemic!* 14.

(e) not to be subjected to medical or scientific experiments without their informed consent. [emphasis added]

As far as the issue of informed consent is concerned, it is worth noting the extensive definition thereof:⁸⁶

3.1.1 Patients have a right to information about their condition and the treatment options available to them. The amount of information that must be given to each patient will vary according to factors such as the nature of the condition, the complexity of the treatment, the risks associated with the treatment or procedure, and the patient's own wishes. For example, patients may need more information to make an informed decision about a procedure which carries a high risk of failure or adverse side effects, or about an investigation for a condition which, if present, could have serious implications for the patient's employment, social or personal life.

3.1.2 The National Health Act requires patients to be given information about:

...

3.1.2.4 The patient's right to refuse health services and explain the implications, risks and obligations of such refusal.

...

3.1.3.6 *Advice about whether a proposed treatment is experimental;*

3.1.3.7 *How and when the patient's condition and any side effects will be monitored or re-assessed...*

3.1.3.10 *A reminder that patients can change their minds about a decision at any time ...*⁸⁷

Just as I argue with regard to the New Zealand High Court's pronouncements on the mandate, I submit that since the vaccine is still in an experimental stage, it is not possible to obtain informed consent of any meaningful sort from any prospective patient. With further regard to the questionable efficacy and safety of the vaccines, it certainly requires a stretch of the imagination to conceive how the mandatory COVID-19 - vaccination programme could even be considered constitutional in principle.

6 Discussion

At the outset of this discussion, I should make it clear that the central concern with mandatory vaccination ... is governments' uncritical collusion with

⁸⁶ HPCSA 2016 https://www.hpcsa.co.za/Uploads/Professional_Practice/Conduct%20%26%20Ethics/Booklet%204%20Informed%20Consent%20September%20%202016.pdf?msclkid=ba7b9b31ba4111ecb1e22c378c715614.

⁸⁷ Emphasis added.

Big Business – and this certainly includes Big Pharma – in the formulation of domestic public policy. Colin Crouch⁸⁸ has contributed to this debate by usefully calling this phenomenon nothing if not a "post-democracy era" where in the "spectacle of the electoral game, politics is really shaped in private by interaction between elected governments and elites that overwhelmingly represent business interests." Colin Leys⁸⁹ lends support to Crouch's perspective by suggesting that national governments have since the 1970s increasingly and certainly uncritically fused their policy with that of Big Business to the extent that policy formulation specifications could be considered "out-sourced". In the South African context, Friedman⁹⁰ suggests that the picture of the relationship between an avowedly socialist-oriented ANC government and business is more nuanced, because the historical role of extractive apartheid and business' investment therein had created mistrust, although Ramaphosa, who is himself a businessman, has ameliorated relations somewhat. This should be obvious, as I made clear in another publication with my reference to Angela Davis's⁹¹ questioning of the link between Big Pharma and the so-called War on Drugs in the US, which has at least in part led to the greatest and most tragic experiment in mass incarceration in the free world in the twentieth century.

These institutional deformations are evident in government's collusion with Big Business in the furtherance of their special interests and certainly not in the general interest, which is the result of "systematic communicative distortions", in Habermas's celebrated phrase.⁹² It is worth noting Habermas's observation⁹³ in which he explains the case for deontology (procedure-based thinking) as follows:

the diagnostician of the present assumes the fictive standpoint of an evolution-theoretic explanation of a future past As a rule, Marxist explanations of developed capitalism also share this asymmetric position of the theoretician who analyses developmental problems of the contemporary social system with a view to structural possibilities that are not yet institutionalized (and will perhaps never find an institutional embodiment).

One way to understand Habermas's concern with a reconstruction of the past is to consider his interest in projecting a more just, sustainable future. Said in another way and to invert Habermas,⁹⁴ special interests are

⁸⁸ Crouch *Post-Democracy* 4.

⁸⁹ Leys "The Cynical State" 118, 129.

⁹⁰ Friedman *One Virus, Two Countries* 76.

⁹¹ Davis *Is the Prison Obsolete?*

⁹² Habermas 1970 *Inquiry*, in general.

⁹³ Quoted in McCarthy *Critical Theory of Jürgen Habermas* 265-266, the latter's translation, the original source being unavailable to me.

