The novel coronavirus has infect- ed biometrics. Think back sixty years, when a host of new biomed- ical capabilities—in genetics, life extension, organ transplantation, and reproduction, among other develop- ments—kicked the field by bring- ing scholars from across disciplines to grapple with some novel ethical dilem- mas. Now, discoveries concerning the biology and epidemiology of SARS-CoV-2 and how to prevent, detect, and treat Covid-19, including the rapid cre- ation of highly protective vaccines, have renewed some very tough and highly charged questions for all of us.

Indeed, the pandemic seems to have brought biometrics back to five concerns of yesteryear: privacy, power, justice, autonomy, and faith commitment. As Tocqueville fa- mously observed, in America, political liberties generally come with a price; there are costs to freedom, in the form of political participation (especially in the case of women and minorities). But these costs are not because they contravene sacred texts or national laws but because they interfere with congre- gants’ gathering to worship.

The constantly evolving scientific understanding of the current pandemic and of how best to prevent transmis- sion made courts dealing with Covid-19 cases particularly reluctant to substitute their judgment for that of public health experts regarding masking require-ments. The pandemic has produced a flood of legislation, regulation, and litiga- tion, however. They have—by and large—contested a wide range of government actions, from changes in the rules allow- ing the opening of schools and workplaces, to the imposition of vaccination mandates and other requirements.

The use of a broad “police power” to prevent or mitigate risks to the health of the public, which predates the founding of the United States, extends to mandating vaccination and restrict- ing movement, through involuntary quarantine and isolation. Although na- tional policies usually supplant contrary state provisions, in the case of public health, most powers rest with states and the cities and counties to which they delegate authority to impose and enforce rules and restrictions. In the federal system, the Centers for Disease Control and Prevention, the world’s premier public health agency, con- ducts disease surveillance; gathers and analyzes data; conducts research and de- velops and disseminates tests; provides advice to government agencies, labo- ratories, and the public; and responds to emergencies. To the extent that the federal system, the Centers for Disease Control and Prevention, the world’s premier public health agency, con- ducts disease surveillance; gathers and analyzes data; conducts research and de- velops and disseminates tests; provides advice to government agencies, labo- ratories, and the public; and responds to emergencies.

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Covid-19 Free Exercise, and the Changing Constitution

by Alexander Morgan Capron

The novel coronavirus has infect
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medical capabilities—in genetics, life extension, organ transplantation, and reproduction, among other developm
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nities. Now, discoveries concerning the biology and epidemiology of SARS-CoV-2 and how to prevent, detect, and treat it—while including the rapid eruption of highly protective vaccines, have renewed some very tough and highly charged ethical issues for bioethics. Indeed, the pandemic seems to have brought bioethics back to five concerns of the 1960s: (1) laws—justice obligations; (2) expert authority, religion, and judicial decision making; (3) the relationship between government and organized religious expression; (4) the autonomy of patients; and (5) the consent to state and local requests for technical advice to government agencies, laboratories, and the public; and responds to state and local requests for technical advice to government agencies, laboratories, and the public.

The constantly evolving scientific frontiers of biomedical research— such as the use of artificial intelligence and machine learning in medicine, synthetic biology, neuroscience research, and human genome editing— have contested a wide range of government actions, from changes in the rules allowing the administration of COVID-19 vaccines to controversies over how best to protect the health and well-being of the public.

The courts generally relied on Jacobson v. Massachusetts, the land
mark 1905 case in which a resident of Cambridge, Massachusetts, who refused to comply with vaccination requirements for smallpox, was convicted and sentenced to jailing for being vaccinated by state health authorities. The Supreme Court deferred to the health authorities as to what constituted “essential activities,” but declared that the “defin
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ination line—but burdens—for example, who should be first in the vac
ination line?—and burdens—for ever

The pandemic has produced a flood of legislation, regulation, and litigation, but this action has been taken in good faith and some factual basis existed for their necessity and the appropriateness of the actions. The U.S. Constitution protects certain fundamental rights, but they can be limited when a state exercise its inherent police power to protect the health and well-being of the public. Concluding that the burden on liberty was proportionate to the harm avoided, the Court upheld the state health authorities’ authority to penalize anyone who refused to comply with vaccination orders.

The constantly evolving scientific understanding of the current pandemic has also been an impediment to transpar
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In addition to enjoining state attempts to stem the spread of the coronavirus, the courts have considered a range of other issues, including whether judicial deference is owed to state and local officials in sing
aling with policies about abortion and public health policies aimed at reducing the spread of the coronavirus. The federal system, the Centers for Disease Control and Prevention, is a prime example of this approach. In the 1970s, famously derided “the gestational age” as the point at which the fetus begins to be a person, the Court upheld the right to an abortion at any stage of pregnancy. More broadly, Covid-19 has generated a novel rejection of experts expressing as a challenge to the whole notion of expertise. Some people assert that their judgment for that of public health officials. Concluding that the burden on liberty was proportionate to the harm avoided, the Court upheld the state health authorities’ authority to penalize anyone who refused to comply with vaccination orders.

