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Worth a Shot: Encouraging Vaccine Uptake Through “Empathy”

Dr. Jody Lyneé Madeira

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Worth a Shot: Encouraging Vaccine Uptake Through “Empathy”

Dr. Jody Lynéé Madeira*

ABSTRACT

Pro- and anti-vaccine organizations and individuals have frequently invoked empathy as a strategy for increasing uptake of COVID-19 precautions, including vaccinations. On one hand, vaccine supporters deployed empathy to defuse conflict, prioritize safeguarding the collective welfare, and avoid government mandates. On the other hand, vaccine opponents used empathy to emphasize the alleged individual effects of pandemic precautions, mobilize public voices, and stress the importance of medical freedom in policy-making contexts.

This Article first defines empathy and reviews empathy scholarship, paying particular attention to its relationship with narrative and the contexts where empathy can be difficult or dangerous. It then applies these perspectives to the issue of vaccine uptake. Finally, it deconstructs empathy messaging in pro- and anti-COVID-19 vaccine social media messaging and at a rally opposing Indiana University’s vaccine “mandate” on June 10, 2021.

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I. INTRODUCTION

Throughout the COVID-19 pandemic, public health officials, politicians, celebrities, and others urged the US public to practice empathy concerning ever-changing health restrictions.¹ Empathy has become the emotional cure-all to COVID-19's antisocial ills. When confronted with another individual who is breaking quarantine,²

1. See, e.g., *infra* app. I, at Figures 1, 2 & 3.

2. See Chad Severson, *Lessons Learned in Quarantine: The Power of Experimentation and Empathy*, FORBES (June 2, 2021, 9:20 AM), <https://www.forbes.com/sites/forbesbusinesscouncil/2021/06/02/lessons-learned-in-quarantine-the-power-of-experimentation-and-empathy/?sh=74cec37a167a> [https://perma.cc/4G5J-WDPJ];

reluctant to wear a mask,³ or hesitant to get vaccinated,⁴ Americans are advised to be patient and nonjudgmental—not to become frustrated and argumentative. Admittedly, this advice is often aspirational; President Biden himself has blamed unvaccinated individuals for increasing COVID-19 cases, stating, “if you’re not vaccinated, you’re not nearly as smart as I thought you were.”⁵

In the COVID-19 era, this turn to empathy—the ability to understand and share the feelings of another—should not be surprising; this tactic is listed among best practices for crisis and emergency risk communication (CERC).⁶ But few have explored how empathy is used—and to what effect—in crises, particularly how it is deployed in policymaking. Often, these strategies differ from conventional understandings of empathy as interpersonal identification.⁷ For example, pro-vaccine messages invite vaccine supporters to exercise understanding towards others with different perspectives—not to actually step into their shoes.⁸ Conversely, COVID-19 vaccine opponents use empathy for entirely different purposes—to reframe the issue from public health and social obligations to individual rights and autonomy; to dignify their

Amy Klein, *Covid, Quarantine, and Closures Are Creating a Hierarchy of Grievance. We Need Compassion.*, NBC NEWS (Dec. 20, 2020, 3:30 AM), <https://www.nbcnews.com/think/opinion/covid-quarantine-closures-are-creating-hierarchy-grievance-we-need-compassion-ncna1251763> [<https://perma.cc/9L28-3TWE>]; Serena Petrocchi, Sheila Bernardi, Roberto Malacrida, Rafael Traber, Luca Gabutti & Nicola Grignoli, *Affective Empathy Predicts Self-Isolation Behavior Acceptance During Coronavirus Risk Exposure*, SCI. REFS., May 2021, at 1, 7.

3. See Stefan Pfattheicher, Laila Nockur, Robert Böhm, Claudia Sassenrath & Michael Bang Petersen, *The Emotional Path to Action: Empathy Promotes Physical Distancing and Wearing of Face Masks During the COVID-19 Pandemic*, 31 PSYCH. SCI. 1363, 1370 (2020).

4. Jennifer Huizen, *Why Vaccine Hesitancy Must Be Addressed Empathetically*, MED. NEWS TODAY (Apr. 3, 2021), <https://www.medicalnewstoday.com/articles/why-vaccine-hesitancy-must-be-addressed-empathetically> [<https://perma.cc/J2DV-HBHE>].

5. Biden also stated: “We have a pandemic because of the unvaccinated, and they’re sowing enormous confusion. . . . And only one thing we know for sure: If those other hundred million people got vaccinated, we’d be in a very different world.” President Joe Biden, Remarks at the Office of the Director of National Intelligence (July 27, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/27/remarks-by-president-biden-at-the-office-of-the-director-of-national-intelligence/> [<https://perma.cc/JLB3-8DCX>].

6. Definition of Empathy, LEXICO, <https://www.lexico.com/en/definition/empathy> [<https://perma.cc/L4BD-YSNG>] (last visited Feb. 2, 2022); Lisa Briseño, *CERC Overview for Covid-19*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 6, 2020), https://emergency.cdc.gov/cerc/training/pdf/COVID19_CERC.pdf [<https://perma.cc/93LH-UKC4>]. According to the CDC, the CERC principles include the following: be first, be right, be credible, express empathy, promote action, and show respect. Briseño, *supra*.

7. See ELIZABETH A. SEGAL, SOCIAL EMPATHY: THE ART OF UNDERSTANDING OTHERS 3–4 (2018).

8. See Huizen, *supra* note 4.

position; and to promote empathy for those who allegedly could be harmed or exploited through mainstream COVID-19 policies.⁹

This Article explores how empathy was used in the months following the COVID-19 vaccine's release by pro- and anti-vaccine organizations and individuals. Ironically, both vaccine supporters and opponents strategically deployed empathy to avoid more stringent—and controversial—measures such as vaccine mandates.¹⁰ Vaccine supporters were hopeful that empathic educational conversations would increase vaccine uptake among hesitant individuals in order to potentially avoid more draconian measures; their uptake strategies deployed emotion to encourage self-regulation over governmental intervention, and usually did not include explicitly making policy arguments.¹¹ In contrast, vaccine opponents used empathy to individualize the effects of the COVID-19 vaccine, alleged that it was dangerous, and argued that medical freedom trumped collective well-being; these arguments translated well to policymaking contexts and were easily mobilized to oppose vaccine mandates.¹²

Part II of this Article discusses how empathy has been defined, provides a brief literature review of scholarship on empathy, explores the interdependency of empathy and narrative, and addresses what happens when empathic processes are difficult or dangerous. Part III explores empathy and narrative in the specific context of vaccine uptake, focusing on COVID-19 vaccines in particular. Finally, Part IV analyzes dimensions of empathy in pro- and anti-COVID-19 vaccine social media messaging and at a rally opposing Indiana University's vaccine "mandate" on June 10, 2021.

II. UNDERSTANDING EMPATHY

A more thorough understanding of empathy is critical to grasp the nuances of how pro- and anti-vaccine advocates strategically deployed various forms of empathy to achieve different goals, from increasing identification to persuasion. The following sections summarize empathy research, discuss its interdependence with

9. See, e.g., *infra* app. I, pt. II, at Figures 7, 16, 17 & 18.

10. See *infra* app. I, at Figure 6; Alana Wise, *The Political Fight over Vaccine Mandates Deepens Despite Their Effectiveness*, NPR (Oct. 17, 2021, 7:00 AM), <https://www.npr.org/2021/10/17/1046598351/the-political-fight-over-vaccine-mandates-deepens-despite-their-effectiveness> [https://perma.cc/STM7-WH5P].

11. See Wen-Ying Sylvia Chou & Alexandra Budenz, *Considering Emotion in COVID-19 Vaccine Communication: Addressing Vaccine Hesitancy and Fostering Vaccine Confidence*, 35 HEALTH COMM'N 1718, 1720 (2020).

12. See *id.* at 1719.

narrative, and address what happens when empathy becomes difficult or impossible.

A. What is Empathy?

The term “empathy” was first formed through the work of German psychologist Theodor Lipps and US psychologist Edward Titchener.¹³ While Lipps contributed the aesthetic concept of *einfehlung* (German for the “feeling one might have while viewing beautiful works of art or nature, that is, ‘feeling into’ the art”), by applying it to “the feelings one has while reflecting the feelings of another person,”¹⁴ Titchener “[a]nglicized the Greek word *empathia*, which means ‘in passion’ or ‘in suffering,’” to coin “empathy.”¹⁵

Because there is no single agreed-upon definition of empathy, it is best to choose the most inclusive one: “[A] set of constructs that connects the responses of one individual to the experiences of another.”¹⁶ Empathy is a “role-taking emotion[]” like guilt, embarrassment, and shame; these emotions are social and are felt when a person becomes aware of how others in her social networks perceive her.¹⁷ Empathy has been described as both emotional (“feeling the way another feels, or having a congruent emotion, *because* the other feels that way”) and cognitive (“the capacity or process of *knowing* what another wants, believes, or feels as a result of placing oneself in her situation”).¹⁸ It differs from sympathy, or “feelings of sorrow or concern for the other” and an “other-oriented desire for the other person to feel better.”¹⁹ Moreover, empathy is not so much an emotional state as a process or a “capacity, a tool used to

13. FRITZ BREITHAUPT, *THE DARK SIDES OF EMPATHY* 77 (Andrew B. B. Hamilton trans., 2019).

14. SEGAL, *supra* note 7, at 5–6.

15. *Id.* at 6.

16. Mark H. Davis, *Empathy*, in *HANDBOOK OF THE SOCIOLOGY OF EMOTIONS* 443, 443 (Jan E. Stets & Jonathan H. Turner eds., 2006).

17. Jessica Fields, Martha Copp & Sherryl Kleinman, *Symbolic Interactionism, Inequality, and Emotions*, in *HANDBOOK OF THE SOCIOLOGY OF EMOTIONS*, *supra* note 16, at 155, 158.

18. Antti Kauppinen, *Empathy, Emotion Regulation, and Moral Judgment*, in *EMPATHY AND MORALITY* 97, 99 (Heidi L. Maibom ed., 2014); *see* Davis, *supra* note 16.

19. Kauppinen, *supra* note 18.

achieve a variety of ends.”²⁰ We use empathy to negotiate interpersonal relations and make moral judgments.²¹

B. Empathy's Effects

Empathy affects intrapersonal and interpersonal behaviors.²² For example, an individual might experience empathy when exposed to a “target”—someone who triggers an empathic response that can be cognitive, affective, motivational, or behavioral.²³ Several factors affect these “empathy episodes,” including antecedent factors (characteristics of the empathizer, the target, and the situation), how the empathic reaction is produced, the empathizer’s intrapersonal empathic reaction, and the interpersonal behavioral outcome (how the empathizer responds to the target).²⁴

An individual can experience emotional reactions that either align with or differ from the target’s feelings, such as sympathy, empathic concern, or personal distress; these reactive emotions can, in turn, prompt either peaceful or aggressive behavior.²⁵ Intrapersonally, an individual may feel closer to a target, feel anger on their behalf, or draw away to reduce “the intensity and frequency of unpleasant emotion[s]” or attempt to maintain personal integrity.²⁶

Most of the time, empathy refers to an interpersonal phenomenon or experience.²⁷ An individual’s empathic reactions are motivated by and affect their interactions and relationships.²⁸ The closer or more compatible an individuals’ emotion is to a target, the more likely that person is to agree with another’s perspectives while also experiencing emotional concordance and compassion.²⁹ Individuals feel greater affinity for those “close to [them] in affection, time, and place,” such as friends, ingroup members, and others who

20. Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 379 (1996).

21. E.g., Adam Morton, *Empathy for the Devil*, in *EMPATHY: PHILOSOPHICAL AND PSYCHOLOGICAL PERSPECTIVES* 318, 318–19 (Amy Coplan & Peter Goldie eds., 2011); Jean Decety & Jason M. Cowell, *Friends or Foes: Is Empathy Necessary for Moral Behavior?*, 9 PER-SPS. ON PSYCH. SCI. 525, 526, 532–33 (2014).

22. Davis, *supra* note 16, at 443–44.

23. *Id.* at 443.

24. *Id.* at 443–44.

25. *Id.* at 446.

26. Kauppinen, *supra* note 18, at 103; see Davis, *supra* note 16, at 453.

27. See BREITHAUP, *supra* note 13, at 7.

28. Kauppinen, *supra* note 18, at 103.

29. Davis, *supra* note 16, at 450; Heidi L. Maibom, *Introduction: (Almost) Everything You Ever Wanted to Know About Empathy*, in *EMPATHY AND MORALITY*, *supra* note 18, at 1–3.

are deemed to be fair, kind, or good.³⁰ Thus, empathy may mitigate bad behavior in relationships; instead of retaliating against someone, empathizers who have a relationship with that person may accommodate the other's behaviors and treat them with more respect.³¹ Here, empathy is a "warm feeling," conveying tolerance or moral approval.³² This type of empathy can also apply to entire groups; social empathy is "the ability to understand people and other social groups by perceiving and experiencing their life situations" through "learning about and understanding the historical context of group experiences."³³

Emotion regulation techniques—whether and how someone restores "calmness or balance" after emotional engagement with another person or issue—also impact empathic engagement.³⁴ Emotion regulation prevents individuals from getting "swept away" and allows them to "take control and adapt [their] feelings appropriately" to various situations.³⁵ One can regulate her empathic responses by changing how she is interacting with a particular target or situation; for instance, she can pay attention to a target or on something else, can reappraise what is going on and her reactions, and can even suppress emotional responses altogether.³⁶ If an individual is unable to empathize, this translates into "a coldness toward others," indicating moral disapproval.³⁷

C. Empathy and Narrative

Stories are powerful vehicles for empathy because they are compelling and more likely to elicit emotions and behavioral reactions than statistics or bare facts.³⁸ Placing events into a narrative order affects whether and how these events impact others.³⁹ People "order [their] experiences into stories . . . with familiar structures and conventions—plot, beginning and end, major and minor characters,

30. Maibom, *supra* note 29, at 13.

31. Davis, *supra* note 16, at 459.

32. Kauppinen, *supra* note 18, at 113.

33. SEGAL, *supra* note 7, at 4.

34. *Id.* at 19–20.

35. *Id.*

36. Kauppinen, *supra* note 18, at 103.

37. *Id.* at 113–14.

38. Paul J. Zak, *How Stories Change the Brain*, GREATER GOOD MAG. (Dec. 17, 2013), https://greatergood.berkeley.edu/article/item/how_stories_change_brain [https://perma.cc/M572-PNV9].

39. See Bandes, *supra* note 20, at 363.

heroes and villains, motives, [and] a moral.”⁴⁰ Empathy is often induced by “reading, viewing, hearing, or imagining narratives of another’s situation and condition.”⁴¹ Critically, past experiences affect interpretations of new ones; new stories are interpreted through the old.⁴² Often, a dominant narrative interpretation “drowns out or preempts another,” and comes to resemble common sense, so that “its character as narrative is invisible.”⁴³ Moreover, certain stories “are relegated to the status of outsider narratives—suspect, implausible, and optional—while others speak the rhetoric of universality and inevitability, and are thus authoritative.”⁴⁴

Much of the research on empathy and narrative stems from narrative theory and literary criticism. Scholars have identified several dimensions of narratives,⁴⁵ characters,⁴⁶ and narrators that affect empathic efficacy.⁴⁷ A character with whom readers personally identify, a narrator who speaks in first person, or an omniscient third-party narrator who peers into characters’ minds are more likely to generate empathy than other techniques.⁴⁸ These processes of narrative engagement and identification mirror how individuals form relationships with others—through media consumption or real-life interactions—and help educate them in understanding and deciding to act upon social cues.⁴⁹ In this way, narrative can prompt introspection and personal development.⁵⁰

To be empathically effective, a narrative must hold a reader’s attention; doing so long enough can spark emotional resonance and transportation (the sensation of being “caught up” often triggers

40. *Id.* at 383.

41. Suzanne Keen, *Narrative Empathy*, THE LIVING HANDBOOK OF NARRATOLOGY, <https://www.lhn.uni-hamburg.de/node/42.html> [<https://perma.cc/7A6E-A34X>] (Sept. 14, 2013).

42. See Bandes, *supra* note 20, at 385.

43. *Id.* at 386.

44. *Id.* at 389.

45. Narrative qualities affecting empathic efficacy include “narrative consonance or dissonance, unreliability, discordance, an excess of narrative levels with multiple narrators, extremes of disorder, or an especially convoluted plot.” Suzanne Keen, *A Theory of Narrative Empathy*, 14 NARRATIVE 207, 215 (2006). Character qualities affecting empathy include “naming, description, indirect implication of traits, reliance on types, relative flatness or roundness, depicted actions, roles in plot trajectories, quality of attributed speech, and mode of representation of consciousness [first person versus third person point of view].” *Id.* at 216. Narrator qualities affecting empathy include such as relation to and perspectives on other characters. *Id.* at 215–16.

46. *Id.* at 216.

47. *Id.*

48. *Id.* at 215–16, 219.

49. Zak, *supra* note 38.

50. *Id.*

empathic processes.)⁵¹ Transportation is often triggered by a narrative's dramatic arc, which holds attention and generates the hormone oxytocin, priming the brain for empathic engagement.⁵² This dramatic arc starts with "something new and surprising," builds tension as characters confront challenges, then escalates to a climax that transforms one or more characters, after which tension falls.⁵³ One common dramatic arc is the "hero's journey," which features "[a]n innocent treated unfairly, and a protector who seeks to right the wrong—but can only do so by finding the courage to change himself and become a better person."⁵⁴

D. Dark Empathy and Difficult Empathy

Empathy's inherent utility—whether it is "good" or "bad"—necessarily turns on context. Researchers disagree as to whether empathy is always a net good.⁵⁵ Peter Goldie argues that empathic perspective-shifting could replace a person's preexisting perspectives about a subject,⁵⁶ possibly "mak[ing] what is irrational or unfounded appear . . . rational or well-founded."⁵⁷ It is also possible that a person's empathic identification with another might prompt personal distress that preoccupies her, decreasing her ability to feel compassion for another's suffering and increasing the risk that she will cope through defensive dissociation.⁵⁸ Finally, empathy is selective; individuals identify with specific persons and specific aspects of their feelings or perspectives.⁵⁹ Empathic reactions are complex; individuals can feel overwhelmed by their empathic feelings but may be unwilling to help, might feel irritation at another's distress, or may be moved to a violent cathartic reaction.⁶⁰

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. See Bandes, *supra* note 20, at 374–75. See generally Kauppinen, *supra* note 18; Peter Goldie, *Anti-Empathy*, in *EMPATHY: PHILOSOPHICAL AND PSYCHOLOGICAL PERSPECTIVES*, *supra* note 21, at 302.

