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**On the right to accommodation for Canadians with disabilities: space, access, and identity during the COVID-19 pandemic**

**Droit aux accommodements pour les Canadiens et Canadiennes handicapés : espace, accès et identité pendant la pandémie de COVID-19**

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**Abstract**

In this article, I explore the societal reluctance to accommodate and include persons with illnesses/disabilities, which has rendered them “second-class” citizens. This reluctance exists despite several pieces of legislation whose goal is to create an inclusive and accepting social as well as physical environment across Canada. In October 2020, the Ontario government introduced a mask mandate as a non-medical procedure to limit the spread of COVID-19. I argue that this mandate has further reduced civil society’s willingness to accommodate those who are unable to wear a mask due to their disability or medical condition, especially when their illness or disability is not visibly discernible. By making use of the concept of “state of exception” developed by Giorgio Agamben, and the biopower/biopolitics paradigm introduced by Michel Foucault, I attempt to examine what the mask mandate means for persons with disabilities as well as for society at large. My investigation is an effort to uncover why we are finding ourselves in a situation of inaccessibility and exclusion at this moment in time, despite the widespread rhetoric of unity and support for each other throughout the pandemic. Through a reading of Agamben, I aim to uncover why persons with disabilities have been, once again, considered justifiable collateral damage on the altar of necessity (in this case, the necessity to fight COVID-19 at all costs).

**Résumé**

Dans cet article, j’explore la réticence sociétale à accommoder et à inclure les personnes qui ont une maladie et les personnes handicapées, ce qui par conséquent en a fait des citoyens et citoyennes de « seconde zone ». Cette réticence existe malgré plusieurs mesures législatives dont le but est de créer un environnement social et physique inclusif et tolérant à travers le Canada. En octobre 2020, le gouvernement de l’Ontario a présenté le port obligatoire du masque comme une procédure non médicale pour limiter la propagation de la COVID-19. Je soutiens que cette obligation a encore réduit la volonté de la société civile d’accueillir les personnes qui ne peuvent pas porter de masque en raison de leur handicap ou de leur état de santé, en particulier lorsque leur maladie ou leur handicap n’est pas visible. En utilisant le concept d’« état d’exception » développé par Giorgio Agamben et le paradigme biopouvoir/biopolitique introduit par Michel Foucault, je tente d’examiner ce que signifie l’obligation de port du masque pour les personnes handicapées ainsi que pour la société en général. Mon enquête est un effort pour découvrir pourquoi nous nous trouvons actuellement dans une situation d’inaccessibilité et d’exclusion, malgré la rhétorique généralisée d’unité et de soutien mutuel tout au long de la pandémie. À

travers une lecture d'Agamben, je vise à découvrir pourquoi il a semblé justifié, encore une fois, de sacrifier les personnes handicapées au nom de la nécessité (en l'occurrence, la nécessité de lutter contre la COVID-19 à tout prix).

**Keywords**

Accommodation; Inclusion; Persons with disabilities; Invisible disabilities; Mask mandate; State of exception; Biopolitics; Necessity; COVID-19.

On 11 March 2020, Dr. Tedros Adhanom Ghebreyesus, director general of the World Health Organization (WHO), declared a worldwide pandemic of the SARS-CoV-2 virus, responsible for the COVID-19 illness. As a result, several countries, Canada included, introduced restrictive measures to protect their populations. Among those measures were physical distancing of at least 6 feet and the requirement to wear a mask in indoor spaces such as public transit and stores, as well as outdoors when physical distancing was not possible.

According to several scholars, these measures were based on questionable scientific evidence, yet were unreservedly embraced by governments around the world (Aiello et al. 2010; Larson et al. 2010; WHO 2019; Canini et al. 2020; Rancourt 2020, Xiao, J. et al. 2020). They were followed by lockdowns across different countries, including Canada and its provinces. In conjunction with the government response to the pandemic, the mainstream media developed a tight narrative that has since been repeated ad nauseam over newspapers, radio, television, and the internet, implying that humanity is at war with a virus and that, as aptly noted by David Cayley, “we must win no matter the cost” (October 2020) (see also Ajana 2021; Dias and Deluchey 2020).