⁹⁴ Habermas *Legitimation Crisis* 113-114.

generalised to repress genuine general interests. I noted above that Schafer⁹⁵ points out his preference for sensible sequestration rather than the reform thesis, but whether this policy suggestion has a realistic chance of getting off the floor is of course an altogether different question.

Regarding the furtherance of generalised interests, Sweden's refusal to follow the mainstream narrative relating to wide-spread lockdowns led Tim Lister and Sebastian Shukla⁹⁶ to report that:

Sweden's actions are about encouraging and recommending, not compulsion. Two days after Spain imposed a nationwide lockdown on March 14 [2020], Swedish authorities were encouraging people to wash their hands and stay at home if sick. On March 24, new rules were introduced to avoid crowding at restaurants. But they very much stayed open.

The well-known French philosopher Francois Lyotard⁹⁷ defined what he called a "differend" as:

A case of differend between two parties takes place when the 'regulation' of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom.

Following Lyotard, I argue that the official narrative presents itself as such a differend in closing off open debate on the origin, veracity and legitimacy of the vaccine and especially the vaccine mandate. Similarly, Bert Olivier⁹⁸ suggests that despite the official narrative's regarding both the efficacy and the safety of the so-called "vaccines", they do not (as vaccinations are supposed to do) immunise one against the disease, nor guarantee prevention of transmission or infection. Perhaps this is implicitly justified by the fact that the COVID-19 "vaccines" have been given authorisation only for "emergency use" by the American Food and Drug Administration (see for example Pfizer).

It is also worth noting that in mid-2021, 10 000 Canadian doctors⁹⁹ issued a warning directed at licensing and other allied professional bodies that the blanket official advocacy of the various vaccines does not protect patients' rights of informed consent (in the sense of the "risks, benefits and any alternatives to the treatment or intervention"), that it contravenes the

⁹⁵ Schafer 2004 *Journal of Medical Ethics*.

⁹⁶ Lister and Shukla 2020 <https://edition.cnn.com/2020/04/10/europe/sweden-lockdown-turmp-intl/index.html>.

⁹⁷ Lyotard *The Differend* 9.

⁹⁸ Olivier 2021 *Phronimon* 21-22.

⁹⁹ Canadian Physicians 2021 <https://canadianphysicians.org/>.

historical Nuremberg Code¹⁰⁰ (enumerated below) against the roll-out of medical experimental treatment (similar to Nazi experimentation on unwitting prisoners in death camps and other torture chambers) and that the lockdowns have imposed their own suffering in the form of increased domestic abuse, psychological trauma such as increased loneliness, depression and suicide as well as economic devastation, as we have seen in countries such as India. But the most serious issue with the so-called vaccine is that it is not a vaccine in the proper understanding of the term.

The "vaccine" is by definition a medical "experimental" vaccine since it is and remains in a trial stage and fails to meet the following five requirements: that it

Provides immunity to the virus. This is a "leaky" gene therapy that does not provide immunity to Covid and claims to reduce symptoms yet double-vaccinated are now 60% of the patients' requiring ER or ICU with covid infections.

Protects recipients from getting the virus. This gene-therapy does not provide immunity and double-vaccinated can still catch and spread the virus.

Reduces deaths from the virus infection. This gene-therapy does not reduce deaths from the infection. Double-Vaccinated infected with Covid have also died¹⁰¹.

Reduces circulation of the virus. This gene-therapy still permits the spread of the virus as it offers zero immunity to the virus.

Reduces transmission of the virus. This gene-therapy still permits the transmission of the virus as it offers zero immunity to the virus.¹⁰²

Apart from this fairly convincing demonstration that the so-called "vaccine" does not meet the requirements of a genuine vaccine, it also fails nine of the ten articles of the Nuremberg Code (save for article 8), which are briefly listed below:

Nuremberg Code #1: Voluntary Consent is Essential

Nuremberg Code #2: Yield Fruitful Results Unprocurable by Other Means

Nuremberg Code #3: Base Experiments on Results of Animal Experimentation and Natural History of Disease

¹⁰⁰ Breaking News-CA 2021 <https://breakingnews.ca/the-new-nuremberg-trials-2021-please-share-this-info/>.

¹⁰¹ This is probably a reference to the existing less virulent strain of the virus.

¹⁰² Breaking News-CA 2021 <https://breakingnews.ca/the-new-nuremberg-trials-2021-please-share-this-info/>.