56. Goldie, *supra* note 55, at 303.

57. *Id.* at 312.

58. Steve Larocco, *Empathy as Orientation Rather than Feeling: Why Empathy Is Ethically Complex*, in *EXPLORING EMPATHY: ITS PROPAGATIONS, PERIMETERS, AND POTENTIALITIES* 3, 8 (Rebecca J. Nelems & L.J. Theo eds., 2017).

59. *Id.* at 11–12.

60. *Id.* at 12.

Empathy by itself does not motivate individuals to act;⁶¹ “feeling” another’s pain does not guarantee that someone will be motivated to help.⁶² Thus, empathy might not be the most valuable pro-social process. “Although framed as an antidote to detached concern,” empathy is still disconnected; instead, caring may be more beneficial because it “is a sustained emotional investment in an individual’s well being [*sic*], characterized by a desire to take actions that will benefit that person.”⁶³

Individuals can design narratives and situations to trigger empathy for both pro- or antisocial purposes.⁶⁴ For instance, individuals naturally use “manipulative empathy” to “guide the other into a particular situation in which they will be emotionally predictable” so that “the empathizer [can] coexperience [*sic*] their emotions.”⁶⁵ Although manipulative empathy usually has negative connotations, this form of empathy is not inherently sinister.⁶⁶ It includes several positive, “socially sanctioned behaviors,” including gift-giving, pedagogical successes (“a teacher sharing in a student’s moment of recognition”), and telling others good or bad news.⁶⁷ Another form of manipulative empathy, therapeutic empathy, is explicitly beneficial; it is an intentional act directed toward another with a moral value that aims to “make[] people feel better and show[] them that they are not alone and that their suffering is being witnessed.”⁶⁸ Negative forms of manipulative empathy can include “moralizing; teasing; criticizing; patronizing; testing; bullying; threatening; pressuring (as in employees or subordinates); blackmailing; giving false hope and disappointing; irony; sexism; all forms of coercion, including subtler forms of duress; and deliberate embarrassment.”⁶⁹

But sometimes empathy seems unattainable; for example, it may seem impossible to tell a story that induces empathy for a perpetrator. A person might be personally or behaviorally problematic, along a spectrum of actions ranging from merely being disagreeable to

61. *Id.*; Saul J. Weiner & Simon Auster, *From Empathy to Caring: Defining the Ideal Approach to a Healing Relationship*, 80 YALE J. BIOLOGY & MED. 123, 126 (2007).

62. Weiner & Auster, *supra* note 61.

63. *Id.*

64. BREITHAUPT, *supra* note 13, at 186.

65. *Id.*

66. *See id.* at 187.

67. *Id.*

68. Valeria Bizzari, Hajira Dambha-Miller, William F. Laughaey & Claudia Carvalho, *Defining Therapeutic Empathy: The Philosopher’s View*, 112 J. ROYAL SOC’Y MED. 91, 93 (2019).

69. BREITHAUPT, *supra* note 13, at 187.

committing terrible acts such as murder. In “difficult” or “dark” empathy situations, a narrative can explain the motives behind a perpetrator’s acts, and one can understand this explanation but not experience the “sympathetic identification required for empathy.”⁷⁰ In this context, an individual may feel as if their moral sensitivity or behavioral code actually inhibits their ability to engage imaginatively.⁷¹

Moreover, someone who *can* experience empathy for such a perpetrator might be regarded as a dangerous outsider—a “dark empath” who may exhibit neuroticism, aggression, malicious humor, narcissism, Machiavellianism, grandiosity, and exploitativeness.⁷² Thus, empathy is both a social lubricant and a social barrier; “we want to take empathy as easy, to ease everyday interaction, and we want to take it as difficult, to keep a distance between us and those we despise.”⁷³

Difficult empathy situations often motivate people to form moral judgments.⁷⁴ An individual can use empathy to take a moral stance; first, they will likely feel “a disposition to praise or blame someone on account of an attitude [or] action,” and then they may develop a “normative expectation that everyone share the [same] disposition to praise or blame.”⁷⁵ Through this process, people not only develop moral judgments but also form expectations about how their social communities will evaluate these judgments; “we do not act morally because we feel empathy; rather, we moralize to justify our quick and empathetic side-taking.”⁷⁶ These expectations of social agreement or disagreement also entail the conviction that these judgments are natural or “given,” formed on the basis of a person’s or situation’s characteristics and not personal biases.⁷⁷

Moral judgments approximate what Professor Terry Maroney terms “emotional common sense”—“what one thinks she simply knows about emotions, based on personal experience, socialization, and other

70. Morton, *supra* note 21, at 321.

71. *Id.* at 318.

72. See generally Nadja Heym, Fraenze Kibowski, Claire A.J. Bloxson, Alyson Blanchard, Alexandra Harper, Louise Wallace, Jennifer Firth & Alexander Sumich, *The Dark Empath: Characterising Dark Traits in the Presence of Empathy*, PERSONALITY & INDIVIDUAL DIFFERENCES, Feb. 1, 2021, at 1, 1.

73. Morton, *supra* note 21, at 329–30.

74. Kauppinen, *supra* note 18, at 104.

75. *Id.* at 107.

76. BREITHAUPT, *supra* note 13, at 17.

77. Kauppinen, *supra* note 18, at 108.

forms of casual empiricism.”⁷⁸ If common sense is “unreflective knowledge not reliant on specialized training or deliberative thought” that seems to be a “simple truth,”⁷⁹ *emotional* common sense is its effective counterpart.⁸⁰ Emotional common sense is “based on human observation and experience, accumulated and passed on over time” and thus “embod[ies] certain truths that appear both universal and stable.”⁸¹ But these truths actually incorporate “distortion, myth, and bias,” and are fairly accurate with respect to “familiar, consciously accessible phenomena” but not “rapid, nonconscious, largely invisible ones.”⁸² Because emotional common sense embodies cultural beliefs and values,⁸³ it is inconsistent and subjective “not just between cultures but within individual subjects.”⁸⁴

III. EMPATHY, NARRATIVE, AND VACCINE UPTAKE

Given empathy’s narrative dimensions and interpersonal dynamics, it is understandable why researchers have focused on how it can be used to encourage positive health behaviors, such as promoting vaccination and education about vaccine safety and uptake.

A. Empathy and Health Behaviors

Health-behavior research has identified the importance of emotional engagement and health-related activity, and the complex relationship between the two.⁸⁵ Empathy-based messaging is generally more effective in changing health behaviors than fear-based messaging.⁸⁶ While both fear and empathy can have persuasive effects, empathy can suppress a fear-triggered, defensive psychological reaction that people (especially high-risk individuals) experience when they think that their freedoms may be eliminated.⁸⁷ Thus, empathic

78. Terry A. Maroney, *Emotional Common Sense as Constitutional Law*, 62 VAND. L. REV. 851, 854 (2009).

79. *Id.* at 852.

80. *See id.* at 861–62.

81. *Id.* at 862.

82. *Id.* at 863.

83. *Id.* at 865–66.

84. *Id.* at 866–67.

85. Wen-Ying Sylvia Chou & Alexandra Budenz, *Considering Emotion in COVID-19 Vaccine Communication: Addressing Vaccine Hesitancy and Fostering Vaccine Confidence*, 35 HEALTH COMM’N 1718, 1718 (2020).

86. *See infra* notes 94–97.

87. Lijiang Shen, *The Effectiveness of Empathy- Versus Fear-Arousing Antismoking PSAs*, 26 HEALTH COMM’N 404, 404 (2011). *See generally* Richard Tay & Lucie K. Ozanne, *Who*

identification with a health-related message can inhibit users' anger and defensiveness toward recommended changes,⁸⁸ making advice seem like a personal decision rather than a constraint that others impose.⁸⁹

"Fear is also notoriously fickle in creating successful behavior change."⁹⁰ For instance, in testing eight antismoking public service announcements, Professor Lijiang Shen found that empathy-arousing messages were more persuasive, and fear-based messages triggered stronger psychological reactance.⁹¹ Shen concluded that, since empathy facilitates "social bonding and relationship development . . . a) the recipients tend to approach the message, instead of avoiding it, b) unintended responses such as counterargument and anger tend to be reduced, and c) the recipients are more likely to internalize the message, hence perceived manipulation can be minimized."⁹² Empathy—particularly when facilitated by narrative—can also help people avoid blaming others for stigmatized health-related behaviors.⁹³ For example, Shaffer et al. found that healthcare professionals felt an increased positive attitude and empathy after reading a narrative about a woman who smoked while pregnant, and were encouraged to find external reasons for her behavior.⁹⁴ Thus, the researchers concluded, "narrative writing would be an efficacious intervention promoting attitude change toward patients who engage in unhealthy, and often contentious, behaviors."⁹⁵

Moreover, empathy can help increase compliance with health recommendations.⁹⁶ King et al. found that when individuals responded with greater empathy to the threat of a pandemic like H1N1, they were more likely to endorse recommended health behaviors and

Are We Scaring with High Fear Road Safety Advertising Campaigns?, ASIA PAC. J. TRANSP., Summer 2002, at 1.

88. See generally Shen, *supra* note 87.

89. *Id.* at 406.

90. Joseph Heffner, Marc-Lluís Vives & Oriol FeldmanHall, *Emotional Responses to Prosocial Messages Increase Willingness to Self-Isolate During the COVID-19 Pandemic*, PERSONALITY & INDIVIDUAL DIFFERENCES, Feb. 15, 2021, at 1.

91. Shen, *supra* note 87, at 411.

92. *Id.* at 412.

93. See Victoria A. Shaffer, Jennifer Bohanek, Elizabeth S. Focella, Haley Horstman & Lise Saffran, *Encouraging Perspective Taking: Using Narrative Writing to Induce Empathy for Others Engaging in Negative Health Behaviors*, PLOS ONE, Oct. 15, 2019, at 1, 13.

94. *Id.*

95. *Id.* at 1.

96. See generally David B. King, Shanmukh Kamble & Anita DeLongis, *Coping with Influenza A/H1N1 in India: Empathy Is Associated with Increased Vaccination and Health Precautions*, 54 INT'L J. HEALTH PROMOTION & EDUC. 283 (2016).

perceive the pandemic as a threat.⁹⁷ Finally, Heffner et al. found that pro-social appeals evoking highly positive emotional responses associated greater compliance with self-isolation measures during COVID-19.⁹⁸

B. Empathy, Vaccination, and the COVID-19 Vaccine

One recent context in which empathy has played a prominent role is in encouraging participants to get the COVID-19 vaccine. Here, as elsewhere, narrative plays an important role for vaccine supporters and opponents—both in using empathy to educate individuals about the vaccine and in attempts to resist it.

1. The COVID-19 Vaccine, Narrative, and Social Media Messaging

Researchers have begun identifying and tracking narratives related to promoting or resisting the COVID-19 vaccine.⁹⁹ Smith et al. analyzed over 14.3 million posts on Twitter, Instagram, and Facebook, including the word “vaccine” or “vaccination” in English, Spanish, and French, finding that a number of distinct communities were engaging with one another around the COVID-19 vaccine topic, including “[l]ibertarians, traditional anti-vaxxers, New Age groups, [and] Q-anon adherents.”¹⁰⁰ Moreover, these interactions centered around two subjects: “the political and economic motives of actors and institutions involved in vaccine development and the ‘safety, efficacy and necessity’ concerns around vaccines.”¹⁰¹ These narratives were broken down into six themes: 1) development, provision, and access; 2) safety, efficacy, and necessity; 3) political and economic motives; 4) conspiracy theory; 5) liberty and freedom; and 6) morality and religion.¹⁰²

Development, provision, and access themes addressed the “ongoing progress and challenges of vaccine development,” including vaccine testing, provision, and public access.¹⁰³ Safety and efficacy

97. *Id.* at 290.

98. *See* Heffner et al., *supra* note 90.

99. *See* RORY SMITH, SEB CUBBON & CLAIRE WARDLE, FIRST DRAFT, UNDER THE SURFACE: COVID-19 VACCINE NARRATIVES, MISINFORMATION AND DATA DEFICITS ON SOCIAL MEDIA 6–7 (2020), https://firstdraftnews.org/wp-content/uploads/2020/11/FirstDraft_Underthesurface_Fullreport_Final.pdf?x58095 [<https://perma.cc/GCK3-KZSN>].

100. *Id.* at 7, 12.

101. *Id.* at 2.

102. *Id.* at 9.

103. *Id.*

themes, on the other hand, covered “how they [the vaccines] may not be safe or effective” and their “perceived necessity.”¹⁰⁴ Political and economic motive narratives included “posts related to the . . . motives of actors (key figures, governments, institutions, corporations, etc.) involved with vaccines and their development.”¹⁰⁵ Conspiracy theory themes addressed narratives that “feed[] off a deep mistrust of the intentions of political actors and institutions,” including the claim that the COVID-19 vaccine was a mechanism for microchipping individuals and developing population-tracking systems.¹⁰⁶ The liberty and freedom theme was related to “concerns about how vaccines may affect civil liberties and personal freedom.”¹⁰⁷ Finally, the morality and religion theme discussed moral and religious concerns about vaccines and their development, including composition and testing.¹⁰⁸

Many of these themes were connected to particular cultural narratives.¹⁰⁹ The theme of political and economic motives linked to a narrative of capitalistic corruption.¹¹⁰ This narrative posited that untrustworthy politicians and business leaders (i.e., Bill Gates and “Big Pharma” executives) produced and promoted the COVID-19 vaccine for personal benefit and controlled the government and the media.¹¹¹ The safety, efficacy, and necessity theme was associated with several competing narratives.¹¹² While pro-vaccine narratives suggested that the COVID-19 vaccine was the “the silver bullet solution” allowing normal life to resume,¹¹³ anti-vaccine narratives posited that the COVID-19 vaccine was unnecessary or harmful because it was less powerful than a healthy immune system; COVID-19 could be treated with other effective and inexpensive drugs; COVID-19 was not dangerous or was less deadly than the flu; mRNA vaccines were not safe; and vaccines, in general, were dangerous.¹¹⁴ The liberty and freedom theme was associated with a narrative of governmental control designed to “‘railroad[] our rights’ and freedoms,” beginning with mask mandates.¹¹⁵ Finally, the morality

104. *Id.*

105. *Id.*

106. *Id.* at 41.

107. *Id.* at 9.

108. *Id.*

109. *See id.* at 67.

110. *Id.* at 34.

111. *Id.* at 33–35.

112. *Id.* at 36.

113. *Id.* at 13.

114. *Id.*

115. *Id.* at 13, 52.

and religion theme was linked with narratives that suggest either that God enlightened scientists, allowing them to discover the COVID-19 vaccine, or that the only effective vaccine was the Blood of Christ.¹¹⁶ Narratives often addressed multiple themes; for example, one merged the political and economic theme with the morality and religion theme, positing that Bill Gates was using the COVID-19 vaccine in his global depopulation plan and that the vaccine was associated with the “mark of the Beast.”¹¹⁷

Anti-vaccination advocates use certain strategies to make these narratives more visible, including taking advantage of public ignorance of vaccine ingredients and technologies to spread disinformation through individual accounts and “news” outlets,¹¹⁸ recycling preexisting vaccine myths and conspiracy theories that are adapted to COVID-19,¹¹⁹ and adapting vaccine-related headlines from legitimate news stories to fit the anti-vaccination agenda.¹²⁰

2. Research on Emotion and COVID-19 Vaccine Uptake

Some pre-COVID-19 research has assessed the use of empathy in promoting vaccine uptake.¹²¹ According to Bodelet et al., for instance, healthcare workers listed protecting patients as a pro-social reason for obtaining a flu vaccine, and “self-reported compassion” was a predictor for adopting pro-social behavior; emotion was “self-transcending,” and participants overcame their own emotions to focus on others.¹²²

As of late 2021, research concerning uptake of the COVID-19 vaccine is still minimal. Assessing the role of emotion in COVID-19 vaccine hesitancy, Chou and Budenz observed that people felt emotionally charged about vaccines before the pandemic, but that individual anecdotes were most influential in determining vaccine behaviors and “influence vaccine risk perceptions and intentions more strongly than statistical information.”¹²³ Accordingly, anti-vaccination groups attempted to “manipulate[] emotions to promote

116. *Id.* at 70–72.

117. *Id.* at 46.

118. *Id.* at 11.

119. *Id.*

120. *Id.* at 12.

121. See generally Céline Bodelet, Julien Bodelet, Caroline Landelle & Aurélie Gauchet, *Seasonal Flu Vaccination, a Matter of Emotion? An Experimental Study on Role of Compassion, Socioeconomic Status and Perceived Threat Among Healthcare Workers*, 36 *PSYCH. & HEALTH* 1461 (2020).

122. *Id.* at 1461–62.

123. Chou & Budenz, *supra* note 85, at 1719.

misinformation and conspiracy theories, sow confusion, and create division.”¹²⁴ Anti-vaccination Twitter accounts were more likely to express anger; analyses of anti-vaccination websites demonstrated that between 76 and 88 percent of websites leveraged emotional attacks or assertions, like vaccines violated civil liberties and had dangerous side effects.¹²⁵ The COVID-19 pandemic also had high emotional valence due to isolation, loss of loved ones, apprehension, financial difficulties, increasing fear, anxiety, anger, uncertainty, emotional detachment, and related attitudes such as racism and xenophobia.¹²⁶ These factors contributed to vaccine hesitancy and declines in vaccine uptake; “coupled with anti-vaccination rhetoric [they] may cause confusion, nervousness, apathy, and other emotions affecting vaccine decisions.”¹²⁷ Thus, vaccination education efforts should address emotions and present factual information.¹²⁸ Rather than using negative emotional appeals, for instance, it may be more effective to characterize the COVID-19 vaccine as a “concrete[,] actionable strategy to reduce COVID-19 risk [and] . . . increase self-efficacy.”¹²⁹

This same perspective is advocated in a widely-discussed essay published in the spring of 2021.¹³⁰ Larson and Broniatowski’s editorial, *Volatility of Vaccine Confidence*,¹³¹ discussed yo-yoing public willingness to get the COVID-19 vaccine, exemplifying “emotional epidemiology.”¹³² Vaccine uptake rates initially appeared high following news reports of the Pfizer vaccine’s efficacy, but then decreased, potentially reflecting public disappointment or despair after news of additional infection waves, new variants, and potential side effects.¹³³ Larson and Broniatowski distinguished between two different unvaccinated populations, the vaccine-hesitant and the “anti-vaxx.”¹³⁴ They asserted that confusing the two could have dire consequences for public health education and vaccine uptake because

124. *Id.*

125. *Id.*

126. *Id.* at 1718.