This “cost” (more accurately, one of the many costs) is the topic of this paper. In the following pages, I argue that although accommodation is mentioned in the emergency legislation concerning mask wearing, the public climate has been so saturated by the “at all costs” narrative that the right to accommodation has become precarious at best, a distant memory at worst. Here,

I am not discussing the scientific validity of the measures implemented as a response to the pandemic across Canada, since others with more expertise on the subject have already covered that aspect in peer-reviewed and non-peer-reviewed publications (Bundgaard et al. 2021; Isaac 2021; Kisielinski et al. 2021; Corbett 2020; Koops 2020), and since I am only looking at the issue of mask wearing from a disability lens, specifically in terms of perceptions and experiences among a subsection of the disability community within the Canadian province of Ontario. I am also not examining the many economic and social costs of the pandemic response (Bhattacharya et al. 2020; Alonso Fernandez 2021; Burris et al. 2021; Canadian Public Health Association 2021; Graso et al. 2021; Marler and Ditto 2021).

I am instead interested in exploring how the right to accommodation for Canadians with disabilities has been negatively impacted by the mask-mandate implemented across Ontario and its capital (and largest) city, Toronto. While supporters as well as opponents of mandatory masking have developed arguments based on the evolving scientific evidence (Arellano-Cotrina et al. 2020; Dugdale and Walensky 2020; Eikenberry et al. 2020; Rancourt 2020; Rubio-Romero et al. 2020), neither side has addressed head-on the impact that mask wearing can have on persons with illnesses/disabilities; in fact, a basic search on the internet with regards to mask mandates and disability will show very few, if any, results. In these analyses, disabled individuals are rendered socially invisible, hence “absent from the public realm” (Davis 2005: 198).

Those claiming exemptions to the current policy are often not believed and are consequently publicly shamed and ostracized. This is an important issue not only for the disability community but for society at large: how we integrate or exclude persons with disabilities defines public space, access to it, and our commitment to inclusivity. I want to

acknowledge that the disability community is a diverse group and that while my focus is going to be exclusively on those negatively impacted by the mandate to wear a mask, I recognize that other individuals with disabilities might have different concerns related to circulating in spaces where others are not wearing masks or wearing them improperly. They might also be concerned by the potential, at some point in the future, for the removal of the mandate here in Ontario, although that's not yet in the plan according to the latest announcement by Premier Doug Ford (Rodriguez 2021).

This paper begins with a synopsis of what has occurred in terms of health regulations and restrictions across Ontario and its largest city since the WHO declaration of a pandemic. It also examines the requirement of wearing a mask indoors and the exemptions to that requirement that are mentioned in the legislation. This is followed by a brief overview of the pre-pandemic status of Canadians with disabilities, their position as “second-class” citizens, and the unique challenges faced by those with invisible disabilities when attempting to have their rights to proper accommodation acknowledged by the public.

The third and last section of the paper connects the two previous sections by demonstrating how a subgroup of the population that has historically been kept to the margins of society is being further penalized on the basis of current emergency policies and regulations. This part of the study explores how and why the mask mandate, combined with public perception of the existing health crisis, has resulted in further discrimination of those Canadians requiring exemptions. It also assesses what this means for society and its commitment to integration and accommodation. It argues that this exclusion has been rendered possible by appealing for the necessity of a prompt response to a health emergency. Necessity is used to justify a state of exception that results in the suspension of laws meant to accommodate persons with disabilities.

Whereas these laws were not fully and automatically abided to in the past, their suspension is now formally promoted across society.

I support my argument with references to Agamben's concept of state of exception and Foucault's concept of biopolitics/biopower. I argue that they both offer insights into the current situation that sees rights and constitutional guarantees limited in the name of bare life survival. We are today witnessing the implementation of a new governmentality that suppresses civil liberties and constitutional guarantees in the name of biological security (Ajana 2021). The loss of liberties and rights for the population in general, and specifically for persons with disabilities, is hence accepted as a price worth paying.

Before beginning my analysis, I want to clarify the terminology used throughout the paper and position myself so to explain my interest in this subject. For terminology: in the following pages I refer to persons with illnesses and to those with disabilities as if they are part of the same group. While disability is a social construct but illness is not, it remains true that the difference between the two tends to blur when discussing chronic (as opposed to acute or temporary) illnesses (Capurri 2021; Dale Stone 2008) and that both groups often encounter similar challenges and barriers. For this reason, I assess the impact of the mask mandate on both persons with certain illnesses (i.e., high blood pressure) and those with disabilities (i.e., autism).