Nuremberg Code #4: Avoid All Unnecessary Suffering and Injury

Nuremberg Code #5: No Experiment to be Conducted if There's Reason to Think Injury or Death Will Occur

Nuremberg Code #6: Risk Should Never Exceed the Benefit

Nuremberg Code #7: Preparation Must Be Made Against Even Remote Possibility of Injury, Disability or Death

Nuremberg Code #8: Experiment Must Be Conducted by Scientifically Qualified Persons

Nuremberg Code #9: Anyone Must Have the Freedom to Bring the Experiment to an End at Any Time

Nuremberg Code #10: The Scientist Must Bring the Experiment to an End at Any Time if There's Probable Cause of it Resulting in Injury or Death.¹⁰³

Considering the wording of Section 12(2) of the South African *Constitution*, quoted above, the breaches of both the Nuremberg Codes and the five criteria for a medically approved vaccine should result in the vaccine's outright failure of constitutionality under South African law. In the words of Peter Doshi,¹⁰⁴

When do public health officials have a duty to warn the public over possible harms of vaccines detected through pharmacovigilance? How much detail should the public be provided with, who should provide it, and should the provision of such information be proactive or passive? If history were to repeat itself, does the public have a right to know?

A critical public perspective, however, is not the only concern. In this regard, Critical Criminology's primary objective has been the identification of the state's "criminalization and marginalization practices"¹⁰⁵ in its management of structural contradictions. Two issues should cause alarm: In mobilising the consent of the public against "criminal" subcultures, namely the so-called unvaccinated, this power of the state to criminalise is one of the "most powerful disciplinary strategies" available to perpetuate vested interests.

I disagree with Habermas's argument¹⁰⁶ that law, as the conservative discourse which it is, is the most effective way to bring about the integration of marginalised groups (including that created by health apartheid in the

¹⁰³ Breaking News-CA 2021 <https://breakingnews.ca/the-new-nuremberg-trials-2021-please-share-this-info/>.

¹⁰⁴ Doshi 2018 *BMJ* 3.

¹⁰⁵ McLaughlin "Critical Criminology" 167.

¹⁰⁶ Habermas *Between Facts and Norms* Preface and 352.

form of the unvaccinated). Instead, Angela Davis,¹⁰⁷ John Braithwaite¹⁰⁸ and Naomi Klein¹⁰⁹ have argued persuasively and independently of each other that social movements were, at least in part, responsible for the removal of social evils such as slavery, lynching and segregation. Klein adds the example of the demise of apartheid in South Africa, which would have been unthinkable without a worldwide anti-apartheid movement.¹¹⁰ Perhaps law is indeed not the best way to achieve major progressive social change.

Finally, Nils Christie,¹¹¹ the well-known Norwegian conflict criminologist, has drawn attention to the phenomenon that "the major dangers of crime in modern societies are not the crime, but the fight against them [that] may lead societies towards totalitarian developments." Curiously, this autocratic tendency might arguably also overlap with a patriarchal attitude toward its populace.

By analogy, I argue that COVID-19 has provided even the most progressive governments, the South African ruling party being a case in point, with a perfect pretext for a power rush. As Christie points out, the greatest danger at this point in time is the tendency towards totalitarian developments. One may ask whether this danger is not compounded by the ANC's loss of face in the recent local government elections where the ruling party received less than 50% of the municipal vote for the first time in its 25-year stretch in power.

Before proffering a conclusion, I pause to highlight the merit of my methodology and theoretical framework in having allowed me to explore the puzzle in a nuanced fashion, considering often contradictory perspectives, to reach my conclusions.

7 Conclusion

In conclusion, I have attempted to demonstrate that critical thinking is crucial in examining the agenda-driven "vaccine mandate". This ties in with the criminological idea that governments will latch onto any crisis as a pretext to advance authoritarian rule. In particular, my aim with this contribution has been to demonstrate that certain questions in constitutional law, notably the

¹⁰⁷ Davis *Is the Prison Obsolete?* 25.

¹⁰⁸ Braithwaite "Inequality and Republican Criminology" 289-294.

¹⁰⁹ Klein *This Changes Everything* 6-7.

¹¹⁰ Lötter *Reintegration of Ex-offenders in South Africa* 47-48.

¹¹¹ Christie *Crime Control as Industry* 4.

issue of a mandatory vaccine policy, have to be framed and answered in a wider social sciences framework.