127. *Id.* at 1719.

128. *Id.*

129. *Id.*

130. See Heidi J. Larson & David A. Broniatowski, *Volatility of Vaccine Confidence*, 371 *SCI.* 1289, 1289 (2021).

131. See *id.*

132. *Id.*

133. See *id.*

134. *Id.*

“being hesitant or undecided in the face of a possible safety risk is not being anti-vaccine.”¹³⁵

Vaccine hesitant individuals could lack knowledge about the vaccine, be anxious about vaccine risks, and be fearful because of “historic individual or community experiences.”¹³⁶ They may seek information about vaccines, and thus are vulnerable to manipulation by anti-vaccine individuals and organizations.¹³⁷ They could also be unfairly labeled as anti-vaxx, even by individuals who can encourage vaccine uptake, such as healthcare workers.¹³⁸

Anti-vaccine groups, on the other hand, are entirely committed to opposing vaccines and use three key messages: COVID-19 is not dangerous, the vaccine is dangerous, and pro-vaccine individuals and organizations are untrustworthy.¹³⁹ These individuals “typically represent well-organized entities with explicit agendas, ranging from financial interests (such as selling alternative cures) to ideological or political commitments (such as opposing specific legislation).”¹⁴⁰ Larson and Broniatowski advise using empathy when discussing the COVID-19 vaccine with hesitant individuals to avoid stigma, including “listening to their concerns and helping them contextualize information,” nonjudgmentally acknowledging reasons why someone may be hesitant to vaccinate, and using individuals’ well-established relationships with businesses like salons and healthcare services to increase confidence and endorse vaccination.¹⁴¹

In summary, vaccine advocates, vaccine-hesitant individuals, and vaccine opponents all have different relationships to “empathy” and different empathic needs or agendas.

Vaccine advocates were told to use empathy when communicating with hesitant individuals trying to make good healthcare decisions for themselves and others; these individuals needed education and patience when trying to disentangle controversy, misinformation, trial data, safety anxieties, and historical distrust of medical providers and institutions. Here, “empathy” refers to particular communication practices like patience, a nonjudgmental orientation, and reflective listening—not a process whereby one attempts to take another’s perspective or imagine another’s experience. The strategy reflected advice for creating a new

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

non-threatening narrative about COVID-19 that would be informative to vaccine-hesitant individuals. The approach utilized empathy to change public health behaviors instead of fear, in accordance with research findings. But the strategy was also deeply ironic since it used empathy as a purely instrumental way of talking to unvaccinated individuals, some of whom supporters might otherwise dislike—potentially even viewing them as a group of perpetrators responsible for rising COVID-19 infection rates.

In contrast, anti-vaccine institutions and individuals built fearful COVID-19 vaccine narratives, positioning themselves as the bastion guarding the United States against dangerous medical products, coercive policies, and other threats to individual freedoms and rights. They used empathy to build respect for their perspectives, rehabilitate their moral identity, and gain a public presence. To do so, they weaponized empathy, arguing that they were victims of bias or discrimination, or that they have a right to their anti-vaccine beliefs *and* to impose their perspectives on others through anti-vaccination policies.

Understanding these different orientations to empathy helps facilitate effective communication practices and realistic health policies.

IV. ANALYZING EMPATHY IN COVID-19 VACCINE MESSAGING

The following sections will analyze empathy themes in COVID-19 vaccine messaging from two primary information sources. The first source is representative of social media messages and memes from pro-vaccine sources like the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), and private accounts of anti- and pro-vaccine individuals and organizations. The second source is signs and speeches from the “Rally for Medical Freedom” held on June 10, 2021, at Indiana University (IU) in Bloomington, Indiana, to protest the university’s vaccine “mandate.” This rally was one of the earliest efforts opposing a vaccine mandate.¹⁴² These protests culminated in a lawsuit brought by eight IU students in the US District Court for the Northern District of Indiana,¹⁴³ claiming that IU’s policy infringed on bodily autonomy and

142. See David Williams, *IU Bloomington Students, Staff Protest COVID-19 Vaccination Mandate*, WISHTV, <https://www.wishtv.com/news/vaccinecentral/iu-bloomington-students-staff-protest-covid-19-vaccination-mandate/> [<https://perma.cc/CNK4-WJTU>] (June 10, 2021, 7:01 PM).

143. *Klaassen v. Trs. of Ind. Univ.*, No. 1:21-CV-238 DRL, 2021 U.S. Dist. LEXIS 133300, at *1, *2 (N.D. Ind. July 18, 2021).

privacy; this suit was ultimately rejected by the United States Supreme Court.¹⁴⁴

Empathy had a visible presence in both pro- and anti-vaccine messaging in the first several months following approval of the COVID-19 vaccine, from public health statements advocating nonjudgmental conversations to anti-vaccine messaging that deployed empathy to recast the COVID-19 vaccine from a public health issue into one about individual rights. Both groups created COVID-19 vaccine narratives that recycled elements of past stories related to other vaccinations, educational campaigns, and unethical experiments.

A. *Empathy and Pro-Vaccination and Media Messages*

Several government agencies, public officials, health organizations, and news media organizations engaged in manipulative empathy over social media, posting messages supporting an empathic attitude towards the COVID-19 vaccine.¹⁴⁵ The CDC and the WHO were among the most powerful and visible sources of pro-vaccine messaging on social media.¹⁴⁶ The CDC's "COVID-19 Vaccine Conversations" infographic series on Twitter explicitly invoked empathy; one tweet advised users to "help friends and family by listening with empathy and identifying the cause of their concerns" while refraining from any judgment.¹⁴⁷ This tweet positioned empathy as an educational strategy and normalized vaccine hesitancy.¹⁴⁸ Public figures and news media stations tweeted similar messages, emphasized related emotions like "compassion" and "understanding," quoted experts who stressed these emotions' importance, and often profiled someone who got the vaccination.¹⁴⁹ Health care providers' social media messaging followed a similar strategy; one tweet from the Centene Center for Health Transformation, a "community-industry-academic partnership," mentioned "3 Key Tactics to Convince Vaccine Skeptics," which included empathy.¹⁵⁰

144. Adam Liptak, *The Supreme Court Won't Block Indiana University's Vaccine Mandate.*, N.Y. TIMES (Aug. 12, 2021), <https://www.nytimes.com/2021/08/12/us/supreme-court-indiana-university-covid-vaccine-mandate.html> [<https://perma.cc/54ZU-LCSR>].

145. See, e.g., *infra* app. I, at Figures 1, 2 & 3.

146. See Ayesha Anwar, Meryem Malik, Vaneeza Raees & Anjum Anwar, *Role of Mass Media and Public Health Communications in the COVID-19 Pandemic*, CUREUS, Sept. 14, 2020, at 1.

147. See *infra* app. I, at Figure 1.

148. See *infra* app. I, at Figure 1.

149. See *infra* app. I, at Figure 2.

150. See *infra* app. I, at Figure 3.

Pro-vaccine messages from individuals' private accounts were less likely to advocate empathy.¹⁵¹ Typical vaccine-supportive posts discussed why refusing the COVID-19 vaccine was antisocial and characterized vaccination as a communal, pro-social act, rather than an individual healthcare decision.¹⁵² Often, users blamed unvaccinated individuals or implied that they were ridiculous, stupid, or selfish.¹⁵³ One meme picturing an adult's hands tying clown shoes stated, "Before you judge anti-vaxxers, walk a mile in their shoes."¹⁵⁴ This meme mocked empathic perspective-taking, inviting users to identify with pro-vaccine messages while simultaneously what the author of the meme saw as a clownish viewpoint.¹⁵⁵ However, some posts did not use humor; one Facebook user posted that people who refused vaccines were "too stupid and too lacking in human empathy to wear masks and social distance."¹⁵⁶ Another Facebook user called university students contesting a vaccine mandate "pro-epidemics."¹⁵⁷

These examples illustrate that pro-COVID-19 vaccine messaging from public health, government, and news media organizations was not so much a call to understand, identify with, or evaluate the perspective of a vaccine-hesitant individual; rather, it was a request to gatekeep (manage or exclude) negative emotions, use a particular communication style, and educate others. This goal used manipulative empathy, albeit in a socially sanctioned way, to create a safe space for vaccine conversations. Public health authorities' messages in particular positioned vaccine supporters as members of a communal public with responsibilities to and for one another, who could utilize interpersonal or parasocial relationships to reach particular pro-social goals.¹⁵⁸ These messages created a twofold narrative: a) getting vaccinated was the mainstream strategy for safeguarding one's self and others, and b) the preferred way to increase vaccine uptake was for vaccine supporters to converse with and educate vaccine-hesitant individuals.¹⁵⁹ Messaging that instructed

151. See Dave Stopera, *18 Tweets that Prove How Incredibly Dumb Anti-Vaxxers Really Are*, BUZZFEED (Feb. 25, 2019), <https://www.buzzfeed.com/daves4/anti-vaxxer-logic> [<https://perma.cc/K4KT-N7A8>].

152. See *infra* app. I, at Figures 5, 6 & 7.

153. See Stopera, *supra* note 151.

154. See *infra* app. I, at Figure 4.

155. See *infra* app. I, at Figure 4.

156. See *infra* app. I, at Figures 5 & 6.

157. See *infra* app. I, at Figure 7.

158. See Kauppinen, *supra* note 18, at 103–04; Amanda C. Cohn, Barbara E. Mahon & Rochelle P. Walensky, *One Year of COVID-19 Vaccines: A Shot of Hope, a Dose of Reality*, 327 JAMA NETWORK 119, 119–20 (2022).

159. See Cohn et al., *supra* note 158.

vaccine supporters on persuasive communication styles were designed to help them get through a difficult empathy experience, reflecting the assumption that they may find it hard to empathize or speak with individuals who were not yet vaccinated.¹⁶⁰

Representative posts from private individuals supporting the COVID-19 vaccine, however, suggested resistance to these strategies.¹⁶¹ Despite the potential benefits of employing patience and a nonjudgmental attitude, supporters readily disagreed with, blamed, and attributed negative qualities to vaccine opponents.¹⁶²

These reactions suggest that COVID-19 conversations were considerably more complex than messages acknowledged. Messages did not address how vaccine supporters should handle continued disagreement, or what to do if they felt that anti-vaccine rationales were persuasive.¹⁶³ Moreover, these messaging strategies did not consider how interpersonal affinity or preexisting relationships could derail the persuasive process.¹⁶⁴ Take the example of a vaccine supporter who converses with a beloved relative who then refuses the COVID-19 vaccine. The vaccine supporter could respond empathically by accommodating that relative's views, differentiating that person from others who refuse vaccination, and excluding them from blame or stigma. In deciding to "excuse" her relative because of the kinship, the vaccine supporter resolves the *intrapersonal* discomfort, but in a manner that ignores the communal, *interpersonal* problem of individuals who refuse vaccination. If she were instead attempting to persuade a work colleague to get the COVID-19 vaccine, the vaccine supporter might have a different, more judgmental reaction because she is not as close to her colleague.¹⁶⁵ These complex, unforeseen interactions make conversations a less constructive policy tool; for them to be most effective, vaccine supporters should be equally invested in every individual regardless of kinship and emotional distance—but that is an unrealistic expectation.

Empathic pro-vaccine social media messaging also positioned vaccine supporters as "good guys" who were instructed not to moralize

160. See *infra* app. I, at Figure 1.

161. See *infra* app. I, at Figures 5 & 7.

162. See *infra* app. I, at Figures 5 & 7.

163. See FACEBOOK, YALE INST. FOR GLOB. HEALTH & UNICEF, VACCINE MESSAGING GUIDE 4 (2020), https://medicine.yale.edu/yigh/resources/Covid-19_Guide_v3_416091_40906_v1.pdf [<https://perma.cc/WH7C-L59U>].

164. See Krystal Jagoo, *Differing Opinions on the COVID-19 Vaccine and Our Relationships*, VERYWELL MIND (Sept. 15, 2021), <https://www.verywellmind.com/covid-19-vaccine-and-our-relationships-5201171> [<https://perma.cc/9XUA-AU23>].

165. See Kauppinen, *supra* note 18, at 106–07.

(or at least advised to communicate from a non-moralizing position).¹⁶⁶ Vaccine-hesitant individuals were cast as victims of bad information, who could be further hurt through stigma or aggression.¹⁶⁷ They were tragic figures who could either save themselves and others by undergoing vaccination or doom themselves through refusal, casualties of their flawed reasoning.¹⁶⁸ This characterization gave vaccine supporters a discharge valve for their personal distress after unsuccessful conversations. A polite, non-adversarial vaccine supporter who did not persuade a hesitant individual to become vaccinated could walk away with a clean conscience knowing she did everything possible—and discharge any empathic distress by blaming the vaccine refuser.

Critically, these vaccine refusal interactions could have great emotional, educational, and persuasive resonance when turned into exemplary narratives instead of interpersonal encounters.¹⁶⁹ Some messages, usually news media stories featuring a person who experienced vaccine-preventable COVID-19 harms, painted a vaccine-hesitant individual as a tragic figure to persuade unvaccinated individuals that they could experience similar consequences and should get the shot.¹⁷⁰ For example, one *CNN* story headlined, “Families Mourn the Loss of Loved Ones Who Hesitated on the COVID-19 Vaccine,” was a triple whammy, profiling three individuals who regretted not getting the vaccine earlier.¹⁷¹ The story first discussed Mike Lewis, whose fifty-eight-year-old father died four days after being diagnosed with COVID-19; he had been working multiple jobs and did not prioritize getting the shot.¹⁷² This loss prompted Lewis and his wife to get vaccinated.¹⁷³ Second to be profiled was Darryl Preissler, sixty-three years old, who did not get vaccinated

166. See *How to Talk About COVID-19 Vaccines with Friends and Family*, CTFS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/talk-about-vaccines.html> [<https://perma.cc/HC7D-Q3NR>] (Apr. 27, 2021); Elizabeth Cohen, *The US Eliminated Measles in 2000. The Current Outbreak Could Change That*, *CNN*, <https://www.cnn.com/2019/08/28/health/us-measles-elimination-status-in-jeopardy/index.html> [<https://perma.cc/3N4X-7X23>] (Sept. 3, 2019, 2:29 PM).

167. See Huizen, *supra* note 4.

168. See FACEBOOK ET AL., *supra* note 163, at 6.

169. See Keen, *supra* note 41.

170. See, e.g., Ashley Killough & Ed Lavandera, *Families Mourn the Loss of Loved Ones Who Hesitated on the COVID-19 Vaccine*, *CNN*, <https://www.cnn.com/2021/06/16/us/unvaccinated-covid-deaths-loved-ones/index.html> [<https://perma.cc/UTY8-UY6X>] (June 16, 2021, 11:09 PM).

171. *Id.*

172. *Id.*

173. *Id.*

because he was on immunosuppressants; after he died following almost one month in the hospital, his wife, a healthcare worker, regretted not scheduling a vaccination appointment for him.¹⁷⁴ The final profile was of Josh Garza, who initially did not take COVID-19 seriously and spent almost four months in the hospital after receiving a double lung transplant; Garza was angry with himself, but grateful to be alive to share his story.¹⁷⁵

These profiles positioned readers—particularly unvaccinated ones—on the sidelines of others' suffering, inviting them to empathize with people who, like them, may have delayed or refused vaccination.¹⁷⁶ These stories also give vaccine supporters another type of informational tool to deploy in interpersonal interactions, conveying the potential consequences of remaining unvaccinated without imposing blame.¹⁷⁷

Critically, the empathic goal of these pro-vaccine messages was *not* to foster the alignment in perspective that is conventionally empathy's most desirable outcome.¹⁷⁸ Instead, these messages were designed to encourage patience and non-adversarial knowledge transfer—outcomes that, while well-intentioned, *preserved* and *reinforced* interpersonal distance between the vaccine supporter and the vaccine-hesitant individual.¹⁷⁹ Reminders to be patient and non-adversarial strengthened the assumption that it was difficult for vaccine supporters to empathize with individuals who remain unvaccinated. These conceptions of empathy became strategies for defusing other antisocial emotions, like embarrassment or shame, that could undermine persuasion. A patient, kind, and informative vaccine supporter would be far less threatening to another's personal autonomy compared to someone who is combative and judgmental. Such a person could provide accurate information to support others'

174. *Id.*

175. *Id.* Another type of story utilizes an expert to comment on these experiences of suffering. For example, the Huffington Post published a story that featured Alabama doctor Brytney Cobia, who had previously released a Facebook statement describing how COVID patients beg for the vaccine just before they are intubated. Josephine Harvey, *'It's Too Late': Doctor Says Dying COVID-19 Patients Are Begging for Vaccines*, HUFFPOST, https://www.huffpost.com/entry/brytney-cobia-doctor-covid-vaccinessage_n_60f8b4cae4b0158a5edcedde?utm_source=Sailthru&utm_medium=email&utm_campaign=Morning%20Email%207-22-21&utm_term=us-morning-email [<https://perma.cc/AVN3-VP3Q>] (July 22, 2021). Dr. Cobia detailed how patients cried, claimed they thought the virus was a hoax, and didn't think they would get sick. *Id.*

176. See Killough & Lavandera, *supra* note 170; Harvey, *supra* note 175.

177. See Harvey, *supra* note 175.

178. See Kauppinen, *supra* note 18, at 119–20.

179. See FACEBOOK ET AL., *supra* note 163, at 4.

vaccine decision-making thus diminishing confusion, powerlessness, and perceived loss of control.

These messaging strategies also placed vaccine supporters on the scientific (and moral) high ground; they were the “teachers” deputized to educate unvaccinated individuals (who were vaccine-hesitant or vaccine opponents).¹⁸⁰ Unvaccinated individuals were assigned the “student” role, suggesting that they were selfish, stupid, or backwards.¹⁸¹ The teacher-student relation had obvious power disparities; the term “empathy” was more palatable than “educate” because it implied equality and dialogue, not disparity and lecturing. But given their potential disagreement about the COVID-19 vaccination, these groups were not natural, empathic targets for one another. Ironically, this strategic positioning also put vaccine-hesitant or oppositional individuals on the defensive—just like a mandate.