I have an academic as well as a personal interest in examining this topic: I am a Canadian scholar living and working in the City of Toronto, within the province of Ontario. I am also a person with high blood pressure and multiple sclerosis, conditions that are largely invisible to the general population. In the following pages, I am going to use my personal experience as evidence of the increasing inaccessibility of public space to those who, like myself, are still treated as "second-class" citizens.

## **The COVID-19 pandemic**

First confirmed by Chinese authorities in early January 2020, the novel coronavirus initially named 2019-nCoV but now widely known as SARS-CoV-2 became a concern during the first few months of the year, with the WHO launching a Public Health Emergency of International Concern (PHEIC) at the end of January. On 11 March 2020, the WHO declared a worldwide pandemic (Canadian Public Health Association 2021). In Canada, health care is primarily a provincial responsibility, with the federal government tasked with playing a coordinating role at the national level. Because of the different responses to the pandemic adopted by the different provinces, the focus here is exclusively on Ontario which, together with Alberta, was the first to declare a provincial state of emergency on 17 March 2020, thus mandating the closure of certain businesses, facilities, and schools as well as the cancellation of major events (The Canadian Press 2021). Different municipalities within the province followed suit by declaring a state of emergency, including the City of Toronto on 23 March (Katawazi 2020).

States of emergency across Ontario's municipalities were accompanied by several restrictive measures aimed at containing the spread of COVID-19 among the population. Whereas initially the three levels of government simply recommended people follow appropriate health practices such as washing hands and sneeze/cough etiquette (Canadian Public Health Association 2021), they soon introduced additional requirements, including mask wearing, which is the topic of this study. In his examination of the worldwide response to the pandemic, Giorgio Agamben (2021), on whose analysis I rely quite substantially, argues that the pandemic has been used by governments around the world as justification to create a state of exception. Agamben refers to such state of exception as the permanent suspension of constitutional guarantees (i.e.,

the right of mobility and assembly) and the limitation of individuals' rights (i.e., the right to accommodation). Other scholars have also noticed how exceptional measures were introduced all over the world "to permit change with reduced levels of democratic scrutiny" (Martin et al. 2020: 501). Under the wave of panic generated by the highly publicized (real or perceived) threat, Canadians were asked to sacrifice their social, political, and economic lives on the altar of a state of emergency that, almost two years later, appears more like a state of permanence/normalcy. If this state of exception has become the norm, then we need to seriously examine the ethical and political consequences that ensue from such a state of affairs since "[a] society that exists in a perennial state of exception cannot be free" (Agamben 2021: 28). We also need to ask "social and ethical questions about the distribution of benefits and drawbacks across society" (Martin et al. 2020: 505). I want to question the cost that we are imposing on persons with disabilities in the name of safety, and I want to invite the reader to reflect on whether this cost is worth the price. What is the limit (if there is one) to the core principles and constitutional rights we are willing to sacrifice on the altar of safety.

Before examining the impact of the mask mandate across Ontario, it is worth mentioning that both the WHO and the government of Canada gave inconsistent advice over time, oscillating between the argument that masks were not recommended, to recommended, to mandatory (Karaivanov et al. 2020; Howard, 2020; Martin et al. 2020). Only on 6 April 2020 did Canada's Chief Public Health Officer, Dr. Theresa Tam, suggest that wearing masks could prevent the spread of COVID-19, then reiterated the point on 13 May, emphasizing how this was important in situations where physical distancing was not possible (The Canadian Press 2021). Currently, the federal government recommends the use of masks (both medical and non-medical) among a number of personal preventive practices that can help mitigate the spread of COVID-19



(Government of Canada 2021). In Ontario, only in October 2020, seven months into the pandemic, did Premier Doug Ford announce a mandatory mask policy in all indoor public areas, on transit, and in workplaces when physical distancing was not possible (Rocca 2020). Up until that point, the decision on whether to implement a mask mandate had been left to municipalities, and the City of Toronto had made mask wearing mandatory in indoor public spaces at the end of June (DeClerq 2020).