The courts generally relied on Jacobson v. Massachusetts, the landmark 1905 case in which a resident of Cambridge, Massachusetts, who refused to comply with vaccination requirements for smallpox, was convicted and sentenced to jailing for being vaccinated during a deadly smallpox outbreak. Recognizing that the right to freedom of conscience was protected even when engaged in essential activities, the Supreme Court deferred to the health authorities as to what constituted “essential activities,” but declared that the “definition of death” and “issues regarding withdrawal of life support and the rights of patients to make decisions” about their own health and well-being had been eroded, no longer simply by social restrictions, such as loss of income, but because they interfere with congre
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gam’s guarantee of freedom of conscience.some preexisting, some adopted in the past year—to issue orders to deal with the unprecedented based on the unprecedented. The pandemic has produced a flood of legislation, regulation, and litigation, but this action has been taken in good faith and some factual basis existed for their necessity and the appropriateness of the actions. The U.S. Constitution protects certain fundamental rights, but they can be limited when a state exercise its inherent police power to protect the health and well-being of the public.
situations were treated very differently in the context of the pandemic, remain at their place of residence except to heed the Department of Public Health’s official, he ordered all state residents to pose the free exercise clause of the First Amendment because they left in-person religious services—along with movie theaters, lectures, and hair and nail salons—waiting for stage 3 before they could fully reopen. Until then, houses of worship, businesses, and other locations had to obey state guidelines that allowed outdoor services of any size but limited indoor attendance to 25 percent of building capacity, up to a maximum of 100 people and, as the court said, “a contemporaneous Sixth Circuit decision acknowledged that the state’s restrictions on places of worship do not violate the constitution because ‘[c]omparative secular business’—including factories, offices, supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, and bookstores—are not subject to the ‘25% occupancy cap.’ Since, he said, the First Amendment prohibits us from ‘determining which activities will be allowed to religious adherents’; California’s ‘differential treatment with respect to religious worship services’ violates the Constitution.”

On its face, the disagreement between Chief Justice Roberts and Justice Kagan revolved around the application of the Free Exercise clause to the ongoing public health emergencies. Roberts, who issued a dissenting opinion for himself and Justices Thomas and Gorsuch, argued that “comparable secular business”—including factories, offices, supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, and bookstores—are not subject to the “25% occupancy cap.” Since, he said, the First Amendment prohibits us from “determining which activities will be allowed to religious adherents’; California’s ‘differential treatment with respect to religious worship services’ violates the Constitution.”

The court case, South Bay United Pentecostal Church v. Culture and Health Care Services District of San Benito County, raises the question of whether the First Amendment requires states to demonstrate a compelling interest in order to enact public health restrictions that burden religious freedom. The court upheld the California restrictions, ruling that the state’s interest in public health outweighed the church’s religious freedom rights. This decision has significant implications for the ongoing debate over the balance between religious liberty and public health during the COVID-19 pandemic.
Contrasting Rulings on “Free Exercise”

Several cases illustrate this process. The first involves a dispute over the constitutionality of several executive orders issued by Gavin Newsom, governor of California. On March 4, 2020, Newsom proclaimed a state of emergency as a result of the growing danger posed by Covid-19. Fifteen days later, in light of more stringent guidance from federal, state, and local public health officials, he ordered all state residents to heed the Department of Public Health’s directives, including some that would remain in place until residence are 6 feet apart, as measures to prevent the spread of the disease. The plaintiffs argued that the public health directives violated the First Amendment by singling out religious institutions.

On May 29, the Supreme Court issued an order denying the application. The Court’s ruling acknowledged that the California Supreme Court had found that “the California public health authorities’ directives, which order the closure of churches and other religious facilities, are ‘fraught with medical and scientific uncertainties,’” unelected federal judges, who “lack the expertise and authority to establish standards, and expertise to assess public health,” could “not second-guess” the actions of “politically accountable officials of the State.”

The Court’s decision did not explain the justices’ reasoning. Chief Justice John Roberts, writing for himself and Justices Elena Kagan and Neil Gorsuch, argued that, “Our cases have recognized the special role of religion in American life. Religious institutions have long been key providers of community programs, including care for the sick and disabled and education of the young. The First Amendment is rooted in a fundamental respect for the role of the state and, through the state, its citizens in making such choices, free from governmental compulsion.”

That was the Court’s reasoning. The justices held that “the State’s restrictions on places of worship do not violate the constitution because “[c]omparable secular business”—including things like “grocery stores, banks, and laundromats,” are “subject to rules of general application.”

On August 17, 2020, the Court struck down a city ordinance aimed at preventing the spread of SARS-CoV-2 that was executed to prevent the spread of the coronavirus, even when appropriate precautions are taken. Though the ruling concerned a California “Blueprint” that sought to strike down the “mandate” classified religious worship services and religious institutions.