B. Empathy and Anti-Vaccination Social Media Messages

In contrast to vaccine supporters, vaccine opponents cast themselves as victims, or potential victims, vulnerable to discrimination, experimentation, and loss of freedom.¹⁸² Vaccine opponents painted themselves as the underdog characters who battled corrupt, controlling, and hostile individuals or institutions in David versus Goliath encounters.¹⁸³ This messaging contrasted with vaccine-supportive narratives, in which all citizens were supposed to band together to battle the virus—an army of Davids confronting a giant viral threat.¹⁸⁴ It more closely resembled private posters’ messages that opposed supporters and opponents.¹⁸⁵

Vaccine opponents alleged that pro-vaccine narratives unfairly cast them as ignorant or antisocial, while lauding vaccine supporters

180. See Tonya Russell, *How to Talk to Anti-Vaxxers: Advice from the Experts*, VERYWELL FAM., <https://www.verywellfamily.com/how-to-talk-to-friends-who-are-against-vaccines-5093658> [<https://perma.cc/BWU2-NQDP>] (Oct. 13, 2021).

181. See *infra* app. I, at Figure 6.

182. See *infra* app. I, pt. II, at Figures 16, 19, 26 & 30.

183. See *infra* app. I, pt. II, at Figures 14 & 31. The classic underdog story of David versus Goliath comes from 1 Samuel 17 in the New International Version of the Hebrew Bible. See 1 *Samuel* 17:45–50. King Saul and his Israelite army were fighting the Philistines in a valley. *Id.* Goliath, a Philistine giant, stepped forward twice a day for forty days and dared the Israelites to send out a warrior to face him in single combat. *Id.* King Saul was afraid to fight Goliath, but a boy named David obtained the King’s permission to fight the giant. *Id.* While Goliath was wearing armor and carrying a javelin; David had only a staff, a sling, and stones. *Id.* After telling Goliath that God would give him the power to kill him, David fired a stone from his sling that hit Goliath in the forehead; after he fell, David cut off his head. *Id.*

184. Cf. *infra* app. I, at Figure 1.

185. Cf. *infra* app. I, at Figure 6.

as intelligent heroes, rescuers, or missionaries.¹⁸⁶ Deploying the underdog strategy allowed vaccine opponents to counter these “heroic supporter” themes, explaining that they, too, were good people with moral identities who deserved empathy.¹⁸⁷ If vaccine opponents were victims, after all, they were unlikely to be thoughtless and cruel humans who intentionally spread COVID-19.

Finally, opponents designed narratives to achieve several other goals: discrediting scientific research and drug trials,¹⁸⁸ suggesting that industry and government were corrupt,¹⁸⁹ and countering mainstream pro-vaccine narratives.¹⁹⁰ But the victim narrative could also trap vaccine opponents in a catch-22. Individuals claiming victim status usually do so because they feel powerless and need external assistance to exercise their rights, hold others accountable, and regain personal agency.¹⁹¹ Vaccine opponents, however, claimed victim status to recast COVID-19 as an issue bearing upon individual freedoms instead of public health; their narratives portrayed them as strong and savvy, not helpless or powerless.¹⁹²

Anti-vaccine messaging utilized several themes to build empathy, including that: the COVID-19 vaccine was not based on sound science and was harmful to humans (particularly children),¹⁹³ vaccines constituted unethical experimentation,¹⁹⁴ COVID-19 vaccine disputes were divisive to relationships,¹⁹⁵ vaccinated individuals were foolish or even bestial,¹⁹⁶ and vaccine regulations were threats to privacy and autonomy.¹⁹⁷

1. COVID-19 Vaccines Were Not Based on Sound Science and Were Harmful

Perhaps the most prominent anti-vaccine theme was that COVID-19 vaccine science was flawed, or that science was an

186. *Cf. infra* app. I, at Figure 4.

187. *See infra* app. I, pt. II, at Figure 17.

188. *See infra* app. I, pt. II, at Figure 24.

189. *See infra* app. I, pt. II, at Figure 28.

190. *See infra* app. I, pt. II, at Figure 32.

191. For more information on the victim mentality, see Arlin Cuncic, *What Is a Victim Mentality?*, VERYWELL MIND, <https://www.verywellmind.com/what-is-a-victim-mentality-5120615> [<https://perma.cc/96YH-6TU4>] (May 28, 2021).

192. *See infra* app. I, pt. II, at Figure 8.

193. *See infra* app. I, pt. II, at Figure 32.

194. *See infra* app. I, pt. II, at Figure 9.

195. *See infra* app. I, at Figure 8.

196. *See infra* app. I, pt. II, at Figure 13.

197. *See infra* app. I, pt. II, at Figure 15.

untrustworthy process. Ironically, these posts and memes often claimed to be based on “research,” implicitly endorsing the scientific method. One meme represented itself as a COVID-19 fact-checking site that proffered mock health guidance that included avoiding fresh air and sunlight, trapping bacteria and germs on the face, watching the news, “[g]et[ting] injected with unknown chemicals,” “[i]nstill[ing] a sense of fear and anxiety in your children,” and “[a]ttack[ing] and insult[ing] anyone who disagrees with you.”¹⁹⁸ Another meme portrayed “germ theory” as a paranoid masked woman grocery shopping with a bedsheet lining her cart and a clear veterinary cone over her head.¹⁹⁹ A third meme deemed vaccine advocacy as “peer pressure[]” and compared it to illegal drug awareness campaigns promoting “experimental drugs.”²⁰⁰ These messages sought to undermine mainstream information about the COVID-19 vaccine research or science, and build affinity with other vaccine opponents through pity for misinformed vaccinated individuals.

Other memes used technical language to counter scientific research on its own terms. One meme took issue with applying terms like “cure,” “data,” “research,” and “science” to the COVID-19 context, stating that cures did not kill, adverse event data was being censored, contradictory information was being deleted, and individuals could not question “science.”²⁰¹ These posts often used scientific terminology and discussed scientific, experimental, or clinical processes.²⁰² Such messages varied in their anti-science extremity. On one end of the spectrum were messages from users who opposed *coerced* vaccination but claimed to not be anti-vaxx or anti-science.²⁰³ On the other end were messages opposing vaccines or scientific conclusions in general, or promoting conspiracy theories suggesting the COVID-19 vaccine was poison or a population control technique.²⁰⁴ One meme listed the “five stages of vaccine awareness,” starting with “[v]accines are safe and effective” and degenerating into the assertion that “[v]accines are silence weapons for human farming: killing, sterilizing, mind control & disease creation for fear and income.”²⁰⁵ Another meme featured a gruesome painted image of naked men and women impaled on sinister hypodermic needles like a Christian crucifixion scene, captioned, “How

198. See *infra* app. I, pt. II, at Figure 21.

199.. See *infra* app. I, pt. II, at Figure 22.

200. See *infra* app. I, pt. II, at Figure 9.

201. See *infra* app. I, pt. II, at Figure 24.

202. See *infra* app. I, pt. II, at Figure 7.

203. See *infra* app. I, pt. II, at Figure 7.

204. See *infra* app. I, pt. II, at Figures 27 & 28.

205. See *infra* app. I, pt. II, at Figure 25.

do you cull 7 billion people? . . . Convince them to beg for the poison that kills them.”²⁰⁶ These anti-vaccine messages were fostered to scare or disgust unvaccinated users, counter-narratives that vaccinated supporters were more knowledgeable or powerful, and reinforce anti-vaccine adherence among the like-minded.

To undermine COVID-19 vaccine science, opponents argued that the vaccine was harmful or poisonous, thus creating what they termed a “need” to protect the unvaccinated. Here, memes and posts constructed anti-vaccine advocates as heroes who could save potential “victims” from the dangerous vaccine and its supporters—and both figures could easily trigger empathic reactions. One Facebook meme stated, “I am happy to say no one in my immediate family is taking the poison [smiley face]. Share if you can say the same if not try harder lives depend on it!! [sic]”²⁰⁷

2. COVID-19 Vaccines Were Unethical Experimentation

A related theme was the contention that the COVID-19 vaccine constituted unethical experimentation—largely premised on the vaccine’s emergency use authorization approval from the FDA (it has since received full FDA approval).²⁰⁸

Experimentation messaging often focused on children, a group especially vulnerable to manipulation and exploitation, and therefore likely to inspire empathy.²⁰⁹ Posts cast vaccine supporters who endorsed child vaccination as heartless monsters who would harm innocent youth; one meme featured a young girl holding hands with an older female and cautioned that the COVID-19 vaccine was “EXPERIMENTAL and unapproved” and that recommending children be vaccinated was “unethical, unscientific, immoral, and WRONG.”²¹⁰

Other—and more extreme—memes and private posts compared the COVID-19 vaccine to genocide or the Holocaust.²¹¹ These messages warned of discrimination towards and punishment of unvaccinated individuals, invoking situations where being made “other” had

206. See *infra* app. I, pt. II, at Figure 26.

207. See *infra* app. I, pt. II, at Figure 29.

208. See *Emergency Use Authorization for Vaccines Explained*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained> [<https://perma.cc/2MTJ-EJ8Q>] (Nov. 20, 2020); Press Release, FDA Approves First COVID-19 Vaccine (Aug. 23, 2021), <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine> [<https://perma.cc/D4X5-5VVE>].

209. See *infra* app. I, pt. II, at Figure 32.

210. See *infra* app. I, pt. II, at Figure 32.

211. See *infra* app. I, pt. II, at Figure 31.

unthinkable consequences, like Nazi experiments.²¹² Mask mandates and mitigation testing were transformed from public health measures into sinister steps toward government control and power at the expense of citizens' personal autonomy and dignity.²¹³ These allegations were intended to not only trigger empathy, but to capture users' attention by invoking the unthinkable and casting vaccine opponents either as experimentation victims or as individuals bearing witness to crimes against humanity. Some memes exploited historically marginalized groups' suffering and discrimination (here, Jewish and Black people).²¹⁴ One meme implied that mask wearers were slaves; it featured a photoshopped image of a medical mask attached to a flagpole with the header, "THE FLAG OF SLAVERY."²¹⁵ Another drew parallels between vaccine opposition and resistance efforts during the Holocaust, including hiding Jewish people.²¹⁶

3. COVID-19 Vaccines Were Relationally Divisive

Another theme particularly relevant to empathy was that the COVID-19 vaccine caused mistrust and divisive interpersonal relationships. Anti-vaccine messaging advised users that friends and family were the most trusted information sources about COVID-19 vaccine safety, not anonymous strangers or corporations—countering pro-vaccine "listen with empathy" messages from the WHO and CDC.²¹⁷ One Facebook post asks, "Someone is lying. Is it your friends and family who truly care about you and have taken the time to do extensive research? Or is it big p[harm]a who stands to make billions."²¹⁸ Other messages advised users how to remain polite and civil in a vaccine-related conflict.²¹⁹ One post featured a sign instructing individuals on how to "decline vaccine service," instructing users, "DO NOT 'flatly refuse' a vaccine. Otherwise, you may be considered belligerent. Instead, you can politely decline the service BY respectfully seeking more safety information"²²⁰

Some anti-vaccine messages went much further, suggesting that users terminate relationships with vaccinated individuals, or that

212. See *infra* app. I, pt. II, at Figure 31.

213. See *infra* app. I, pt. II, at Figure 33.

214. See *infra* app. I, pt. II, at Figures 31 & 33.

215. See *infra* app. I, pt. II, at Figure 33.

216. See *infra* app. I, pt. II, at Figure 31.

217. Compare *infra* app. I, pt. II, at Figure 7, with *infra* app. I, at Figure 1.

218. See *infra* app. I, pt. II, at Figure 7.

219. See *infra* app. I, pt. II, at Figure 8.

220. See *infra* app. I, pt. II, at Figure 8.

such people were not worth the interpersonal investment—mirroring vaccine supporters who advocated for denying unvaccinated adults’ empathy.²²¹ Here, the choice to get a COVID-19 vaccine was portrayed not as a pro-social, thoughtful decision, but a choice to intentionally harm oneself—with the implication that adults who self-harm do not deserve assistance.²²² One Facebook poster reasoned that vaccinated adults did not merit compassion because they “choose[] to get jabbed by these MORE THAN OBVIOUS genocidal concoctions.”²²³ Another Facebook post stated that vaccinated individuals did not deserve outreach: “Do as you wish, but personally, I will expend zero time or energy reaching out to the already CV vaccinated.”²²⁴ Still, other messages asserted that vaccinated individuals were not merely fools, but animals undeserving of human companionship or empathy—for example, that they “have the intelligence of a lab rat,”²²⁵ were transformed into animals by vaccine-mutated DNA,²²⁶ or were like zombies.²²⁷

4. COVID-19 Vaccine Policies Violated Privacy and Autonomy

The themes of privacy and “medical freedom” were ubiquitous; for vaccine opponents, refusal was a right, and measures to determine who was vaccinated were violating personal privacy. Anti-vaccine messaging claimed that inquiries about vaccination status were intrusive and unnecessary.²²⁸

Many messages merely expressed defiance; one altered the “Don’t Tread on Me” slogan from the American Revolution Gadsden flag, now identified with the gun rights movement, to read, “Don’t Vaccinate Me.”²²⁹ Another announced that its author was “unmasked, unmuzzled, unvaccinated, unafraid.”²³⁰

The term “medical freedom” was synonymous with personal autonomy but had more flag-waving connotations. Medical freedom was simultaneously a God-given, “natural” individual trait or right,

221. Compare *infra* app. I, pt. II, at Figure 13, with *infra* app. I, at Figure 6.

222. See *infra* app. I, pt. II, at Figure 10.

223. See *infra* app. I, pt. II, at Figure 10.

224. See *infra* app. I, pt. II, at Figure 11.

225. See *infra* app. I, pt. II, at Figure 12.

226. See *infra* app. I, pt. II, at Figure 13.

227. See *infra* app. I, pt. II, at Figure 14.

228. See *infra* app. I, pt. II, at Figure 15.

229. See *infra* app. I, pt. II, at Figure 19.

230. See *infra* app. I, pt. II, at Figure 20.

and something for which one had to fight.²³¹ These messages remained silent on others' rights, government powers, and obligations to act for the public welfare, or exactly how or which freedoms were being threatened or eliminated.²³² For instance, one meme featured a dramatic black-and-white image of a syringe with the caption, "I don't need to justify my refusal[.] You need to prove your right to force me."²³³ This example reduced the COVID-19 controversy from the global level (for the common good) to the local level, requiring vaccination supporters to justify public health regulation and ignoring the robust body of case law allowing the state to act to preserve public safety.²³⁴

Other messages attacked the way supporters referred to vaccine opposition, reframing these choices in more positive terms.²³⁵ For example, one post took issue with the term vaccine refusal: "People who don't want the vaccine aren't 'refusing' it. . . . You can decline without refusing. . . . Refus[ing] is a manipulative term, loaded with unfair moral pressure."²³⁶ Those who "refuse" something useful—even life-saving—may be undeserving of empathy.

In summary, these memes and posts constructed the choice of whether to get the COVID-19 vaccine as an individual "right," not a collective issue. Citizens had responsibilities to protect themselves, not other strangers. Vaccinated individuals were characterized as everything from sheep deserving pity, or willfully moronic fools engaging in self-harm, to human rights criminals on par with Nazis or slave owners. None of these groups, of course, had moral authority or merited empathic engagement.

C. Messaging at the Indiana University "Rally for Medical Freedom"

The second source of COVID-19 messaging consists of signs and speeches from the "Rally for Medical Freedom" held on June 10, 2021, at IU, to protest the university's vaccine "mandate." This case study illustrates how easily opponents' messages could be adapted to protest a particular policy—in this case, IU's vaccine mandate for students, faculty, and staff.

Because attendees gathered in opposition to a specific institutional policy, rally messaging starkly illustrated how vaccine

231. See *infra* app. I, pt. II, at Figure 16.

232. See, e.g., *infra* app. I, pt. II, at Figure 16.

233. See *infra* app. I, pt. II, at Figure 18.

234. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11, 24–25 (1905).

235. See *infra* app. I, pt. II, at Figure 17.

236. See *infra* app. I, pt. II, at Figure 17.

supporters and opponents strategically used empathy in COVID-19 policy-making.²³⁷ While vaccine supporters urge empathic, educational conversations in lieu of mandates and cast vaccination as a benevolent act, opponents usually address *why* the COVID-19 vaccine was scientifically, ethically, morally, and religiously untenable.²³⁸

On May 21, 2021, IU announced that students, faculty, and staff would be required to be vaccinated and upload proof to an online university website.²³⁹ However, after Indiana Attorney General Todd Rokita issued an advisory opinion stating that the mandate violated a new state law banning “vaccine passports,” IU, as a state institution, had to retract its requirement that individuals provide proof of vaccination, instituting other incentives to encourage reporting in its place.²⁴⁰ The June 10th rally was organized by groups such as the Children’s Health Defense and IU Family for Choice, Not Mandates, and also attracted a presence from advocates for other movements, such as anti-abortion activists.²⁴¹

Signs at the IU rally mentioned a variety of slogans that echoed themes of danger, experimentation, and marginalization evident in anti-vaccine social messaging, including the following:

“It’s mutating into medical dictatorship[.]”

“I am not IU’s \$cience Experiment[.]”

“Religious and Medical Freedom[;] Rescind all Mandates[.]”

“I’m not a lab rat[.]”

“Stop the hate in the vaccine debate[.]”

“Medical Segregation [with an X through it]”

“My body, my choice.”

“Fraudci & I.U. Lie.”

“Not anti-vax[x] I just don’t want my kid to be a part of the experiment[.]”

“Tyranny disguised as safety[;] coercion is NOT consent[.]”

237. Compare *infra* app. I, at Figures 1, 2 & 3, with *infra* app. II, at Figures 34 & 40.

238. Compare *infra* app. I, at Figures 1, 2 & 3, with *infra* app. II, at Figures 34 & 40.

239. Press Release, Indiana Univ., COVID-19 Vaccine Will Be Required for All at Indiana University (May 21, 2021), <https://news.iu.edu/stories/2021/05/iu/releases/21-covid-19-vaccine-to-be-required-at-indiana-university.html> [<https://perma.cc/4AFP-RTEJ>].

240. Arika Herron, *Responding to Criticism, IU Still Mandating COVID-19 Vaccine but Won’t Require Proof*, INDYSTAR., [<https://perma.cc/Z5MZ-A5AB>] (June 1, 2021, 1:36 PM).

241. See Emily Cox, *Rally for Medical Freedom Opposes Indiana University’s Vaccine Mandate*, HERALD-TIMES (June 11, 2021, 9:29 AM), <https://www.heraldtimesonline.com/story/news/local/2021/06/11/rally-held-call-iu-cancel-covid-vaccine-mandate/7644954002/> [<https://perma.cc/8JPM-KAB4>].

“Vaccine mandates create medical apartheid[;] No thank you!”