Whereas by early October 2020 mask wearing in indoor public spaces was therefore mandatory at both the provincial and municipal levels, exemptions to the mandate existed. At the provincial level, Regulation 362/20 under the *Reopening Ontario Act 2020* identifies a number of reasons for exemption to the mandate, including medical conditions inhibiting a person's ability to wear a mask, as well as accommodation provided in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005* and with the *Human Rights Code*. Similar exemptions are accepted by the city under its By-law 541-2020 which took effect on 7 July 2020, with the added specification that the individual is not required to provide (and should not be asked for) proof of exemption (2020). Although the three levels of government have formally acknowledged that exemptions are necessary to accommodate distinct sectors of the population, this paper argues that there has been a growing gap between the legislation and the way it is (or is not) implemented. The result has been unequivocal discrimination experienced by individuals with illnesses/disabilities, and their further exclusion from society. The following section examines the situation of persons with disabilities within Canada pre-pandemic and argues that the mask mandate has further contributed to isolate and exclude some of us at a moment when further accommodation should instead be among society's highest priorities.

### **Canadians with disabilities: still ‘second class’ citizens?**

This section discusses the precarious position Canadians with disabilities were already finding themselves in before the pandemic, despite the existing legislation meant to provide accommodation. While the reader might be already familiar with this overall narrative, I believe it is important to recall it to explain why the emergency measures introduced during the pandemic have magnified a condition of exclusion that was already challenging for many of us. In fact, while it might appear that the policies and regulations implemented in response to the pandemic are non-discriminatory insofar as they apply to the entire population, they further exacerbate the already dire situation of a specific sub-section of said population. This is not meant to minimize the negative consequences of these measures on the entire population, but to highlight how their impact is even worse for some of us.

In Canada, several pieces of legislation exist whose foremost goal is providing persons with disabilities with accommodation and inclusion. Among the most significant of these laws are the Canadian Human Rights Act of 1977, the Canadian Charter of Rights and Freedoms of 1982, the Employment Equity Act of 1995, and the Accessible Canada Act of 2019. In addition, in 2010 Canada ratified the UN Convention on the Rights of Persons with Disabilities (2006). At the provincial level, accommodation of persons with disabilities is covered in the Ontario’s Human Rights Code enacted in 1962 as well as in the Accessibility for Ontarians with Disabilities Act of 2005. Both the Charter and human rights legislation stem from the widespread acceptance of the social justice principle of social equality. According to Iris Marion Young, such principle rests on the belief that society should guarantee full participation and inclusion to all its members, irrespective of their “ascribed characteristics” (1990: 164). At the core of the legislation is the understanding that equality cannot be achieved if differences are ignored, but

only through integration and inclusion (Prince 2009; Young 1990)—that is, through accommodation of difference. The Charter as well as the Ontario human rights code aim to address discrimination, irrespective of whether that discrimination is direct (intentional) or indirect (unintentional), with the goal of achieving substantive equality (McColl et al. 2016).

Unfortunately, despite the above-mentioned legislation, Canadians with disabilities remain “second-class” citizens or, as argued by Michael J. Prince, “absent citizens” as a result of “cultural beliefs, material relations, political rules, and everyday social practices” (2009: 48). In fact, the reader will likely agree with Stienstra that “the overall picture for people with disabilities in Canada continues to be one of exclusion” (2018: 6) since proper accommodation is still elusive. With high rates of poverty and unemployment, disabled Canadians remain economically and socially marginalized, and lack the economic means needed for engaging in the costly complaint process to enforce human rights codes and Charter’s rights (Chouinard 2009). Therefore, Canadians with disabilities continue to face an uphill battle when asserting their rights to societal inclusion. As pointedly noted by Chouinard, “rights as represented do not necessarily correspond to rights as lived, and...in practice justice is often denied to those who need it most” (2009: 219; see also Basok and Ilcan 2013).