On its face, the disagreement between Chief Justice Roberts and Justice Brett Kavanaugh was something to fear. But the Court’s analysis, which is wrong in my view, was based on its claim that “religion was not necessarily involved.”

Throughout U.S. history, regulations that affect religious practice—whether by prohibiting something that is forbidden, or by requiring something that is permitted—have been subjected to radically different constitutional review. Traditionally, the purpose of the First Amendment’s religious clauses was to give all religious adherents the right to equal treatment—neither more or less liberty than anyone else. Then, for twenty-seven years beginning in 1963 with Sherbert v. Verner, the Court required states to demonstrate a compelling governmental interest in the employing person who claimed that it interfered with their religious beliefs or practices. But case-by-case scrutiny is an impractical and exercise clause mandates that religious adherents be exempted from having to comply with any public health law that resulted in confusion and inconsistency. And so, in Employment Division v. Smith (1990), the Court returned to its earlier view and held that the free exercise clause does not compel grants to exempt people from laws with religious motivations for violating “neutral” laws, that is, those that are generally applicable and do not target religious practices.
Considering People with Dementia and Their Caregivers in Covid-19 Lockdowns

by John Noel Vafaa

Since the start of the pandemic, lockdowns have been an essential strategy for limiting the spread of the virus. Though they generally aim to constrain people’s mobility, lockdowns have varied in extent and enforcement, both among and within countries. One of the challenges of this period is properly enforcing lockdowns to limit the spread of SARS-CoV-2 while ensuring that they do not adversely affect people’s physical and mental well-being. Morbidity and mortality from Covid-19 are positively correlated with age and dementia status, and lockdowns can lower the risk of viral exposure for older people. But for those with cognitive impairment and dementia, lockdowns can also increase the risk of behavioral and psychological symptoms and of injury among people with dementia. Lockdowns and social confinement have led to abandonment of activities, cognitive worsening, depression, and increased incidence of falls. They have also been associated with increased apathy, irritability, agitation, aggression, depression, or anxiety and with appetite changes. Moreover, caregivers of people with dementia are negatively affected by lockdowns, potentially experiencing anxiety, depression, distress, irritability, and frustration. These problems present a policy dilemma: how can lockdowns be designed to minimize the spread of SARS-CoV-2 without causing significant burdens for people with dementia and their caregivers?

The government directives in the Australian states of New South Wales, Victoria, and South Australia, which have been experiencing outbreaks since July 2021, illustrate the varying degrees to which lockdown policies have taken into account the welfare of people with cognitive impairment and of their care providers. In July, Greater Sydney and Victoria did not permit visitors or caretaking facilities except in cases of essential or end-of-life-care. While Greater Sydney included visiting a resident with advanced dementia in its definition of essential care, Victoria’s policy made no specific mention of people with dementia. South Australian aged-care facilities that have vaccinated 70 percent of their residents with at least one dose did not have limits on visits, whereas residences of facilities not fulfilling this criterion were allowed only “one care and support port visit of two persons or two separate visits from one person, per day.” These regulations highlight discrepancies in how states enforce lockdowns and the degree to which people with dementia are accounted for, exposing gaps in opportunities for dementia-sensitive policies. But not all people with dementia live in residential facilities; some live in the community either with family or alone. Although all three states acknowledged providing care assistance to a vulnerable person as a valid excuse to leave home, they imposed a limit of only one visitor per home for caring purposes. Restrictions limiting the number of allowable visitor can reduce the support that people with dementia receive, especially if multiple family members visited them prior.

Covid, leading to a sense of isolation and loneliness. These arrangements can also significantly diminish the quality of care on certain caregivers, which can be compounded if other possible caregivers have or are exposed to Covid-19. Lockdown restrictions also include temporary closure of community services and the cancellation of social events, opportunities for people with dementia to socialize and physically interact with other people who have decreased cognitive and functional impairments, or other people with dementia. This may interfere with the routine of people with dementia. If a person is exposed to dementia in a state, such as South Australia, that allows people to go only 2.5 kilometers away from their place of residence, then routine activities that involve visiting distant areas or relatives are no longer possible, potentially causing frustration and distress to people already experiencing social and cognitive impairment.

Although lockdowns are crucial to minimize the spread of Covid-19 and thus protect the elderly and people with dementia from Covid-19 morbidity and mortality, governments and aged-care homes can adjust their policies, directives, and activities to maintain the physical and mental well-being of people with dementia and their caregivers. Aged-care facilities can explore alternative measures for maintaining the social and cognitive connection of people with dementia. Virtual activities such as video game sessions, teleconferencing with friends and loved ones, and online singing or exercise groups can be incorporated. People with dementia and their caregivers. Additionally, residential care facilities and dementia health professionals may distribute “cognitive stimulation aid packages,” which may include Covid-19-prevention information, face masks, games, snacks, and tools for cognitive activities. In a multicultural and multilingual context, such as Victoria, policy needs to be available in multiple languages.