“Remember the Nuremberg Code” (held up by a young child)[.]²⁴²

Empathy played a role in several interconnecting narratives that rally speakers used. First, they argued that science was untrustworthy because data could be manipulated or hidden, and scientific studies or vaccine trials were inconclusive.²⁴³ Second, they asserted that pro-vaccine individuals and organizations (like IU) used data deceptively and were untrustworthy; asserting that Big Pharma and other organizations paid them off.²⁴⁴ Third, speakers claimed that vaccines were harmful and should be resisted.²⁴⁵ Instead, they urged people to put their trust in core values such as Christianity, personal autonomy, freedom, and liberty.²⁴⁶ As in other messaging, vaccine supporters who pressured others to get the COVID-19 vaccine merited scorn, whereas their unvaccinated victims were wholly deserving of empathic engagement and support.²⁴⁷

1. Untrustworthy Science

Many signs and speeches were devoted to discrediting the science and technology that had enabled experts to quickly produce the COVID-19 vaccine.²⁴⁸

Although she was introduced as having a background in radio and marketing, Ann Dorris president of IU Family for Choice Not Mandates, claimed to “have a very strong science background”; she claimed that “only the strength of the correlation [] shows that a specific set of data can most likely be true. . . . There is no way to prove anything in this world.”²⁴⁹ Dorris alleged that scientists had censored data showing the vaccine was harmful and that other treatments worked: “Why is the EAU actually allowing a drug to be

242. See *id.*; Jeremy Hogan, *Gallery: “Rally for Medical Freedom” Protest Against IU Requirement for Covid Vaccinations*, BLOOMINGTONIAN (June 10, 2021), <https://bloomingtonian.com/2021/06/10/gallery-rally-for-medical-freedom-protest-against-iu-requirement-for-covid-vaccinations/> [<https://perma.cc/8LBW-PQV2>]; see also *infra* app. II, at Figures 34, 35, 37, 39, 40 & 41.

243. See Ann Dorris, President, The IU Fam. for Choice, Not Mandates, Inc., Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021) (on file with author).

244. See Rally for Medical Freedom at Indiana University (June 10, 2021).

245. See Sandy Spaetti, Med. Choice Activist, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

246. See *id.*

247. See Dorris, *supra* note 243.

248. See, e.g., *infra* app. II, at Figure 40.

249. Dorris, *supra* note 243.

used in this purpose when there were already therapeutics peer reviewed and that information was being suppressed? . . . [T]he environmental hygienists [] already knew this information for many, many years.”²⁵⁰ Libertarian speaker Lucy Brenton also linked COVID-19 cover-ups to other past conspiracies, including the alleged concealment of an effective AIDS treatment.²⁵¹ To contradict mainstream research, speakers offered other information to show the vaccine was unnecessary or that naturally acquired immunity was more effective.²⁵² Sandy Spaetti a medical freedom activist, described an Indiana healthcare worker who had donated her blood after acquiring COVID-19 and whose plasma was used for antibody therapy—something she allegedly could not have done with vaccine antibodies.²⁵³

Speakers also attempted to twist legitimate scientific findings to suggest that studies had concluded the COVID-19 vaccine was unnecessary or that immunity from infection was as effective. For example, Spaetti claimed a Cleveland Clinic study had found that employees who had SARS-COV-2 were unlikely to benefit from the COVID-19 vaccine.²⁵⁴ Spaetti’s description was inaccurate; the article actually was about who should initially receive vaccine priority; it concluded only that individuals who had contracted COVID-19 had *some* antibodies and thus should receive lower vaccine priority than individuals who had never been naturally infected and had no antibodies.²⁵⁵

250. *Id.*

251. Lucy Brenton, Former Libertarian Candidate for U.S. Senate, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

252. Spaetti, *supra* note 245.

253. *Id.*

254. *Id.*; Nabin K. Shrestha, Patrick C. Burke, Amy S. Nowacki, Paul Terpeluk & Steven M. Gordon, Necessity of COVID-19 Vaccination in Previously Infected Individuals 2 (June 5, 2021) (unpublished article), <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v2.full.pdf> [<https://perma.cc/39TQ-B48R>]. This is the virus that causes COVID; COVID-19 is the disease that follows from the virus. *Coronavirus Disease 2019 (COVID-19)*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963> [<https://perma.cc/9LWP-L4SS>] (last visited Feb. 1, 2022).

255. Compare Spaetti, *supra* note 245, with Shrestha et al., *supra* note 254, at 3, 12. Of note, some research has shown that while vaccination produces greater amounts of circulating antibodies, a natural infection produces stronger antibody-generating cells. Meredith Wadman, *Having SARS-CoV-2 Once Confers Much Greater Immunity than a Vaccine—but Vaccination Remains Vital*, SCI., <https://www.science.org/content/article/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-vaccination-remains-vital> [<https://perma.cc/QPZ3-DVH6>] (Aug. 28, 2021, 1:20 PM).

2. Pro-Vaccination Individuals are Untrustworthy

Rally speakers and messages also asserted that pro-vaccination individuals and institutions were untrustworthy for several reasons: they did not engage with vaccine opponents, they dodged accountability, they threatened to take away essential resources from vaccine opponents, and they created an atmosphere of fear and attempted to control vaccine opponents.²⁵⁶

Speakers complained that IU did not engage anti-vaccination advocates' concerns.²⁵⁷ IU Board of Trustees candidate Margaret Menge complained that the Board of Trustees had not responded to her requests for a conversation and that the rally organizers just wanted visibility: "We just wanted to be heard. We wanted them to see us. . . . [T]he better thing for them to do would have been to come out and talk to us."²⁵⁸ Stephanie Deemer, a mother to three IU students, asserted that all the organizers wanted was for others to respect their decision not to vaccinate.²⁵⁹

The allegation that IU would not interact with rally organizers has obvious implications for empathy; one party's refusal to engage with another stifles opportunities for empathic reaction and interaction and might appear to denigrate the other or her perspective(s). By the date of the rally, however, IU had already retreated from its original vaccine mandate requiring proof of vaccination.²⁶⁰ An IU press release stated these changes came from listening to stakeholders: "Feedback from students, parents, faculty, and staff, as well as conversations with legislative leaders, led to adjustments in the vaccine verification and exemption process."²⁶¹

Some speakers argued that vaccination was *not* a pro-social, utilitarian action as supporters claimed.²⁶² They further asserted that vaccine opponents were being subjected to *antisocial*, potentially discriminatory treatment because they were unvaccinated.²⁶³ For

256. See Spaetti, *supra* note 245; Margaret Menge, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021) (on file with author).

257. See Menge, *supra* note 256.

258. *Id.*

259. Stephanie Deemer, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

260. Cox, *supra* note 241.

261. See Press Release, Indiana Univ., Most Restrictions on Masks, Physical Distancing Gone for Fall 2021 Semester at Indiana University (July 6, 2021), <https://news.iu.edu/stories/2021/05/iu/26-masks-physical-distancing-gone-for-fall-2021.html> [<https://perma.cc/ZY67-XLZE>].

262. See Spaetti, *supra* note 245.

263. See Dorris, *supra* note 243.

instance, Spaetti claimed that vaccine supporters were pushing COVID-19 vaccines with “religious devotion” to “trample” opponents’ religious beliefs, imposing coercive regulations, and deprive unvaccinated students of important IU entitlements.²⁶⁴ Menge analogized IU’s consequences for vaccine mandate noncompliance to “termination” (a euphemism for death):

[C]ould IU have gone any further than to say you must get this shot or your classes will be cancelled [*sic*], your Crimson Card will be cut off so you can’t even buy yourself lunch on campus, right? Your email account will be cut off, you will have no access to university resources, and for employees you will be immediately terminated. Now I don’t, I hate that word “terminated.” . . . we are human beings with innate dignity. . . . I can’t be terminated. You can’t be terminated. Terminated is ended. None of us can be ended. We can’t. We’re free Americans.²⁶⁵

Such remarks indict vaccine supporters for supporting mainstream pro-vaccine messages, and cast the COVID-19 vaccine as a false idol.

Speakers also claimed that, if the COVID-19 vaccine was so miraculous, it would not be necessary to use mandates and incentive programs to increase uptake, and that such measures were proof of coercive intent and the vaccine’s danger.²⁶⁶ Spaetti stated:

[Y]ou all have also been tempted with free donuts, free beer, free gift cards, free groceries, free tuition, the chance to win a million dollars, and all sorts of prizes. . . . If a medical procedure is so necessary and so life-saving, if it is so safe and effective, why on God’s green earth would the government need to partner with universities, organizations, and corporations to tempt the public with free prizes?²⁶⁷

Brenton compared IU’s incentive lottery to a deadly game show: “[It’s] like the ‘Price is Right.’ Here, take more poison and hopefully you win a million dollars. Oh, you’re dead? No problem. We’ll just give it to the next guy. That is just insane.”²⁶⁸

Thus, like anti-vaccine social media messaging, rally speakers characterized vaccine supporters and their advocacy efforts as untrustworthy purveyors of a deceptive agenda who merited scorn, not empathy. Getting the COVID-19 vaccine was not a benevolent act of communal caring, but a dangerous decision often imposed through unethical coercion.

264. See Spaetti, *supra* note 245.

265. Menge, *supra* note 256.

266. See Spaetti, *supra* note 245.

267. *Id.*

268. Brenton, *supra* note 251.

3. Vaccines and Vaccine Mandates Created Victims

Vaccine opponents strategically referred to themselves as victims of fear and coercive policies to generate empathy from rally attendees.²⁶⁹

Some speakers alleged that vaccine supporters victimized opponents by cultivating fear.²⁷⁰ Menge told rally attendees they no longer needed to be scared: “We’ve got to get rid of all of this. The charade is [] over. . . . We had a virus, it was scary. . . . The university took extraordinary measures . . . now, we have more information. . . . Time to get back to life.”²⁷¹ Dorris claimed to be inundated with messages from “people just complaining and upset and they, they don’t know what to do and they’re scared,” and said, “That’s the last thing that people should be right now is scared.”²⁷²

Vaccine opponents also claimed exploitation through other regulations such as mask and testing mandates.²⁷³ According to Dorris, “They’re [the students, faculty and staff] still going to be forced to horrible testing on a regular basis. They’re gonna have to wear the face diaper. They’re going to be segregated and discriminated against. That has to stop.”²⁷⁴

IU students, in particular, were vulnerable to such victimization.²⁷⁵ Spaetti stated:

You’re so looking forward to FREEDOM. . . . You’re beyond excited to stand on your own two feet, make your own decisions and just be an adult. Then bam, out of nowhere, you hit a brick wall. You get this vaccine mandate thrown at you. You’re told you must comply or else. Suddenly, you’re feeling panicked. This sure doesn’t feel like that freedom you’ve been yearning for. You don’t want this vaccine. . . . You have so many questions. Can they really cancel your classes and campus privileges if you don’t comply? Is this legal? You’re feeling confused, upset, pressured, and angry. Well, let me tell you. You do not have to comply. Your body is your own.²⁷⁶

Brenton intimated that these measures could create a slippery slope leading to “the beginning of the end.”²⁷⁷ These messages were

269. See Spaetti, *supra* note 245.

270. *Id.*

271. Menge, *supra* note 256.

272. Dorris, *supra* note 243.

273. *See id.*

274. *Id.*

275. Spaetti, *supra* note 245.

276. *Id.*

277. See Brenton, *supra* note 251. Brenton warned that “[i]f . . . forcing a medical procedure through coercion becomes lawful and supported by authorities, we’re setting a precedent for a future without the human right to refuse things being done to your body without

also present in rally signs, including those reading, “medical segregation [with an X through it],” “Stop the hate in the vaccine debate,” and “It’s mutating into medical dictatorship.”²⁷⁸

Jaime Carini, a PhD student in the IU Jacobs School for Music, invoked a personal victimization narrative, directly appealing to attendees’ empathic processes.²⁷⁹ Carini stated that she was “kind of scared to be here because I’ve been living under a veil of fear for the past year,” and claimed to represent others.²⁸⁰ She explained that she “suffer[s] from invisible diseases,” that her treating physician had recommended remaining unvaccinated, and that she did not currently qualify for a medical exemption.²⁸¹ She faulted IU officials for believing that “they have the right to insert themselves into the relationship between me and my doctor” and “encouraging a culture in which asking and divulging private medical information is normalized.”²⁸² Carini’s story was particularly powerful because she was unvaccinated for medical reasons, following her physician’s advice; audience members could easily envision themselves in her situation, caught between needing to finish an academic program and complying with regulations.

Speakers’ most extreme victimization claims invoked the Holocaust; two speakers, Ashley Grogg and Indiana state representative John Jacob, described direct family connections.²⁸³ Grogg described her grandfather’s experiences in Auschwitz to exemplify the consequences of fear, drawing a parallel between bearing witness to the Holocaust and to coercive vaccine policies:

I really and truly can’t imagine what my great grandmother thought as her children were ripped away from her, put on box cars [sic] and sent to Auschwitz. That is what happens when fear dictates people’s behavior. I can’t imagine what my grandfather thought as he marched into the death camps, was kicked in the shins by the SS with steel-toed boots because his poor malnourished child body couldn’t move fast enough. And he drug the murder victims to their mass graves. That is what happens when fear wins. Not on my watch.²⁸⁴

consent.” *Id.* Brenton deemed this “objectively immoral” and “the beginning of the end if [it] becomes reality.” *Id.*

278. *See infra* app. II, at Figures 34, 37 & 38.

279. *See* Jaime Carini, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

280. *Id.*

281. *Id.*

282. *Id.*

283. *See* Ashley Grogg, MSN-RN, Founder, Hoosiers for Med. Liberty, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021); John Jacob, Ind. State Representative, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

284. Grogg, *supra* note 283.

In linking her relatives' fear to that experienced by rally attendees, Grogg implied that IU officials (and, by extension, other vaccine supporters) employed coercive, persecutory behaviors akin to the Nazis, rendering them perpetrators undeserving of empathy. Representative Jacob linked his family's Holocaust history to pro-life arguments and the need to safeguard liberty for the "preborn" lest all citizens' freedom be lost:

My mother was Polish. And she was there when the Nazis took over Poland. The Germans kidnapped her and took her back as a forced nurse's aid to tend wounded German soldiers. . . . Our founding fathers believed in Liberty. But the first thing they talked about was life. . . . If you're not alive, everything else doesn't matter. . . . If we're so concerned about our liberty, but we're not concerned about the preborn that are being murdered at over 3,000 children a day in our nation, God's not concerned about our liberties and don't expect that God will allow our liberties to come back.²⁸⁵

Representative Jacob cast Nazi actors and abortion (and COVID-19 vaccine) supporters as criminals, intimating that all were enemies of liberty who victimized abortion (and vaccine) opponents.²⁸⁶

4. Vaccines are Physically Dangerous

Speakers argued that the COVID-19 vaccine was dangerous, supporting these claims through personal anecdotes, not statistical information.²⁸⁷ Like other rally messaging, this strategy portrayed vaccine opponents as empathic figures, vulnerable to harm through coerced medical procedures. Speakers believed that the COVID-19 vaccine was experimental based on its emergency use authorization status from the Food and Drug Administration (FDA). Invoking the Holocaust, Dorris stated that COVID-19 vaccination campaigns constituted illegal medical experimentation:

[W]hy are they pushing this injection, this chemical cocktail, onto the least of the . . . demographics that are actually affected by Covid . . . why are we going to subject our children to a global experiment that appears to have a little more nefarious tendencies to it. . . . I truly believe wholeheartedly that this could actually become one of the biggest crimes in humanity. To force this on our kids is not just morally and ethically wrong; it's criminal.²⁸⁸

Another speaker, Brenton, conflated coercion and vaccine dangers, painting a fantastical, fear-inducing image of vaccine injury consequences:

285. Jacob, *supra* note 283.

286. *See id.*

287. *See* Becky Cash, Indy Nat. Health Ctr., Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

288. Dorris, *supra* note 243.

It's really darn hard to take care of your family when you're shaking like a Parkinson's patient. If you take on the risk of this vaccine, you can lose your life. You can lose your ability to provide for your family and you will lose your dignity because you're being forced. There is no recourse. And I would like to know who pays the bills for the people that can no longer work. Who pays the bills for the people that are dead. Who takes care of the children of the parents who are dead. There will be, there will be dead people as a result of the vaccine; now they have 5,000 of them . . . You've probably seen the Harvard study that says that 11% of vaccine injuries are reported. . . . Who's paying for the funeral? [] I'm going to start crying.²⁸⁹

Brenton also accused Doctor Anthony Fauci and the federal government, among others, of censoring data and covering up health harms, and told attendees that only they could stop this abuse: "I want you all to say with me, I own me. [Audience: I own me.] You have to decide that you're free. Slaves act like slaves. Free people act like free people. Do free people submit? No!"²⁹⁰

Another group, besides vaccine supporters, who did not merit empathy were Indiana politicians whose passivity had sunk anti-vaccination legislation. Dorris berated Indiana Governor Holcomb: "You need to find at least a warm body with a spine in it. Because I would take that right now over what we've got sitting in the mansion . . . the state of Indiana people don't ever want to see another traitor in their governor's mansion again."²⁹¹ Other speakers argued for holding politicians accountable.²⁹²

These remarks about experimentation and medical harm construct vaccine supporters as moral monsters and COVID-19 vaccine mandates as atrocities—a strategy that not only positions these individuals as perpetrators undeserving of empathy, but that demonstrates their brutality and inhumanity.

5. Core Values are Trustworthy

As mentioned, rally speakers attempted to generate empathy for themselves and other vaccine opponents through appeals to core values, such as Christian religious principles, personal autonomy, liberty, and freedom.²⁹³ They claimed these core values were under attack from numerous sources, including IU.²⁹⁴ Menge stated that "the university was riding roughshod over the constitutional rights of

289. Brenton, *supra* note 251.

290. *Id.*

291. Dorris, *supra* note 243.

292. *Id.*

293. *E.g.*, Spaetti, *supra* note 245.