Spaces that fail to accommodate persons with disabilities are designed to render disability, in its visible as well as invisible forms, as “essentially excludable” (Titchkosky 2011: 39). Those who aren’t meant to be in certain spaces are rendered socially invisible. Examining the dynamics of exclusion and invisibility is important since who can access said spaces reveals plenty about societal structure and social relations. While this argument is common knowledge and part of the lived experience for those of us engaged in disability studies or living with a disability, what is novel in the present situation is the way our “second-class” status gets

legitimized within a state of exception that is certainly affecting the entire population, but ends up targeting with extreme pungency a specific subgroup. While I agree with Agamben (2021) that the mask mandate contributes to isolating individuals from one another, thus depriving them as well as society, of a political dimension, I believe it's vital to address the additional physical, social, and economic burden it imposes on those who have certain disabilities or illnesses. We have all been asked/forced to pay a stiff price in the name of an emergency, but some of us more so than others. In the context of the policy mandating use of masks, this is particularly true for person whose disabilities are not visible to the naked eye and who are therefore not believed when requesting exemptions.

While in the public perception, accommodation is an obvious concern for individuals with visible disabilities, we must not forget that it is also of critical importance for those with invisible disabilities (disabilities that are not always discernible by the general population). Beyond the issue of physical accommodation, at any given time “there are many more subtle and pervasive mechanism of inaccessibility and exclusion” (Davis 2005: 198) that limit participation for both persons with visible as well as invisible disabilities. Additionally, in the case of invisible disabilities, there is an overwhelming societal tendency to question whether the person claiming accommodation is “truly” disabled or is instead faking the disability in order to take advantage of certain benefits (for example, a parking spot close to the entrance, or a seat on a crowded public transit vehicle). As explained by Dorfman in his excellent study on society's fear of the “disability con,” there is a long history of skepticism and suspicion of people who claim accommodation rights when their disability is not visibly discernible (2019). This attitude puts an additional burden on persons with invisible disabilities who are under pressure to prove their disability so to convince the public that they are “not seeking some special – unfair – advantage”

(Davis 2005: 154). This added stress not only has negative repercussions on the health and well-being of disabled persons (Davis 2005), but can also act as a deterrent to request accommodation (Dorfman 2019) and can result in outright avoidance of spaces where questioning is more likely to occur.

The intrusion of perfect strangers into what is generally understood as a private domain, and who are publicly requesting details regarding our personal medical history, is something that is not simply upsetting but could force us to revisit past experiences that might have been traumatic (Davis 2005). As a person with an invisible disability who has some mobility issues that are not immediately discernible, I cannot recount how many times I have been asked why I occupy a disabled seat on public transit or why I am acting lazy and waiting for the elevator instead of taking the stairs. Being continuously confronted “by righteous citizens who feel entitled to play a vigilante role” (Davis 2005: 211) results in an inquisitive process that wears you down over time. I personally find it so stressful that often I will not ask for any accommodation and try instead to “pass” even if I am aware that I am doing my body no favour and that I will have to pay a price for such a choice. It’s easy to realize that this is a societal structure that is far from inclusive of all.

In the following section, I am going to expand on how the mask mandate implemented in Toronto and across Ontario as a non-pharmaceutical response to the pandemic has further contributed to the exclusion some of us with invisible disabilities encounter on a regular basis. I will refer to both Giorgio Agamben and Michel Foucault’s work to examine the present situation that portrays us as expendable in order to protect society. I will also explore the reasons why, under a state of emergency, rights and freedoms that were hard fought for are suddenly

suspended. Finally, I will assess what this means for persons with disabilities as well as for society at large.

### **The mask mandate, medical exemptions, and the “state of exception”**

There is little doubt that during the last couple of years mask-wearing “has emerged as a highly polarizing practice, with surprising partisan division” (Dorfman and Raz 2020: 1; see also Isaac 2021). While it is obvious to most medical professionals and policymakers that there are several categories that necessitate a medical exemption to this requirement, the same cannot be said for the general population that looks with skepticism and suspicion at those claiming an exemption. I argue that heightened moral concerns for those faking an illness/disability to avoid wearing a mask result from a social discourse that has been oversaturated with fear of the disease and its transmissibility. It is such a fear that obliterates any consideration of the social commitment to participation and inclusion for all. In fact, as made abundantly clear by a quick browsing of the internet and social media, individual members of the public are often appointing themselves vigilantes on a mission to shame anyone claiming exemption to the mask-mandate requirement (Dorfman and Raz 2020). What does this mean for those in need of an exemption? And why is this happening with such animosity at this particular moment? These are two questions I will try to answer in this section.