I argue that mandatory vaccinations cannot pass constitutional muster under South African law and that this is so for several reasons. Not only is the so-called vaccine mandate in all its different guises still in an experimental form which means that the therapy offered does not qualify as a vaccine, but informed consent as is required by the Code of Ethics by the South African Health Care Professions Council is necessarily impossible to obtain. The official narrative that the vaccine is both safe and effective has also been shown to be problematic. It certainly fails the test of the Nuremburg Code and section 12(2) of the South African *Constitution*.

In terms of international constitutional law, the US Supreme Court has ruled in the majority opinion of *National Federation of Independent Business v Department of Labor* that the vaccine mandate (as opposed to a voluntary approach) would significantly and unjustifiably affect the lives of millions of people in significant ways and has also pointed out that everyone is not at equal risk of infection. My overview of the New Zealand High Court's decision on the mandate has brought to attention the value of the fundamental right section 19 of the *New Zealand Bill of Rights Act* (the right against discrimination) – which is exactly what any Constitution should guard against. But the most significant lesson for the post-pandemic world lies, as Žižek¹¹² points out, in not closing down dialogue since, as the Chinese experience showed, shutting down alternative views is probably what caused this terrible disease to become a worldwide phenomenon. I hesitate to call it a pandemic. Finally, Habermas and other commentators have demonstrated that special interests parading as general interests can only lead to disaster and governments' tendency to align their interests with that of Big Business, Big Pharma and mainstream media have driven the dominant narrative and could do with a great deal more critical scrutiny.

This recalls the consideration that, by its very nature, law is a conservative discourse and is easily manipulated by the powers-that-be to forge such criminalisation and marginalisation practices as the market might dictate. Health apartheid bestowed on the so-called unvaccinated is a case in point. The situation is indeed complex in the sense that the argument that communal rights must trump individual rights cannot be sustained if the claims in favour of a mandatory vaccine policy – that, for example, it is the

¹¹² Žižek *Pandemic!* 7.

most effective measure against the virus or that the vaccine itself is a good thing – cannot be justified.

Perhaps President Ramaphosa could benefit more by brushing up on his critical thinking skills rather than from promoting the jab. It might also be a healthy idea to drop the label of "health apartheid" when one is not immune to it oneself. In fact, it is deeply ironic that a post-apartheid South African government would see it fit to introduce apartheid thinking in the form of mandatory vaccines as a legitimization for the pandemic of the unvaccinated, namely "health apartheid" by any other name. Finally, it is certainly a great irony that amid South Africa's decolonisation craze, the country's COVID-19 strategy was an abysmal failure because of adopting a First World curative technology-based mindset and fixing its hopes on a vaccine, while extensive African wisdom and experience in the combatting of past pandemics was overlooked.

Bibliography

Literature

Braithwaite "Inequality and Republican Criminology"

Braithwaite J "Inequality and Republican Criminology" in Hagan J and Peterson R (eds) *Crime and Inequality* (Stanford University Press Stanford 1995) 277-305

Christie *Crime Control as Industry*

Christie N *Crime Control as Industry: Towards Gulags Western Style* 3rd edn (Routledge London 2017)

Classen 2021 *Trends Int Med*

Classen JB "US COVID-19 Vaccines Proven to Cause More Harm than Good Based on Pivotal Clinical Trial Data Analyzed Using the Proper Scientific Endpoint, 'All Cause Severe Morbidity'" 2021 *Trends Int Med* 1-6

Crouch *Post-Democracy*

Crouch C *Post-Democracy* (Polity Press Cambridge 2004)

Davis *Is the Prison Obsolete?*

Davis AY *Is the Prison Obsolete?* (Seven Stories Press New York 2003)

Doshi 2018 *BMJ*

Doshi P "Pandemrix Vaccine: Why was the Public not Told of Early Warning Signs?" 2018 *BMJ* k3948 DOI: <https://doi.org/10.1136/bmj.k3948>

Duckworth *Grit*

Duckworth A *Grit: The Power of Passion and Perseverance* (Scribner New York 2017)

Friedman *One Virus, Two Countries*

Friedman S *One Virus, Two Countries: What Covid-19 Tells Us About South Africa* (Wits University Press Johannesburg 2021)

Habermas 1970 *Inquiry*

Habermas J "On Systematically Distorted Communication" 1970 *Inquiry: An Interdisciplinary Journal of Philosophy* 205-218