294. *See* Dorris, *supra* note 243.

students,”²⁹⁵ and Spaetti described IU as a bully: “Indiana University is stepping outside the law with their COVID vaccine mandate. Do not cave into their coercive threats and bullying. Do not cower down to medical tyranny. Do not fear this illegal mandate. Be brave, stand up, stand firm and hold your ground.”²⁹⁶

Some speakers invoked a battle metaphor, stating these core values were under attack, positioning vaccine supporters as “adversaries” and vaccination as succumbing to the enemy or surrendering the fight, acts of moral cowardice.²⁹⁷ For example, Indianapolis pastor Micah Beckwith—a former candidate for Indiana’s Fifth Congressional District for the House of Representatives—gave an opening prayer that stated, “God is a god of freedom; . . . we’re going to ask his blessing so that we can walk in that freedom and defend that freedom today. . . . would you protect us from overbearing, overarching, tyrannical overreach into our personal lives, Father.”²⁹⁸ Similarly, Speaker Becky Cash characterized herself and other parents of children who were allegedly vaccine-injured as “warriors”:

Thankfully, I was raised to search, seek, and stop at nothing. . . . I went to biomedical conferences, full of thousands of moms who had enough knowledge to get medical degrees. I was not in a secret society. I, the daughter of a microbiologist. I, the daughter who was told it was child abuse not to vaccinate. . . . the day the doctors helped me put the dots together, that was the day a warrior was born among warriors.²⁹⁹

Speakers suggested that these core values were akin to fundamental rights that trumped the common good, including autonomy and religious freedom.³⁰⁰

Rally speakers described autonomy as a right existing in both natural law and Christian principle.³⁰¹ Spaetti informed attendees that autonomy was “[t]he moral or natural right to have bodily integrity. This is natural law. This is God-given law.”³⁰² But speakers cautioned this right had to be claimed to be useful; Spaetti urged, “You are within your God-given rights to guard your temple. . . . Be informed, know your rights, be brave, and claim them. Do not consent to handing over medical decisions for yourself to the CDC, FDA or to

295. See Menge, *supra* note 256.

296. Spaetti, *supra* note 245.

297. See Jacob, *supra* note 283; Micah Beckwith, Speech at the Rally for Medical Freedom at Indiana University (June 10, 2021).

298. Beckwith, *supra* note 297.

299. Cash, *supra* note 287.

300. See Spaetti, *supra* note 245.

301. *Id.*

302. *Id.*

Indiana University.”³⁰³ Finally, Brenton challenged attendees to think about who “owned” them and defy coercion: “[Y]ou have to decide, who owns you? Do you own you? Does God own you? I own me. . . . I will not submit to coercion. I will not submit to fraud. I will not submit to force. And I will certainly not submit to a lottery.”³⁰⁴

Speakers also discussed another core value, religious freedom, a natural right supported by Indiana law.³⁰⁵ Speakers usually conflated religious and moral objections to vaccination.³⁰⁶ Spaetti cataloged potential grounds for objection:

There are numerous moral issues with vaccines that may justify one’s desire to claim a religious exemption to some or to all vaccinations. Examples include aborted fetal cell lines, animal cells, and blood products used in the research development, and or production phases of many vaccines. . . . [S]ome individuals simply believe in relying on their God-given immune system as a primary means, the primary means to maintaining health. They may have a moral objection to injecting live or attenuated viruses, or for example, injecting messenger RNA coded to trigger in your body to develop SARS COVID2 spike proteins.³⁰⁷

Thus, speakers drew boundaries around those protecting core values (vaccine opponents) and those threatening them (vaccine supporters, IU, and others) to educate attendees about which were proper targets for empathy, and which deserved scorn.

6. Self-Advocacy as a Path to Freedom

Speakers beseeched attendees to advocate against the COVID-19 vaccine, often invoking the David vs. Goliath theme present in social media.³⁰⁸ Several characterizations of vaccine advocates, including the protective “mama bear” parent and the underdog crusader, were deployed to trigger attendees’ empathy.³⁰⁹

Many speakers linked their advocacy to a parent’s responsibility to protect college-age children from harm (through the vaccine), triggering empathy for potentially vulnerable (if older) populations.³¹⁰ For example, Deemer stated that her children were “going to be forced to take a vaccine if IU doesn’t fix this. And that’s

303. *Id.*

304. Brenton, *supra* note 251.

305. *See* Spaetti, *supra* note 245.

306. *See id.*

307. *Id.*

308. Brenton, *supra* note 251.

309. *See* Deemer, *supra* note 259.

310. *Id.*

why I'm fighting . . . And I'm not backing down. And I'm not afraid. And we're going to get this mandate overturned and trash canned."³¹¹

Speakers described advocacy as a courageous, morally correct behavior.³¹² Spaetti told attendees:

Know this, there are many of us fighting for you. We fight for freedom, religious freedom, medical freedom, freedom from coercion and tyranny, freedom of choice. We fight against all medical mandates. We fight [for] truth. We stay firm knowing beyond a shadow of a doubt that God is on our side. We do not fear because he goes before us.³¹³

Several speakers emphasized advocacy's personal benefits, like overcoming fears and regaining control.³¹⁴ The speakers quickly affirmed that advocates included medical professionals; Cash reassured attendees that medical professionals were risking unknown perils because of their anti-vaccination stance:

[T]here is an entire medical community treating the families that have been called liars and cast aside. They too are warriors in this fight. They risk losing medical degrees from prestigious medical schools like Indiana University. They risk jail time. They risk being called crazy because they cannot and will not abandon what is under the iceberg.³¹⁵

Speakers told attendees that these personal benefits might only come through more visible engagement.³¹⁶ Claiming that self-efficacy raised self-esteem, rally speakers urged attendees to "step up."³¹⁷ Grogg remarked,

I was once hiding in the shadows too. It's time to step out. . . . Right now, we are literally standing out in the sunshine. We are letting our voices be heard, and we need to continue to do this. Those who want to forcibly inject you and your family will win if we start going back to hiding. . . . I don't let fear control me. I use it as motivation.³¹⁸

Speakers also cast themselves as cheerleaders for fundamental rights.³¹⁹ Spaetti stated, "I'm here today to encourage the students of Indiana University to be brave. Embrace your right. Recognize your bodily autonomy. Maintain your dignity as a human being and claim

311. *Id.*

312. *See Spaetti, supra note 245.*

313. *Id.*

314. *See id.*

315. *Cash, supra note 287.*

316. *See Grogg, supra note 283.*

317. *See id.*

318. *Id.*

319. *See Spaetti, supra note 245.*

your personal sovereignty.”³²⁰ Spaetti called upon attendees to join her in advocating to preserve rights for all:

I for one will not remain silent as our freedoms are threatened with illegal mandates. I will not remain silent as the students, staff and faculty of Indiana University are bullied, threatened and coerced into submitting to a medical procedure that many do not want and for which many stand in strong religious opposition. I will fight for our God-given rights, which supersede all other rights, our rights to bodily, autonomy, and integrity. I encourage you to fight with me.³²¹

Anti-vaccine advocacy could even amount to religious calling, a battle of good versus evil.³²² For instance, Brenton stated, “We wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places. We are being hunted by an ancient evil, and they have your children in the crosshairs.”³²³

Through these six themes, vaccine opponents at the IU rally deployed the same types of messages seen in social media posts to oppose the university’s vaccine mandate. These strategies attempted to give a coherent case for why opponents merited empathy, as well as the consequences of empathic identification: conceding that opponents’ individual freedoms outweighed the university’s obligations to protect its community members against the virus. Here, the desired outcome of empathic identification was not perspective-taking, but policy-dictating.

V. WAS EMPATHY OUR BEST SHOT? LESSONS LEARNED

Several lessons can be drawn from these case studies of empathy in the COVID-19 vaccine context. It would have been legal under federal law (and in most states) to impose or incentivize vaccine mandates in early 2021;³²⁴ it may have been wiser—and ultimately easier—to lead with mandates and to use educational and empathic conversations to increase compliance. After all, empathic conversations were already likely to put unvaccinated interlocutors on the defensive. Perhaps more anecdotal narratives could have been proffered to the public along with the “empathy” messaging—or

320. *Id.*

321. *Id.*

322. *Id.*

323. Brenton, *supra* note 251.

324. *See, e.g.*, Exec. Order No. 14,042, 86 Fed. Reg. 50,985 (Sept. 9, 2021); N.Y.C. DEP’T OF HEALTH & MENTAL HYGIENE, ORDER OF THE COMMISSIONER OF HEALTH AND MENTAL HYGIENE TO REQUIRE COVID-19 VACCINATION IN THE WORKPLACE (Dec. 13, 2021), <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-workplace-requirement.pdf> [<https://perma.cc/FKH2-RYVT>].

simply more efficacious narratives. Such a strategy might also have been more successful in reaching vaccine opponents who used anecdotes to counter supporters' claims that the vaccine was safe and effective. Throughout late 2021 and early 2022, tensions ran higher with the advent of the Omicron variant. Some schools, governments, and employers mandated vaccines and masking, while others refused to employ these same protections, creating a terrible natural experiment.

In late summer 2021, COVID-19 infections began to rampage through communities with low vaccination rates, leading the CDC and public health authorities to recommend mask mandates once again, even for vaccinated individuals.³²⁵ It was apparent in September 2021 that supporters' use of "empathy" was not as efficacious as hoped. Adopting an empathic orientation did not sustain high uptake rates any more than it convinced most individuals either that the COVID-19 vaccine harmed recipients or that it was a dangerous product created through collusion and corruption. As a result, companies, states, cities, and the federal government began to express their intent or willingness to push empathy tactics aside and mandate vaccination.³²⁶

By this point, vaccine supporters were even more unwilling to exercise patience and avoid passing judgment on those who remain unvaccinated (without medical exemptions). In public remarks given shortly after he proposed his controversial federal vaccine mandate,³²⁷ President Biden expressed frustration with the approximately eighty million individuals who remained unvaccinated: "We've been patient. But our patience is wearing thin. And your refusal has cost all of us."³²⁸ He also had sharp remarks for governors of states who imposed anti-mask or anti-vaccination policies: "If those governors won't help us beat the pandemic, I'll use my power as president to get them out of the way."³²⁹ Thus, empathic reactions may have run their course.

Paving the kinder, gentler, more empathic path to vaccine uptake may have been the less efficacious solution. If vaccine mandates were imposed from the outset, empathic communication

325. *Delta Variant: What We Know About Science*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> <https://www.nytimes.com/2021/09/09/us/politics/biden-mandates-vaccines.html> [<https://perma.cc/38N4-VR9Z>] (Aug. 26, 2021).

326. *See supra* note 324.

327. Katie Rogers & Sheryl Gay Stolberg, *Biden Mandates Vaccines for Workers, Saying, 'Our Patience Is Wearing Thin'*, N.Y. TIMES, [<https://perma.cc/3AML-MVKT>] (Nov. 12, 2021).

328. *Id.*

329. *Id.*

strategies and conversations could have been used to explain the need for this stringent policy determination, instead of first persuading citizens that the need for vaccination existed and then demonstrating that the COVID-19 vaccines were safe. Perversely, this failure to use law and policy to adequately address public health concerns and improve health outcomes contributed to gaps in belief, trust, and information which vaccination opponents were eager to fill.

VI. CONCLUSION

In conclusion, COVID-19 vaccine supporters and opponents relied on empathy as a policy-making tool to avoid vaccine mandates, but in different ways. Pro-vaccine organizations and individuals used empathic messaging to encourage others to have patience with those who were unvaccinated, and to engage them in conversation to listen and provide accurate vaccine-related information. Thus, vaccine supporters deployed empathy for a particular policy purpose: to steer away from more coercive mandates. Anti-vaccine organizations and individuals, however, used empathy to directly engage with medical risk, coercion, and threatened loss of rights, introducing themes like the idea that the COVID-19 vaccine was dangerous, that it constituted unethical and illegal medical experimentation, and that its use violated core values, particularly if uptake was encouraged or required through incentive programs or mandates. Vaccine opponents then used empathy to legitimate their perspectives, to regain dignity, and to open social and policy spaces for these perspectives and arguments, strategies that could only compel one policy outcome: no mandates.

Although “empathy” and empathy-related themes were ubiquitous in both pro- and anti-vaccination messaging throughout the first several months of the COVID-19 vaccine rollout, these terms did not carry their customary meaning. Usually, empathy connotes a process of emotional and cognitive engagement and exchange between an empathizer and a target that often utilizes narrative, whereby the empathizer comes to appreciate, understand, and accept the target’s perspective. Here, empathy assumed various other forms as deployed by vaccine supporters and opponents, from education and communication strategies to a mechanism for differentiating trusted “insiders” from distrusted and corrupt “outsiders.” Vaccine supporters never intended for empathy-related messages to create a “meeting of the minds” in which supportive empathizers validated anti-vaccine perspectives at the cost of their own support for the COVID-19 vaccine. Instead, supporters used “empathy” to denote the patience and compassion necessary for creating non-adversarial conversational

spaces in which to educate and listen to others, perhaps overcoming personal disagreement in the process. Vaccine opponents, however, used empathic messaging to encourage others to a) contextualize COVID-19 vaccination as an issue primarily affecting local, individual rights and not the communal good; and b) persuade others that the vaccine was unnecessary and dangerous.

Despite these semantic shifts, the purpose of “empathy” remained largely unchanged; it was still an educational mechanism, a tool for outlining ingroup and outgroup boundaries, and a means of conferring or denying humanity. Empathy and its associated themes conveyed who merited concern and protection in the COVID-19 context (and how concern and protection should be conveyed), and who should be left to their own devices. For vaccine supporters, empathy was an instrument for protecting others through educating and encouraging vaccination, enhancing the collective good. For vaccine opponents, empathy was a useful tool for refocusing attention on individual rights and personal autonomy instead of pro-social, utilitarian, communal concerns. Both uses were narrative in nature, and manipulative in purpose; each aimed to influence policy, regulation, and public opinion. Time will expose which empathic appeals were most effective.

VII. APPENDIX I

A. Pro Vaccine Messages

Figure 1: CDC “Listen With Empathy” Infographic

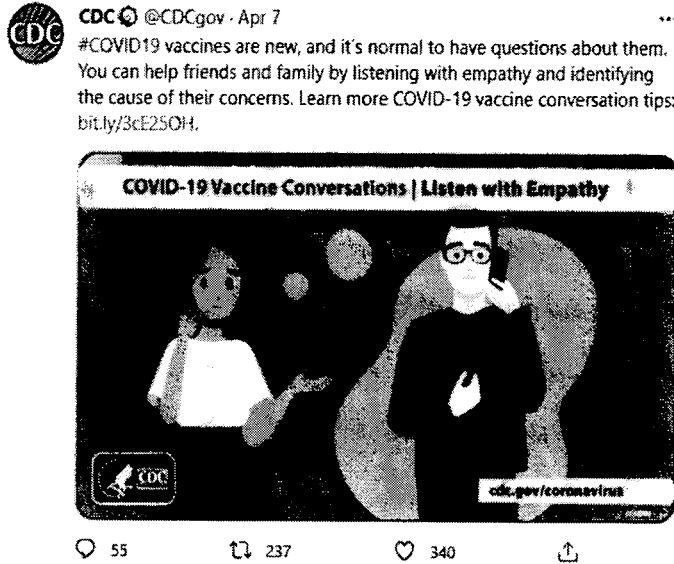


Figure 2: KSL 5 TV Twitter Post Describing Compassion

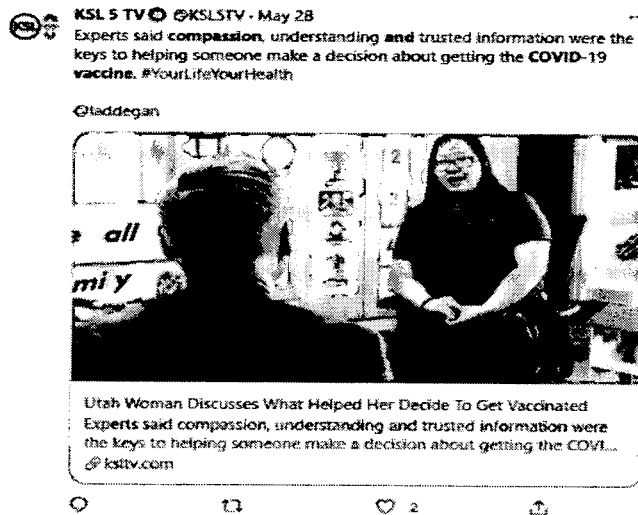


Figure 3: Graphic Urging Persuasion Through Empathy

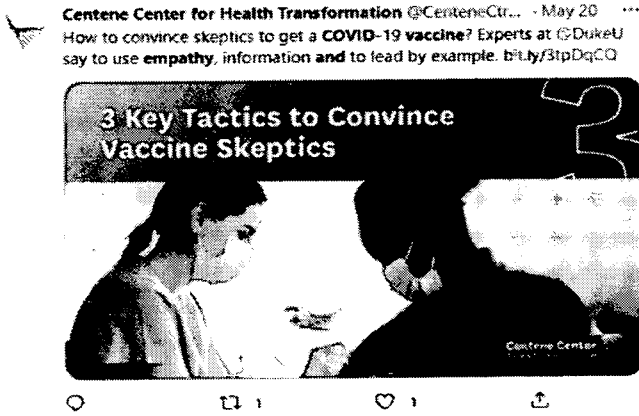



Figure 4: Pro-Vaccine Meme Making an Empathy Pun

Before you judge
anti-vaxxers, walk a
mile in their shoes.



Figure 5: Individual Pro-Vaccine Facebook Post

 Dennis Brady
 Now that most Americans are vaccinated, COVID will increasingly concentrate on those who've chosen to remain unvaccinated, presumably the same people too stupid and too lacking in human empathy to wear masks and social distance. What a shame.

Someday, I'm going to die.

This, I grudgingly accept. I have no idea how it's going to happen. Maybe I will die of having a tree fall on me, of eating tainted shellfish, or of being struck by lightning. But this much I guarantee. I will not die of having wagered my life that TV carnival barkers, political halfwits and MAGA-hat-wearing geniuses know more than experts with R.N.s, M.D.s, and Ph.D.s after their names.

In other words, I will not die of stupid.

—Leonard Pitts, Jr.

Figure 6: Individual Pro-Vaccine Facebook Post

I can tolerate friends who are reluctant to get the vaccine, even though I personally am a bit flustered by your decision, but the moment I see any actively anti-vax or conspiracy propaganda ("It's just the gov't's way of tracking you!", "They're doing experiments on us!", "I don't trust that healthcare is so expensive but suddenly this vaccine is free???" nonsense, you should know that I've lost an enormous amount of respect for you and I will absolutely cut you out of my life over it.

If you're reading this and feel targeted you should know that I am absolutely and entirely ASHAMED of you. You are a huge part of the reason that 1) the pandemic has lasted this long and 2) so many people have died.

Enough is enough. You wouldn't listen to reason since the beginning before the bodies even began to pile up. You ignored medical professionals. You disregarded people who have lost loved ones. You have spat in the faces of those of us who have had to bear the awful weight of responsibly adapting to a modern pandemic while you whined about minor inconvenience or discomfort. And now that we have a way forward, you're actively opposing the best solution we have.