Let’s start by examining what the mask mandate means for persons unable to wear a face mask for either short or long periods of time due to illness or disability. As aptly summarized by Frances M. King in a letter published in *The BMJ* in the Spring of 2020, “face masks could foster distrust and blame.” In particular, the author mentions how “Those not wearing masks might experience abuse or intimidation” (2020), even though exemptions are contemplated in the

legislation. In his recent ruling in *Justin Green v. Alachua County* at the Florida's First District Court of Appeals, Judge Adam Scott Tanenbaum noted that mask wearing has become "the only outwardly visible signal that you are contributing to the solution" and that those not wearing a mask are exposed to public shaming (11 June 2021). This supports a previous statement made by Dr. Renata Villela, president of the Ontario Psychiatric Association, warning that those unwilling or unable to wear a mask "might find themselves facing strong negative responses from others" (in Begovic 2021). Martin et al. (2020) also caution us that since mask wearing has risen to "a visual symbol of virtuous behaviour, those who fail to comply may be subject to stigmatization or worse" (504).

A video posted on YouTube (one of the many available online) shows Windsor Police Service forcefully removing a woman from a bus for not wearing a mask, despite the person indicating she has a medical exemption (6 May 2021). I have had my own, although less traumatic, negative experience with public transit in the City of Toronto: while attempting to board a bus without a mask, I was verbally assaulted by the driver and had to engage in a heated conversation before being permitted to take my seat. Having to advocate for my rights in front of multiple strangers who were already annoyed because the whole episode was slowing down their commute was not a pleasant experience. Once home, I immediately contacted the Toronto Transit Commission (TTC) to lodge a complain; subsequently, a senior customer service representative responded via email with a formal apology. While the latter was appreciated, I have avoided using public transit since, unless strictly necessary. I have had similar experiences in grocery stores or at the doctor's office, where strangers have approached me demanding to know why I was not wearing a mask. It goes without saying that I have selected to also avoid these spaces as much as possible.

Despite the City of Toronto By-law 541-2020 clearly indicating that “The policy shall not require employees or members of the public to provide proof of any of the exemptions set out in section 2(a),” public questioning occurs quite often and I am too emotionally and physically exhausted to keep fighting the same battle over and over again. It’s not even possible to simply remind strangers that it is none of their business why I am not wearing a mask; I have tried, and it only escalates the situation by increasing the confrontation level of the vigilante of the moment. Hence, I have decided that I’d rather avoid being in public spaces than being regularly subjected to such inquisition. While I have had the privilege of working from home and opting to avoid uncomfortable spaces, many lack this same opportunity and are exposed to harassment and abuse. It should not be up to disabled persons to educate the public; it is instead the municipality (or any other government level introducing the legislation) that should make sure any regulation is properly explained to the residents, employers, employees, and enforcement personnel. Obviously, this has not yet occurred almost two years into the pandemic, and I have little faith it will happen any time soon. This leaves those with a disability or medical condition as outsiders who do not belong in public spaces. For all practical purposes, access is not a right but remains a privilege many of us still do not enjoy.

Another related question I am interested in exploring is why intra-societal tension has skyrocketed at this time, when we would expect people to support each other. Let’s not forget that at the beginning of the pandemic, we were fed the slogan “We’re all in this together” (Pelley 2020). Yet, the exact opposite seems to have occurred as we have witnessed the breaking up of society into two camps. As noted by Dorfman and Raz (2020), mask wearing (similar to vaccination) “has emerged as a highly polarizing practice” (1). Those who have opposed or questioned mask wearing have been systematically relegated to the category of “heretics”



(Martin et al. 2020). Here the work of Giorgio Agamben on the state of exception can help us assess society's unquestioned acceptance of measures that would have been largely dismissed as authoritarian tools before the pandemic. It can also help us assess the resulting militarization of the debate around such measures, with the creation of two enemy camps warring against each other.

In *State of Exception*, Agamben examines the conditions that make possible, during times of peace, the creation of a state of exception and “a permanent state of emergency” (2005: 2), a situation that has become evident across the world since the start of the pandemic as country after country began passing emergency decrees and enacting emergency orders. Such draconian orders were justified by appealing to the concept of necessity, in this case the need to save lives, flatten the curve, and to not overburden hospitals. The understanding is that this necessity is self-explaining and unquestionable. Yet, as Agamben points out, “far from occurring as an objective given, necessity clearly entails a subjective judgement, and that obviously the only circumstances that are necessary and objective are those that are declared to be so” (2005: 30). Hence, in a free and democratic society, vigorously debating whether a measure is necessary and for whom, should remain a priority.