Habermas *Between Facts and Norms*

Habermas J *Between Facts and Norms: A Contribution to the Discourse on Law and Morality* (Polity/Blackwell Cambridge/Oxford 1996)

Habermas *Knowledge and Human Interests*

Habermas J *Knowledge and Human Interests* (Heinemann London 1971)

Habermas *Legitimation Crisis*

Habermas J *Legitimation Crisis* (Beacon Press Boston 1975)

Hurst *Thinking about Research*

Hurst AM *Thinking about Research: Methodology and Hermeneutics in the Social Sciences* (PE Technikon Gqeberha/Port Elizabeth 2004)

Jureidini and McHenry *Illusion of Evidence-Based Medicine*

Jureidini J and McHenry LB *The Illusion of Evidence-Based Medicine: Exposing the Crisis of Credibility in Clinical Research* (Wakefield Press Adelaide 2020)

Klein *This Changes Everything*

Klein N *This Changes Everything: Capitalism vs the Climate* (Penguin London 2015)

Leys "The Cynical State"

Leys C "The Cynical State" (essay) in Leys C *Total Capitalism: Market Politics, Market State* (Merlin Press Monmouth 2008) 111-144

Lötter 2022 *Phronimon*

Lötter C "Does Economic Restructuring During Covid-19 in South Africa Amount to Disaster Capitalism?" 2022 *Phronimon* 1-25

Lötter *Reintegration of Ex-offenders in South Africa*

Lötter C *The Reintegration of Ex-offenders in South Africa Based on the Contemporary Chinese Model: An Interdisciplinary Study* (PhD-thesis University of the Free State 2018)

Lyotard *The Differend*

Lyotard J-F *The Differend: Phrases in Dispute* (Manchester University Press Manchester 1988)

McCarthy *Critical Theory of Jürgen Habermas*

McCarthy T *The Critical Theory of Jürgen Habermas* (Hutchinson London 1978)

McLaughlin "Critical Criminology"

McLaughlin E "Critical Criminology" in McLaughlin E and Newburn T (eds) *The Sage Handbook of Criminological Theory* (Sage London 2010) 153-174

Merchant 2021 *J Pharm Policy Pract*

Merchant HA "CoViD Vaccines and Thrombotic Events: EMA Issued Warning to Patients and Healthcare Professionals" 2021 *J Pharm Policy Pract* 1-2

Olivier 2015 *Alternation*

Olivier B "The Tacit Influences on One's Ways of Teaching and Doing Research" 2015 *Alternation Special Edition* 346-371

Olivier 2021 *Phronimon*

Olivier B "The "Pandemic and the Differend" 2021 *Phronimon* 1-35

Patterson and Balogun 2021 *African Studies Review*

Patterson AS and Balogun E "African Responses to COVID-19: The Reckoning of Agency?" 2021 *African Studies Review* 144-167

Payne "Introduction"

Payne M "Introduction" in Bowie M (ed) *Psychoanalysis and the Future of Theory* (Blackwell Oxford 1993) 1-10

Popper *Logic of Scientific Discovery*

Popper K *The Logic of Scientific Discovery* (Routledge London 1992)

Schafer 2004 *Journal of Medical Ethics*

Schafer A "Biomedical Conflicts of Interest: A Defense of the Sequestration Thesis: Learning from the Cases of Nancy Olivieri and David Healy" 2004 *Journal of Medical Ethics* 8-24

Willen *et al* 2022 *SSM - Mental Health*

Willen SS *et al* "Rethinking Flourishing: Critical Insights and Qualitative Perspectives from the US Midwest" 2022 *SSM - Mental Health* 1-13

Žižek *Pandemic!*

Žižek S *Pandemic! COVID-19 Shakes the World* (Wiley Hoboken 2020)

Case law

Bessick v Baroque Medical (Pty) Ltd (WECT 13083 of 21) [2022] ZACCMA 1 (9 May 2022)

Biden v Missouri (Supreme Court of the United States) Case No 21A240 (13 January 2022)

Four Midwives NZDSOS and NZTSOS v Minister for COVID-19 Response [2021] NZHC 3064 (12 November 2021)

GF v Minister of COVID-19 Response [2021] NZHC 2526 (24 September 2021)