I'm sure you won't miss something as trivial as our connection on social media but you have no business in decent society until you fix your broken perspective. I hope you're held accountable for the harm you're inflicting on your neighbors.

At the end of all things, let's just say theoretically I learn at the end of my life that it was all a hoax after all. I will still have ultimate peace of mind knowing that I made my decisions based on an effort to do good to my fellow neighbors and have no regrets about wearing a mask or abstaining from crowded socializing for a time or taking an early vaccine in an emergency situation.

But it's not a hoax. People *have* died. If you're not aware of anyone in your personal life who's been affected by Covid and this has caused you to question the legitimacy of this pandemic, you're very lucky but also you are an absolutely shameful excuse for a human being who clearly has no sense of sympathy or empathy or compassion in your bones.


You should never dismiss someone's struggles just because they don't affect you personally.

That's why I have divorced the conservative mindset and find it perpetually frustrating to converse with most conservative-identifying Christians. A religion based entirely on the principle of a man who literally preached "love one another" and doing good unto others has lost their way and found every excuse to do the exact opposite.

I don't agree with everything on the left, but for all its faults it's a system largely based on an attempt to treat everyone fairly regardless of their lifestyle or the conditions they were born with or have come into for any reason. It asks those with a lot to do more for those with a little and that to me is much closer to the fundamental Christian M.O. than the one that people apparently interpret as "I refuse to be considerate to people who believe differently than I do", or "I don't care what happens to you as long as I get mine."

I'm just so emotionally spent. My heart is broken and I can't deal with your abhorrent nonsense anymore. I'll gladly reconnect with no grudge if you ever reevaluate your position. In the meanwhile, live your selfish life however you please. I can't stop you. But do it far away from me.

Figure 7: Individual Pro-Vaccine Facebook Comment

 Don't call them anti-vaxxers nor deniers, they are simply pro-epidemics. If they do not have relevant knowledge by know it means that they are apparently immune to that whatsoever. If they know but choose to ignore the scientific proof due to a whim or a trend - they shall not be students in the first place. If you go to the university (BTW a sanctuary of knowledge and Truth) it means that you generally are fond of getting smarter. They act to the contrary of that idea.






Like · Reply · 11h  2

Figure 8: Individual Facebook Post Against Viewpoint Isolation

 **Poncho Aldrete** ...
 May 25 at 11:31 PM · 

What's sad about these days really isn't the masks, vaccines, covid or politics! What's sad is that someone like me can post something that someone doesn't agree with and suddenly I'm a different friend or family member! Suddenly, I'm an outcast because I may have a different theory, belief or fact that someone doesn't care to even discuss! What made our world  amazing is the ability to have conversations and agree to disagree! Today whatever is written is gospel even if its written in a way that opens up discussion! Today if you have a different opinion or belief and even sometimes a FACT people just brand and form opinions that really are far from true! These are normally the same people that say they actually don't do that to others! Yes you do! Just sayin! I'm real! I'm Henry aka... Poncho Aldrete! I love people and love learning new things and I love people's opinions, beliefs, culture, amongst many other things! Bottom line stop paying so much attention to the words and actually call somebody and discuss really how they feel! A "POST" is in all reality just a fraction of really what people think! Goodnight! That is my thought of the day!

Call me (814)746-7428


B. Anti-Vaccine Messages

Figure 7: Anti-vaccination Facebook Post Discussing Conspiracy Theories

Lukas Joseph is with Wendy Gail.
 May 5 · 🌐

We're fully v[accin]ated. We're also not opposed to pharmaceutical interventions, as without a doubt — chemotherapy saved my life. Toxic chemicals that were proven effective after 50 years of research stormed through my body and "melted my cancer like butter," literally.

Many who have historically trusted v[word]s and pharmaceutical interventions are unsure about this v[word]. Rightfully so, their reluctance is a measure of their sincere and legitimate questions about it and the rushed clinical trials, the amount of reported adverse events, and deaths. Nobody should EVER be forced or coerced to take this or any medicine against their will!

Despite all that, it looks like we're going to be one of many that are not getting this experimental treatment that isn't FDA, CDC, or Health Canada approved. We are the 30% — I guess you could call us the "true" control arm of the clinical trials. Something important to note is that the participants within the control groups of the v[word] clinical trials have now received their v[word]. The FDA strongly opposed this, but the placebo recipients have now had the treatment, despite the end date of the trials being late 2022 to early 2023. You often hear, "follow the science" ... That isn't science.

Therefore according to SK Premier Scott Moe, people like us determine the "reopening plan"! These freedoms that have been taken away were God given, not government given. The government should never hold that kind of power over the people, that's tyranny! These coercive tactics are meant to cause a divide — a blame game, an "us vs them". Here's a novel idea, how about offer the v[word] to those who want it, make it available to all, and end it there. The beauty is, if you're at risk, worried, or scared, you can go get it — then you're safe.

Somebody's lying 🤨! Is it your friends and family who truly care about you and have taken the time to do extensive research? Or, is it big p[harm]a who stands to make billions, mainstream media who's being funded by the government, who only wants more power? When does it end? The 3rd or b[oo]ster v[word] has been announced in the UK for those over 50 by this winter. Then the 4th, the 5th, so on and so forth.

#wakeupcanada #wakeupsask #justsayno
 #unitednoncompliance #Godgiventfreedom
 #notgovernmentgiven #enoughwiththegovernmentoverreach
 #someoneislying #followthemoney #somethingismeltsfishy
 #wheretheressmoketheresfire #trialsbeforeevals #iDecide
 #IDecidedToLiveAsMe

Figure 8: Facebook Image with Instructions on How to Refuse a Vaccine

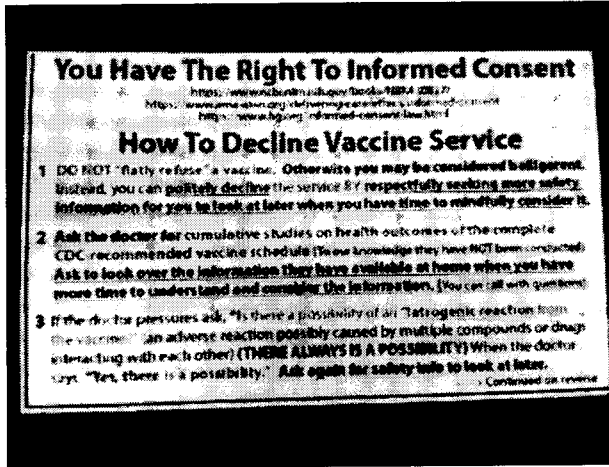


Figure 9: Meme with Play-on-Words About "Experimental Drugs"

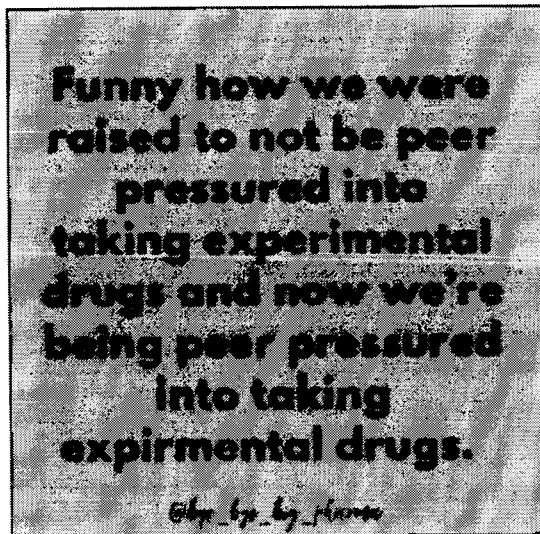


Figure 10: Anti-Vaccine Facebook Post Denying Empathy for Vaccinated Individuals

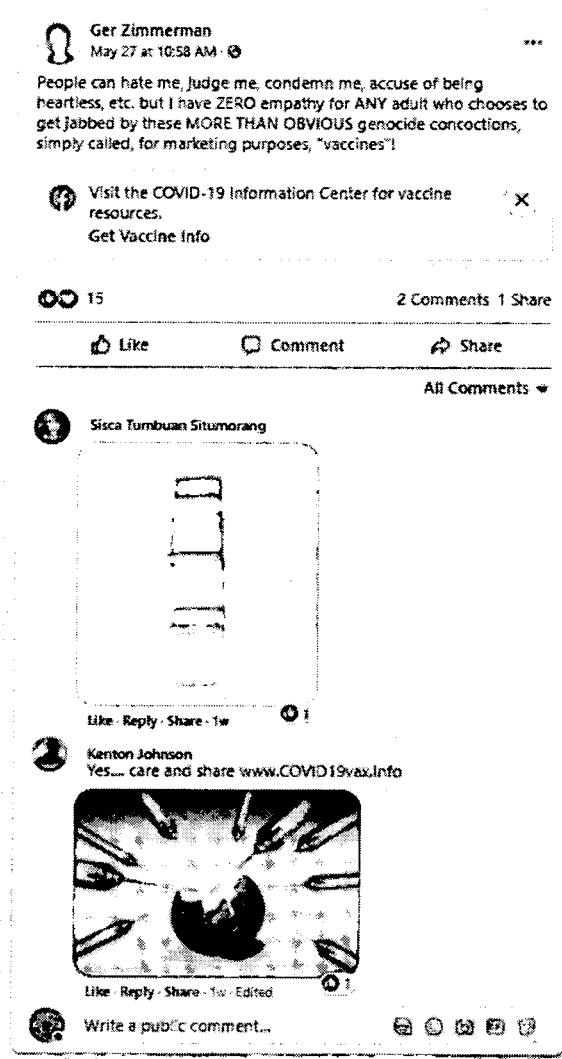


Figure 11: Anti-Vaccine Facebook Post Stating that Vaccinated Individuals Should Not be Saved

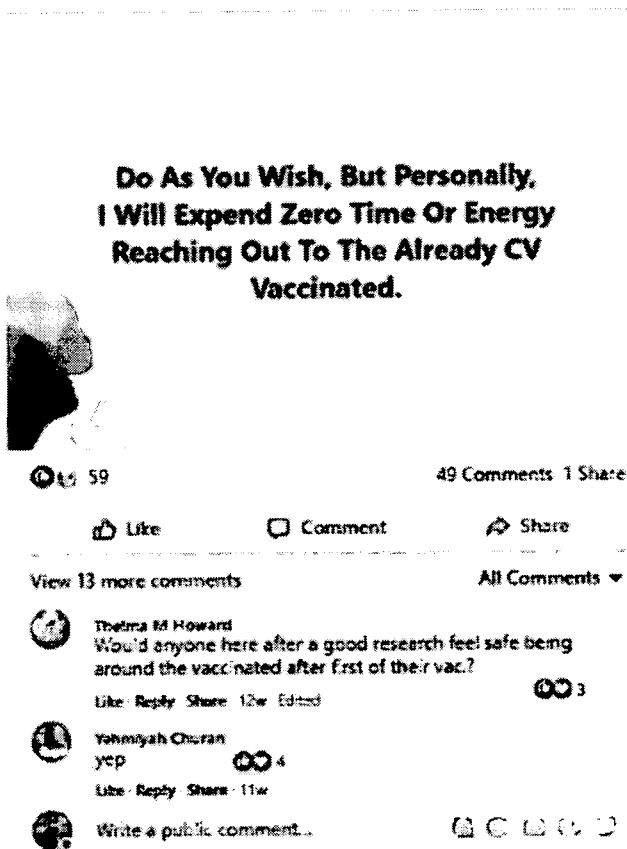


Figure 12: Facebook Meme Attributing Animal Characteristics to Vaccinated Individuals

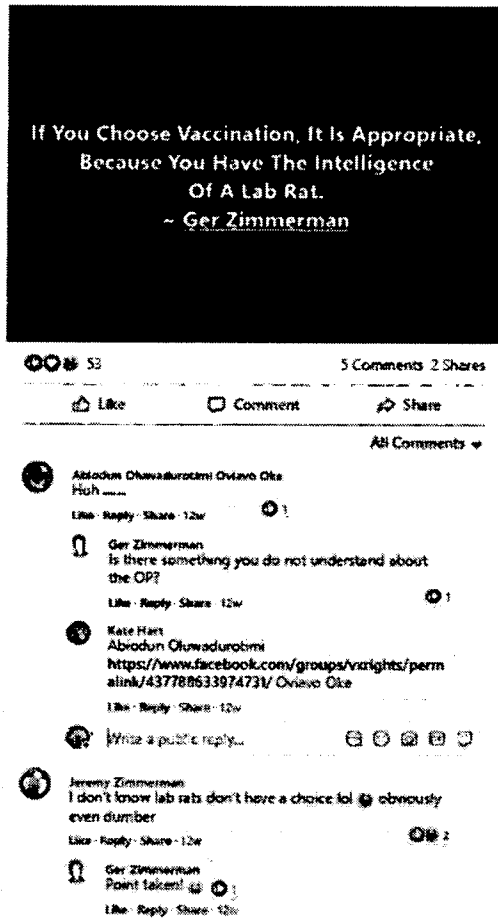


Figure 13: Facebook Post Stating That the mRNA Vaccines Transform Individuals into “Vaccinated Animals”

Lauren Watts
April 15 · 🌐

Soooo ... If man changes his DNA then he's no longer man or considered a person or people then ... are the vaccinated animals now ? If you have sex with one is it now bestiality? Wouldn't it be an abomination???Then if your wife or husband's DNA is changed then are you no longer married ??? 🤔🤔🤔

👍 11 8 Comments 1 Share

👍 Like 💬 Comment ➦ Share

All Comments ▾

Izen Guarr
All valid and accurate points. There are MANY other valid and accurate points as well. Those you mention are just a few. 🤔

Like · Reply · Share · 7w 👤 1

Gina Hayes
Interesting points. 🌐 1

Like · Reply · Share · 7w

Andrea Loftis
I personally would not continue the marriage. I would ask the Lord in fervent prayer for guidance on how to proceed and to be released from the marriage due to the seriousness of this division.

I would pursue a divorce.
This is the time that the Lord is separating the wheat from the chaff. At some point, we are all having to recognize that we have fathers, mothers, children, cousins, friends and spouses that are NOT going to be willing to die in Christ.

Marriage is sanctified because we share our temple in marriage. I could not lay with someone who has had the vaccine and possibly produce offspring of whatever is in their bodies. I truly feel it's an abomination and I could not be a part of it.

Like · Reply · Share · 7w 👤 1

↳ 🗨️ Lauren Watts replied · 4 Replies

Figure 14: Facebook Meme Using Scenes and Symbolism From ‘The Walking Dead’ Television Show

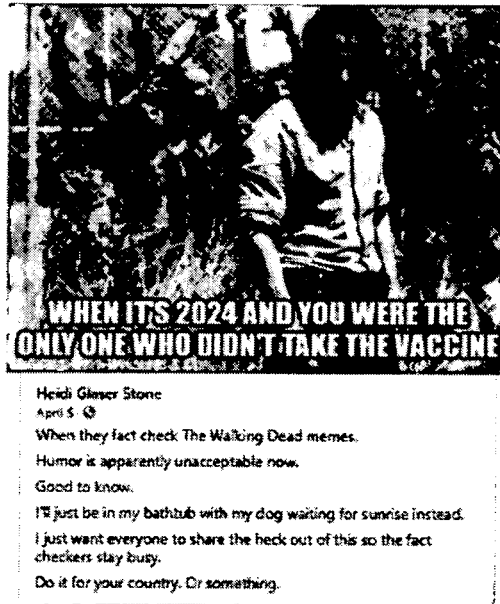


Figure 15: Facebook Meme Highlighting the Privacy Implications of Asking About Vaccination Status

Lady at Walmart: "Are you vaccinated?"

Me: "Do you like anal?"

Lady: 😬 "Excuse me?!"

Me: "Well, I thought since we were asking questions that are none of our f—king business, it seemed fitting."

Figure 16: Facebook Meme About “Medical Freedom”

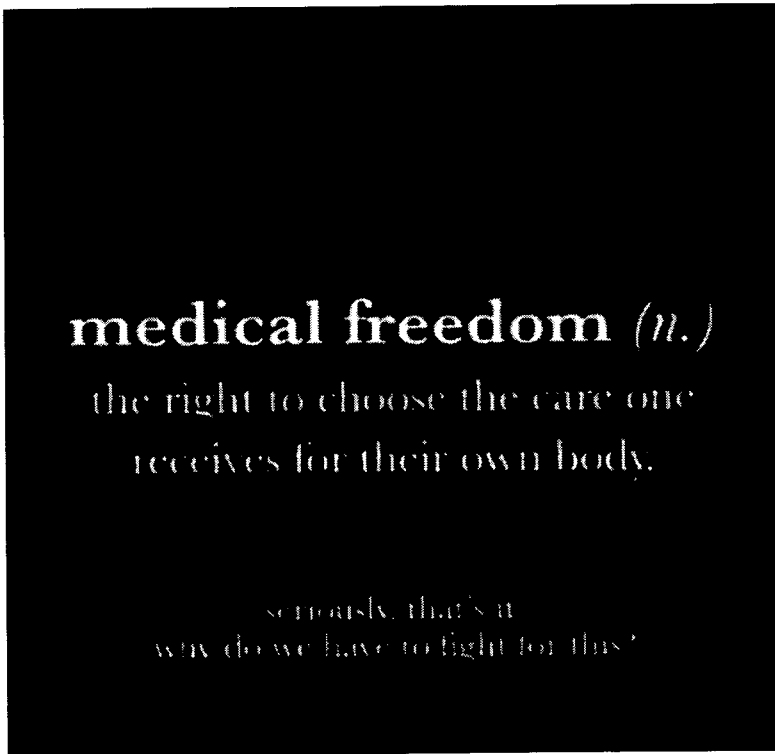
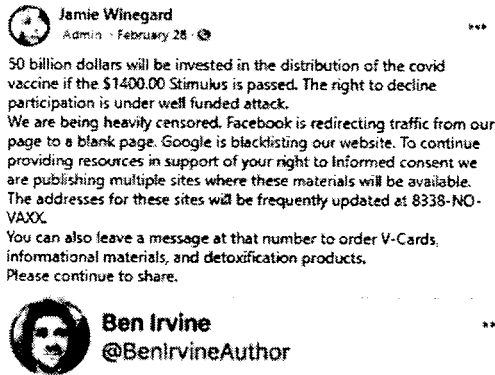


Figure 17: Facebook Post About the Semantics Of “Refusing” the Vaccine



People who don't want the vaccine aren't "refusing" it. You don't say a person is "refusing" to take antidepressants. Or "refusing" to get married. You can decline without refusing. You decide what's best for you. Refuse is a manipulative term, loaded with unfair moral pressure.