Throughout the last couple of years, we have instead witnessed a worrying moralization of discourse so that any questioning is considered unacceptable and met with moral outrage and disapproval. Fear has replaced inquisitiveness and curiosity: we do no longer want to understand, we just want to escape a virus that, despite a survival rate of 99.93% here in Ontario (Justice Centre, 13 October 2021), many perceive as a significant threat. Compliance and uncritical acceptance of authority have suddenly become the most praiseworthy form of civic participation.

If this pandemic has taught us anything, it is that most people “are ready to sacrifice practically anything ... when faced with the risk of getting sick” (Agamben, 2021: 17).

In this stampede to salvation, it doesn't matter who is sacrificed. If certain individuals cannot wear a mask and are prevented from accessing public space, so be it. Some social costs, which are unequally distributed, are considered acceptable in the fight against COVID-19, a fight that “has become moralized, perhaps even to the point of a sacred value” (Graso et al., 2021: 1). It is this joining together of necessity and moralization that renders any opposition outrightly deplorable. In such a context, public shaming and harassment of those not wearing masks are not just tolerable but appropriate reactions (Graso et al., 2021). This is the result of a new form of governmentality that Agamben (2021) defines as biosecurity, a new and permanent paradigm of governance based on fear of contact and the duty (no longer the right) to health. Noncompliance with such paradigm is met with outcasting. If you cannot fit in, then you must get out or be forcefully expunged.

Agamben's notion of biosecurity draws from the concept of biopower (and the related concept of biopolitics) first introduced by Michel Foucault to identify “the diffuse array of institutions that monitor, manage and optimize the health of the population” (Shullenberger 2021: 226). According to Foucault, modern medicine cannot be understood unless we examine its intrinsic connection to politics and assess it as an institution whose main goal is to categorize and manage populations “for the purpose of ‘defending’ society” (Ajana 2021: 25). This is crucially important because, while we are told to put our faith in universal, objective, and unquestionable science, Foucault reminds us that such science has never existed, and that scientific knowledge is not separable from politics and power. In the words of Foucault: “Biopolitics deals with the population, with the population as a political problem, as a problem

that is at once scientific and political, as a biological problem and as power's problem" (2003: 245).

In fact, the determinations of the medical and scientific experts (who we have been told it is unacceptable to criticize) far from transcending politics are instead enabling a "covert expansion of unaccountable power" (Shullenberger 2021: 229). It is therefore unsurprising that Agamben was immediately denounced as irresponsible by those Shullenberger (2021) refers to as "the guardians of respectable opinions" (229), and that Foucault has been largely absent from the debate around policies and measures introduced throughout the pandemic. The "new cult established by medicine-as-religion" (Agamben 2021: 64) cannot tolerate dissent. Grabbed by fear, the world population, intellectuals included, has quietly consented to the limitation of rights and freedoms, as well as to sacrificing fellow citizens, those with disabilities among others.

Foucault was the first to point out that within the biopolitical framework, in order to defend the population we must at times be ready to sacrifice/exclude parts of it (Ajana 2021). His words resonate in the current socio-political climate and help illustrate how biopolitical power operates: "the enemies who have to be done away with are not adversaries in the political sense of the term; they are threats, either external or internal, to the population and for the population" (2003: 256). The unmasked (and the same is true for the unvaccinated) are not adversaries, but threats to remove. In the conflict against a virus, the deployment of warlike tactics that sacrifice "the most precarious bodies among us" (Dias and Deluchey 2020: 3) has become normalized.