KBLN v Minister of COVID-19 Response [2021] NZHC 3012 (8 November 2021)

National Federation of Independent Business v Department of Labor (Supreme Court of the United States) Case No 21A244 (13 January 2022)

Nga Kaitiaki Tuku Iho Medical Action Society v Minister of Health [2021] NZHC 1107 (18 May 2021)

NZDSOS Inc & NZTSOS v Minister for COVID-19 Response & Attorney General [2022] NZHC 716 (8 April 2022)

Legislation

Constitution of the Republic of South Africa, 1996

New Zealand Bill of Rights Act, 1990

Internet sources

Anon 2021 <https://english.alarabiya.net/coronavirus/2021/12/02/South-Africa-s-Ramaphosa-slams-COVID-19-health-apartheid->

Anonymous 2021 *South Africa's Ramaphosa Dams COVID-19 'Health Apartheid'* <https://english.alarabiya.net/coronavirus/2021/12/02/South->

Africa-s-Ramaphosa-slams-COVID-19-health-apartheid- accessed 18 April 2022

Anon 2022 <https://www.nytimes.com/news-event/coronavirus>

Anonymous 2022 *The Covid-19 Pandemic: Latest Updates* <https://www.nytimes.com/news-event/coronavirus> accessed 29 April 2022

Bank 2021 <https://africanarguments.org/2021/02/the-sociology-of-ground-zero-south-african-variant-and-colonial-prejudice/>

Bank L 2021 *The Sociology of Ground Zero: The South African Variant and Colonial Prejudice* <https://africanarguments.org/2021/02/the-sociology-of-ground-zero-south-african-variant-and-colonial-prejudice/> accessed 24 April 2022

Bank 2021 <https://dev.dailymaverick.co.za/article/2021-02-24-ground-zero-deep-seated-colonial-era-prejudice-fuelled-the-pandemic-in-rural-eastern-cape/>

Bank L 2021 *Ground Zero: Deep-Seated Colonial-Era Prejudice Fueled the Pandemic in Rural Eastern Cape* <https://dev.dailymaverick.co.za/article/2021-02-24-ground-zero-deep-seated-colonial-era-prejudice-fuelled-the-pandemic-in-rural-eastern-cape/> accessed 24 April 2022

Bernault 2020 <https://africanarguments.org/2020/06/some-lessons-from-the-history-of-epidemics-in-africa/>

Bernault F 2020 *Some Lessons from the History of Pandemics in Africa* <https://africanarguments.org/2020/06/some-lessons-from-the-history-of-epidemics-in-africa/> accessed 24 April 2022

Bhargava 2021 <https://www.youtube.com/watch?v=5coAP9BLZOk>

Bhargava A 2021 *Is the Shot Safe and Effective as Advertised?* [Interview] <https://www.youtube.com/watch?v=5coAP9BLZOk> accessed 18 April 2022

Breaking News-CA 2021 <https://breakingnews.ca/the-new-nuremberg-trials-2021-please-share-this-info/>

Breaking News-CA 2021 *1,000 Lawyers and 10,000 Doctors have Filed a Lawsuit for Violations of the Nuremberg Code* <https://breakingnews.ca/the-new-nuremberg-trials-2021-please-share-this-info/> accessed 25 April 2022

Canadian Physicians 2021 <https://canadianphysicians.org/>

Canadian Physicians 2021 *Declaration of Canadian Physicians for Science and Truth* <https://canadianphysicians.org/> accessed 25 April 2022

CDC 2021 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measureeffectiveness/breakthrough-cases.html>
Centers for Disease Control and Prevention 2021 *What You Should Know About the Possibility of Covid-19 Illness After Vaccination*
<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measureeffectiveness/breakthrough-cases.html> accessed 4 November 2021

Center for Critical Public Health date unknown
<https://criticalpublichealth.org/about/>
Center for Critical Public Health date unknown *What is Critical Public Health?* <https://criticalpublichealth.org/about/> accessed 23 April 2022

Chen 2021 <https://theconversation.com/big-pharmas-covid-19-reputation-boost-may-not-last-heres-why-162975>
Chen S 2021 *Big Pharma's COVID-19 Reputation Boost May Not Last - Here's Why* <https://theconversation.com/big-pharmas-covid-19-reputation-boost-may-not-last-heres-why-162975> accessed 28 April 2022