Figure 18: Anti-Vaccination Meme About “Forced” Vaccine Uptake

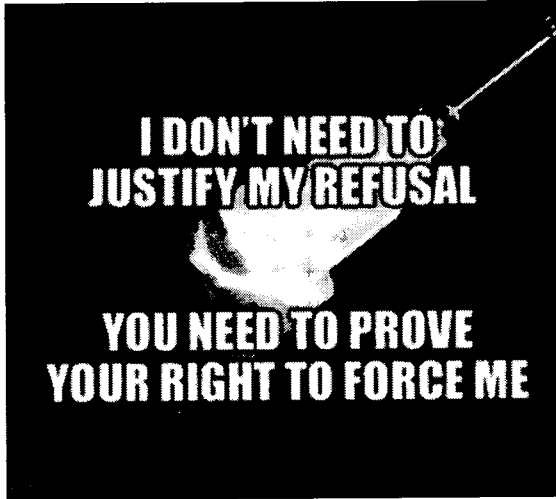


Figure 19: Gadsden Flag Anti-Vaccination Meme

<p>The Nuremberg Code</p> <p>VOLUNTARY CONSENT 1. The human subject must be legally competent to give informed consent.</p> <p>SCIENTIFIC PURPOSES 2. The experiment should be based on scientific knowledge that is expected to yield important contributions to the health of man.</p> <p>PERSONAL BENEFIT 3. There must be adequate protection against all forms of coercion and enticement.</p> <p>QUALIFYING SUPERVISION 4. The experiment should be conducted only by qualified scientists with adequate knowledge of the principles, techniques, instruments, and materials.</p> <p>STOPPING THE EXPERIMENT 5. The experiment should be stopped at any time if the subject experiences pain, discomfort, or distress that is excessive in relation to the anticipated scientific importance of the experiment.</p>	<p>DONT TREAD ON ME VACCINATE</p>	<p>For resources in support of your right to informed consent:</p> <p>www.vxrights.com facebook.com/groups/vxrights http://www.holistology.company.site facebook.com/vxrights</p> <p>Phone: (833) NO-VAXX www.8338-no-vaxx.com</p> <p>Telegram: t.me/holistology</p>
<p>THE BASIS OF MEDICAL ETHICS SINCE 1948 INFORMED CONSENT IS ESSENTIAL</p>		<p>Wallet card resources, detoxification products, encyclopedias of vaccines, adverse risk cards, more.</p>

Figure 20: Anti-Vaccination Meme Highlighting The Need To Not Be Afraid

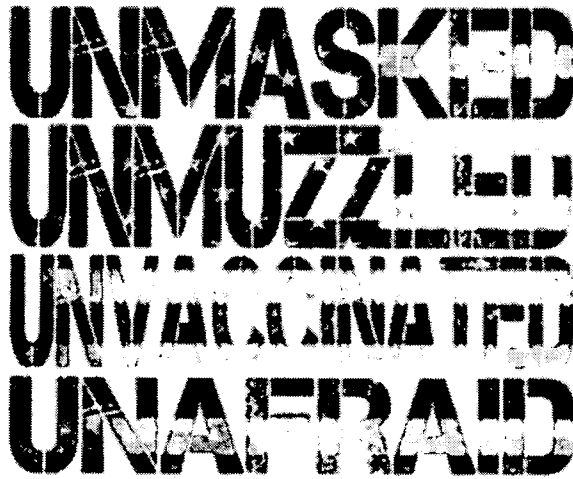


Figure 21: Anti-Vaccine Meme Spoofing COVID Fact-Checking Sites

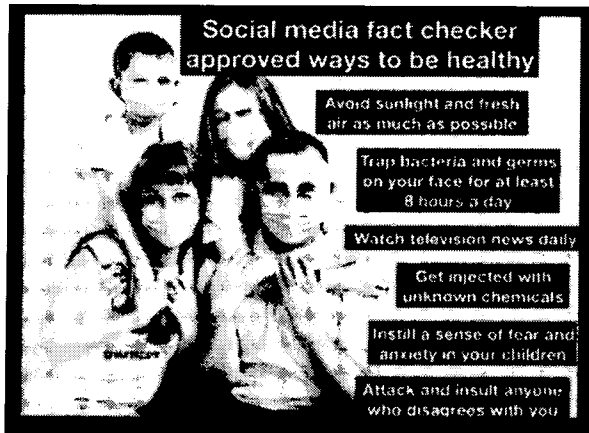
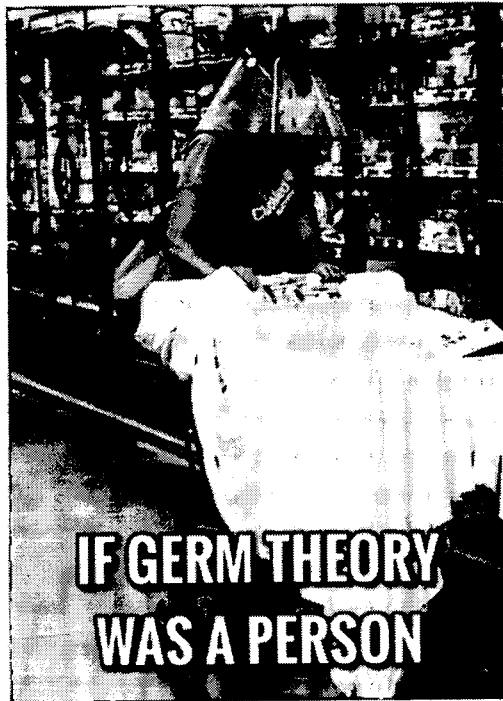


Figure 22: Meme Debunking “Germ Theory”



Jeremiah Daniel

April 7 · 🌐

Stop living in fear!

"If germ theory were true, nobody would be alive to believe it" -

Dr BJ Palmer

Research germ theory for yourself!

Figure 23: Meme Spoofing the Stigma Of “Unvaccinated” by Suggesting Replacing that Term with “Organic

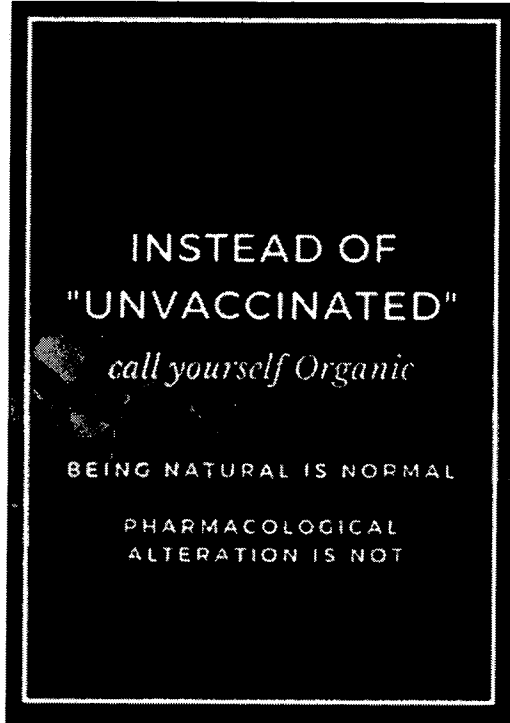


Figure 24: Meme Questioning Scientific Basis of COVID Vaccine

It's not a "cure" if people are dying.

It's not "data" if the adverse reactions and deaths are being censored/not included.

It's not "research" if they're deleting opposing information.

It's not "science" if you're not allowed to question it.

Figure 25: Anti-Vaccination Meme Listing Progression of Realization That Vaccines Are Allegedly Not Scientifically Supported and Are Dangerous

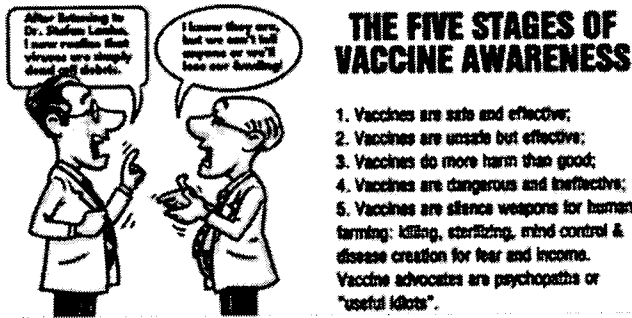


Figure 26: Anti-Vaccination Meme With Figures Impaled On Hypodermic Needles

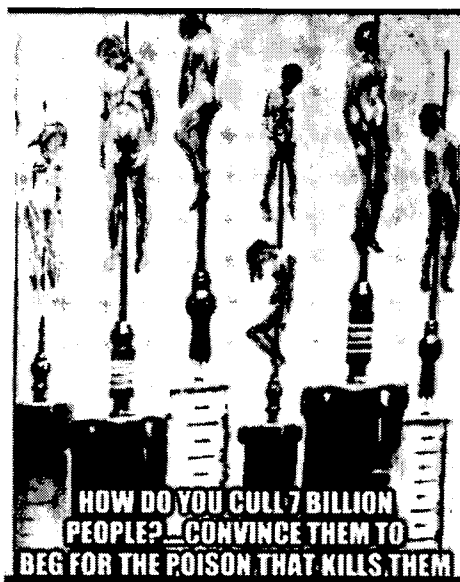


Figure 27: Anti-Vaccination Meme Comparing COVID-19 Vaccine to Arsenic and Poison

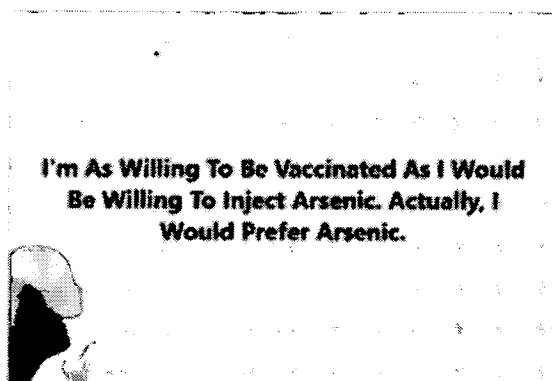


Figure 28: Anti-Vaccination Meme Criticizing COVID-19 Incentive Programs

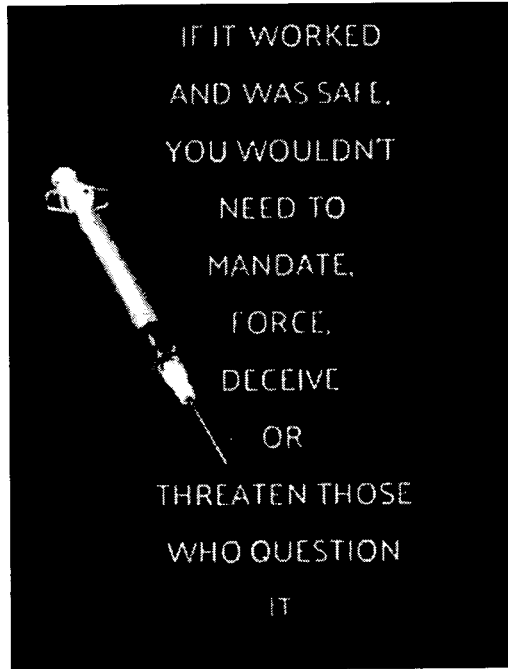


Figure 29: Anti-Vaccination Meme Discussing The Important of Protecting Loved Ones From Allegedly Dangerous Covid-19 Vaccine

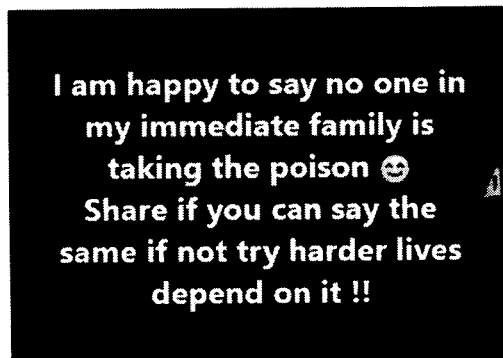


Figure 30: Anti-Vaccination Meme Discussing The Need to Protect Others From The COVID-19 Vaccine



Figure 31: A Screen Shot From The Movie “Inglourious Basterds” Referencing World War II Resistance Forces



Figure 32: Anti-Vaccination Meme Stating That It Is Wrong to Extend The COVID-19 Vaccine to Children

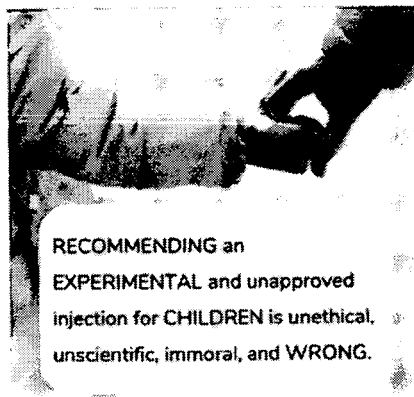
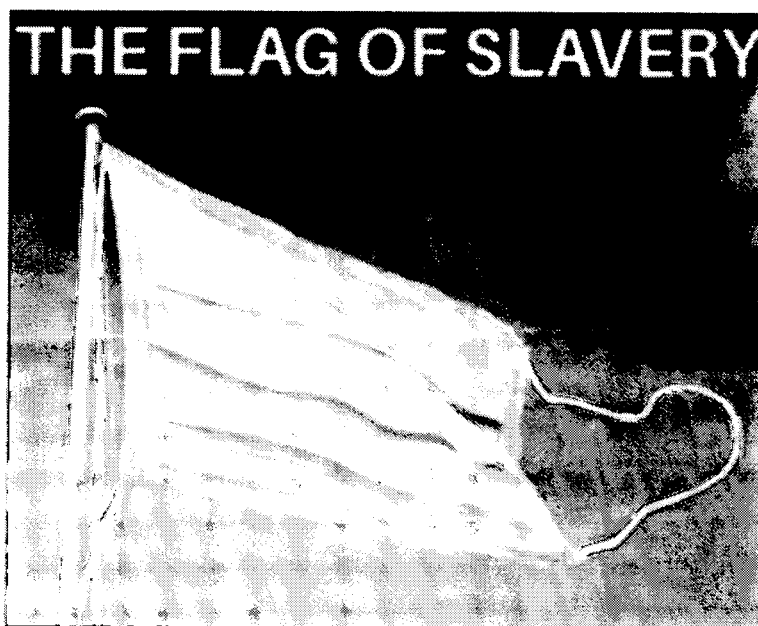


Figure 33: An Anti-Vaccination Meme Substituting A Paper Surgical Mask for The American Flag



VIII. APPENDIX II: SIGNS FROM THE INDIANA UNIVERSITY “RALLY FOR MEDICAL FREEDOM”

Figure 34: Attendees Holding Signs Stating “It’s Mutating Into Medical Dictatorship” and “I Took One For The Team / My Immunity Occurred Naturally.”



Figure 35: Child Attending IU Rally Holds Up Sign Stating
“Remember The Nuremberg Code”



Figure 36: Rally Attendees Holding Signs that State Mandate Medical Freedom / Where There Is Risk / There Must Be Choice / Stop The Coercion

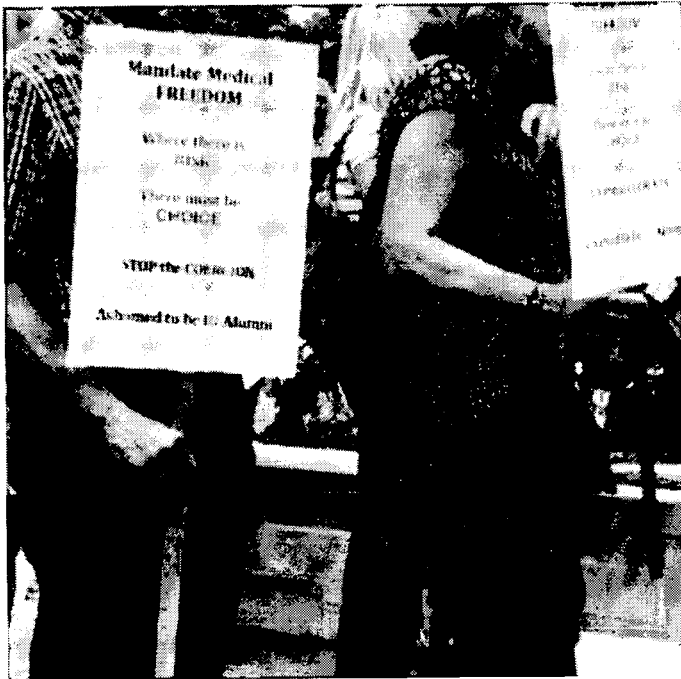


Figure 37: Child Attending Rally Holds up sign that States, “Stop the Hate in the Vaccine Debate”



Figure 38: Sign From IU Rally Portrays an X Over "Medical Segregation"



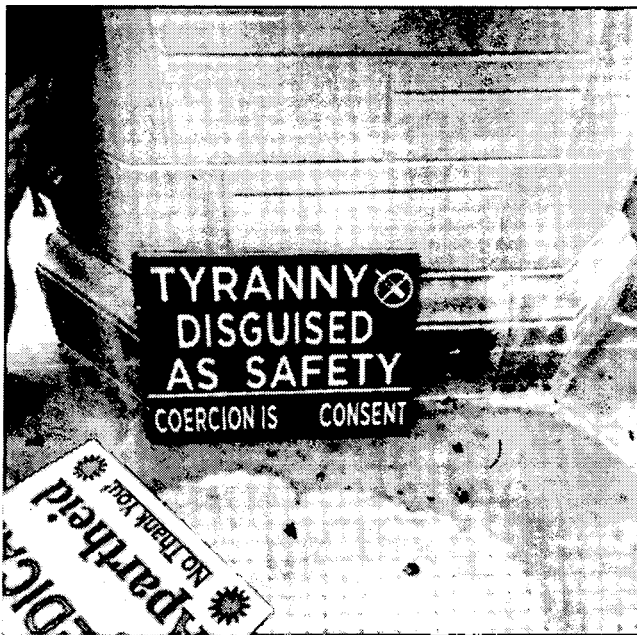
Figure 39: Sign From The IU Rally That States, "Not Anti-Vax / I Just Don't Want My Kid to be A Part Of The Experiment."



Figure 40: Attendees Holding Signs at the IU Rally Stating “Religious And Medical Freedom / Rescind All Mandates” and “I Am Not IU's \$cience Experiment”



Figure 41: Sign From The IU Rally Stating “Tyranny Disguised As Safety / Coercion Is NOT Consent”



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