Persons with disabilities have a long history of exclusion from public space and here again, they are being sacrificed on the altar of the war against COVID-19. If accommodation is no longer a priority for Canadian society, then we need to discuss what this means and why we are making such a decision. We owe the disability community an explanation as to why we are

de-prioritizing their needs one more time. We should also investigate the magnitude of the impact that the mask mandate is having on those requiring an exemption: are the latter limiting their presence in and access to public space because of the mandate? Since the mandate implementation, have disabled persons participated less to public life than the non-disabled? I certainly have. A study similar to the one conducted by Wilson and McColl to assess integration and inclusion through the adoption of a “time use dissimilarity index” could be a valuable tool (2019: 21). Wilson and McColl argue that such an index, by reflecting the participation of persons with disabilities to public life, “would enhance the ability of government and advocates to track and evaluate the impact of policy and program activity” (2019: 21). It would be an empirical and effective approach that could help us understand the real-life impact of policy decisions on certain sectors of the population beyond the anecdotal level.

Faced with the full legitimation of our exclusion from civil society in the name of security and the logic of a “defensive biopolitics” (Ajana 2021: 25), what should we do? How can those of us who are disabled and/or working in the field of disability studies take back control of a situation that directly affects us but that has so far functioned without our direct input? Here I suggest we look again at the work of Michel Foucault and his idea of counter-conducts which, as explained by Cadman (2010), are practices of freedom that question “the regime of truth through which they are engaged as objects and subjects of government” (550). We therefore need to reject compliance and uncritical acceptance of authority and engage instead in the critical questioning of all measures presented as salvation at the expense of our rights. Persons with disabilities, both in Canada and across the world, have fought hard for these rights. Should they go, it won’t be easy to gain them back.

## **Conclusions**

This article has examined the impact of the mask mandate, a non-pharmaceutical measure meant to stop the spread of COVID-19, on those persons with illnesses/disabilities who are unable to wear a mask. While aware that within the disability community there are also individuals who have no issues with wearing masks and do in fact perceive it as a needed protection, my study was limited to the negative impacts of mask wearing for a specific subsection of the population. The investigation has focused on Ontario, Canada's most populous province, and its largest city, Toronto. The article has provided a summary of the situation in the last couple of years, since the announcement of a worldwide pandemic made on March 11, 2020 by the WHO. After a brief overview of the pre-pandemic status of persons with disabilities in Canada, the paper has examined the further exclusion from social space of those Canadians with disabilities or illnesses preventing them from wearing a mask.

My argument has presented these individuals as collateral damage in society's war against COVID-19 since their rights to accommodation and inclusion have been all but forgotten in the panic-stricken environment created by the pandemic. By making use of Agamben's state of exception and Foucault's biopolitical paradigm, I have attempted to assess current dynamics that see the sacrifice of some members of society on the altar of public health and population survival as legitimate and unquestionable. Fear has become the dominant receptor across society and, once again, the public appears to have decided that it is tolerable for persons with disabilities to pay the price for the common good. Mask wearing has been unquestionably accepted as a necessary measure, and any objection to it is met with scornful disdain and moral outrage. Beyond the real effectiveness of such non-pharmaceutical measure (which is beyond the

scope of this investigation), this is a concerning development for all of society, and for persons with disabilities in particular.

As scholars in disability studies, we need to ask ourselves uncomfortable questions: what does the current environment mean with respect to inclusion, participation, and accommodation of difference? Why are we allowing persons with disabilities to become even more socially invisible and irrelevant to the larger community than they already were before the pandemic? What does this mean for disabled persons and for society at large? In this article, I have attempted to kickstart a meaningful conversation, in the hope that some of my colleagues will join me with other contributions. I also invite other scholars to explore the opposite perspective of those Canadians with disabilities who instead have welcomed mask mandates and are concerned by the eventual removals of such mandates across jurisdictions.

My goal is to encourage a debate that is neither moralized nor polarized, but that is instead open and honest. COVID-19 (and I am here referring to the virus not necessarily to the socio-political measures imposed by governments worldwide) will eventually pass, but the isolation of persons with disabilities from society will have a lasting impact. Rights that were fought for and won with immense hardship and sacrifice are now being lost. It won't be easy to get them back.

I want to conclude with a quote from the late Paul Hunt, author and disability activist: "We are challenging society to take account of us, to listen to what we have to say, to acknowledge us as an integral part of society itself. We do not want ourselves, or anyone else, treated as second-class citizens and put away out of sight and mind" (1966: 157-158). The way society responds to the present challenge will define it for the foreseeable future. It is therefore vital for all of us, academics and non-academics, disabled and non-disabled, to make sure we

answer by reaffirming our unequivocal commitment to accommodation and inclusion without exceptions.

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