Erdbrink *et al* 2021 https://www.nytimes.com/2021/12/03/world/Omicron-norway-christmas-party.html?campaign_id=57&emc=edit_ne_20211203&instance_id=46990&nl=evening-brie
Erdbrink T *et al* 2021 *A Christmas Party in Norway Becomes a Possible Omicron-Spreading Event, and Other International News*
https://www.nytimes.com/2021/12/03/world/Omicron-norway-christmas-party.html?campaign_id=57&emc=edit_ne_20211203&instance_id=46990&nl=evening-brie accessed 21 April 2022

Ghebreyesus 2020 <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---12-october-2020>
Ghebreyesus TA 2020 *WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 - 11 March 2020* <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---12-october-2020> accessed 25 April 2022

Hdogar 2021 <https://medium.com/lessons-from-history/black-death-pandemic-that-killed-200-million-people-7d94f2753465>
Hdogar O 2021 *Black Death — Pandemic That Killed 200 Million People*
<https://medium.com/lessons-from-history/black-death-pandemic-that-killed-200-million-people-7d94f2753465> accessed 28 April 2022

Hodge 2022 <https://www.the-sun.com/news/184/spanish-flu-pandemic-1918-death-toll/>

Hodge M 2022 *Deadly Virus: How Many People Died from the Spanish Flu Pandemic?* <https://www.the-sun.com/news/184/spanish-flu-pandemic-1918-death-toll/> accessed 29 April 2022

HPCSA 2016 https://www.hpcsa.co.za/Uploads/Professional_Practice/Conduct%20%26%20Ethics/Booklet%20%20Informed%20Consent%20September%20%202016.pdf?msclkid=ba7b9b31ba4111ecb1e22c378c715614

Health Professions Council of South Africa 2016 *Guidelines for Good Practice in the Health Care Professions - Seeking Patients' Informed Consent: The Ethical Considerations* https://www.hpcsa.co.za/Uploads/Professional_Practice/Conduct%20%26%20Ethics/Booklet%20%20Informed%20Consent%20September%20%202016.pdf?msclkid=ba7b9b31ba4111ecb1e22c378c715614 accessed 12 April 2022

Johns Hopkins University Coronavirus Resource Center 2021 <https://coronavirus.jhu.edu/map.html>

Johns Hopkins University Coronavirus Resource Center 2021 *Covid-19 Map* <https://coronavirus.jhu.edu/map.html> accessed 25 April 2022

Kent 2021 <https://www.theguardian.com/commentisfree/2021/jan/22/funding-self-isolate-covid-rampant>

Kent J 2021 *Thousands Have Been Refused Funding to Self-Isolate - No Wonder Covid is Rampant* <https://www.theguardian.com/commentisfree/2021/jan/22/funding-self-isolate-covid-rampant> accessed 30 April 2022

Khoza 2022 <https://www.timeslive.co.za/news/south-africa/2022-04-13-covid-19-vaccine-compensation-scheme-investigating-55-claims/>

Khoza A *Covid-19 Vaccine Compensation Scheme Investigating 55 Claims* <https://www.timeslive.co.za/news/south-africa/2022-04-13-covid-19-vaccine-compensation-scheme-investigating-55-claims/> accessed 15 April 2022

Kormann 2021 <https://www.newyorker.com/science/elements/the-mysterious-case-of-the-covid-19-lab-leak-theory>

Kormann C 2021 *The Mysterious Case of the COVID-19 Lab-Leak Theory: Did the Virus Spring from Nature or from Human Error?* <https://www.newyorker.com/science/elements/the-mysterious-case-of-the-covid-19-lab-leak-theory> accessed 12 October 2021

Li 2022 <https://www.nytimes.com/2022/04/13/business/china-covid-zero-shanghai.html>

Li Y 2022 *China's "Zero Covid" Mess Proves Autocracy Hurts Everyone* <https://www.nytimes.com/2022/04/13/business/china-covid-zero-shanghai.html> accessed 28 April 2022

Liptak 2022 <https://www.nytimes.com/2022/01/13/us/politics/supreme-court-biden-vaccine-mandate.html>

Liptak A 2022 *Supreme Court Blocks Biden's Virus Mandate for Large Employers* <https://www.nytimes.com/2022/01/13/us/politics/supreme-court-biden-vaccine-mandate.html> accessed 28 April 2022

Lister and Shukla 2020 <https://edition.cnn.com/2020/04/10/europe/sweden-lockdown-turmp-intl/index.html>

Lister T and Shukla S 2020. *Sweden Challenges Trump and Scientific Mainstream by Refusing to Lock Down* <https://edition.cnn.com/2020/04/10/europe/sweden-lockdown-turmp-intl/index.html> accessed 25 April 2022

Lovelace 2021 <https://www.cnn.com/2021/07/30/cdc-study-shows-74percent-of-people-infected-in-massachusetts-covid-outbreak-were-fully-vaccinated.html>

Lovelace B Jr 2021 *CDC Study Shows 74% of People Infected in Massachusetts Covid Outbreak Were Fully Vaccinated* <https://www.cnn.com/2021/07/30/cdc-study-shows-74percent-of-people-infected-in-massachusetts-covid-outbreak-were-fully-vaccinated.html> accessed 21 April 2022

Mark 2020 <https://www.worldhistory.org/article/1540/medieval-cures-for-the-black-death/>

Mark JJ 2020 *Medieval Cures for the Black Death* <https://www.worldhistory.org/article/1540/medieval-cures-for-the-black-death/> accessed 29 April 2022

Merriam-Webster Online Dictionary date unknown <https://www.merriam-webster.com/words-atplay/epidemic-vs-pandemic-difference>

Merriam-Webster Online Dictionary date unknown *Pandemic vs Epidemic — How They Overlap and Where They Differ* <https://www.merriam-webster.com/words-atplay/epidemic-vs-pandemic-difference> accessed 29 June 2021

Moynihan 2021 <https://theconversation.com/covid-vaccines-offer-the-pharma-industry-a-once-in-a-generation-opportunity-to-reset-its->

reputation-but-its-after-decades-of-big-profits-and-scandals-165082?utm_med

Moynihan R 2021 *COVID Vaccines Offer the Pharma Industry a Once-in-a-Generation Opportunity to Reset its Reputation. But it's After Decades of Big Profits and Scandals* https://theconversation.com/covid-vaccines-offer-the-pharma-industry-a-once-in-a-generation-opportunity-to-reset-its-reputation-but-its-after-decades-of-big-profits-and-scandals-165082?utm_med accessed 28 April 2021

Ross and Klompas 2010 <https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf>

Ross L and Klompas M 2010 *Electronic Support for Public Health – Vaccine Adverse Event Reporting System (ESP:VAERS)* <https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf> accessed 18 April 2022

Sayer 2021 <https://theconversation.com/nigerian-museums-must-tell-stories-of-slavery-with-more-complexity-and-nuance-169785>

Sayer F 2021 *Nigerian Museums Must Tell Stories of Slavery with More Complexity and Nuance* <https://theconversation.com/nigerian-museums-must-tell-stories-of-slavery-with-more-complexity-and-nuance-169785> accessed 30 October 2021

Shipman 2014 <https://www.americanscientist.org/article/the-bright-side-of-the-black-death>

Shipman PL 2014 *The Bright Side of the Black Death* <https://www.americanscientist.org/article/the-bright-side-of-the-black-death> accessed 29 April 2022

Staff Writer 2022 <https://businesstech.co.za/news/business/562366/vaccine-mandates-in-south-african-workplaces-where-we-are-heading/>

Staff Writer 2022 *Vaccine Mandates in South African Workplaces – Where We are Heading* <https://businesstech.co.za/news/business/562366/vaccine-mandates-in-south-african-workplaces-where-we-are-heading/> accessed 28 April 2022

Weijer 2020 <https://theconversation.com/how-pharma-can-build-trust-in-covid-19-vaccines-transparency-on-trials-and-side-effects-150270>

Weijer C 2020 *How Pharma Can Build Trust in COVID-19 Vaccines: Transparency on Trials and Side-Effects* <https://theconversation.com/how-pharma-can-build-trust-in-covid-19-vaccines-transparency-on-trials-and-side-effects-150270> accessed 29 September 2022

List of Abbreviations

BMJ	British Medical Journal
CDC	Centers for Disease Control and Prevention
HPCSA	Health Care Professions Council of South Africa
J Pharm Policy Pract	Journal of Pharmaceutical Policy and Practice
Trends Int Med	Trends in Internal Medicine
US	United States of America
VAERS	Vaccine Adverse Events Reporting System
WHO	World Health Organisation