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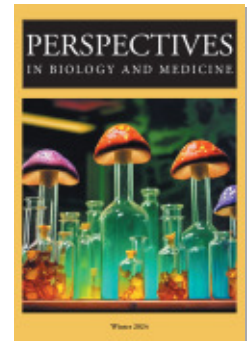
## Lived Religion in Religious Vaccine Exemptions

Hajung Lee

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# LIVED RELIGION IN RELIGIOUS VACCINE EXEMPTIONS

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HAJUNG LEE

**ABSTRACT** This essay explores a more inclusive and equitable interpretation of “religion” within the context of religious vaccine exemptions. The existing literature critiques the prevalent interpretation of the meaning of religion in religious exemption cases, but frequently overlooks the importance of incorporating the concept of “lived religion.” This essay introduces the concept of lived religion from religious studies, elucidates why this lived religion approach is crucial for redefining “religion,” and illustrates its application in the domain of religious vaccine exemptions. The author contends that broadening the meaning of religion by employing the concept of lived religion would promote a more inclusive and equitable implementation of religious vaccine exemptions.

**E**MPLOYER VACCINE MANDATES HAVE stirred controversy across the nation during the COVID-19 pandemic. Many employees whose religious beliefs or practices oppose these mandates have sought religious exemptions. According to Title VII of the Civil Rights Act of 1964, religious exemptions allow employees to request an exception to a health-protected mandate if it “conflicts with employee’s sincerely held religious beliefs, practices, or observances” (EEOC 2008). But what does “religious” or “religion” mean in the context of religious vaccine exemptions?

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Religion, Spirituality, and Society and Bioethics, University of Puget Sound, 1500 N. Warner Street, Wyatt 137, Tacoma, WA 98416-0001.

Email: [hjlee@pugetsound.edu](mailto:hjlee@pugetsound.edu).

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Bioethicists have pondered what types of sacred beliefs, practices, or observances are considered “religious.” The US courts’ interpretations of “religion” or “religious beliefs or practices” have been inconsistent and unclear throughout legal history. Researchers from various fields have tried to define “religious” and “religion” and have proposed guidelines to determine whose religious rights should be protected under the First Amendment (Johnson 2015; Mcrary 2022; Miller 2016; Wong and Vinsky 2009). Some of these researchers, with a legal background, have conducted studies related to the meaning of “religious” or “religion.” For example, Johnson (2015) argues that ethical veganism is religious in nature and that it should be protected under the Free Exercise Clause. On the other hand, Miller (2016) asserts that spiritual but not religious beliefs and practices should be protected by the First Amendment.

However, in defining religion for religious vaccine exemptions, the existing literature does not focus on the concept of “lived religion,” which is frequently studied in the fields of religious studies and sociology of religion. In this essay, I argue that the court should add “lived religion” to the standard conceptions in order to be more inclusive of diverse religious beliefs and practices in the context of religious vaccine exemptions. By incorporating individualized versions of religious beliefs and practices, which also encompass spiritual practices, I hope to create a more comprehensive understanding of religion in vaccine exemption issues. And by incorporating a lived religion approach into discussions about religious vaccine exemptions, the definition of religion can be interpreted more inclusively and equitably. This approach better captures the contemporary social realities of religious and spiritual experiences (Ammerman 2013b; Miller 2016).

### DEFINING RELIGION

I live in the greater Seattle area, where religious “nones” constitute about 37% of the population (Pew Research 2014). This has caused me to ponder a number of questions. Would these religious “nones” ever qualify for vaccine religious exemptions under the Free Exercise Clause? As more states remove “philosophical” vaccine exemptions, would the spiritual practices of “nones” still be covered by the First Amendment? And as more people become religious “nones,” will religious protections under the First Amendment belong only to individuals who identify themselves as religious? Is it ethically permissible for individuals who exercise their spirituality without any religious affiliation and who do not follow any top-down religious teachings to gain vaccine religious exemptions?

Given recent social trends, spirituality is gradually replacing organized religion in the US, and many people are leaving their religious organizations. The overall proportion of the population that identifies as religiously unaffiliated has increased from 5% in 1972 to 30% in 2020, and if recent trends continue, more

than half of the US population is projected to be religiously unaffiliated by 2070 (Pew Research Center 2022). Researchers in religious studies have found that these religiously unaffiliated individuals express their religiosity in different settings outside the traditional boundaries of religious institution. Although they are “not-orthodox and not-loyal people,” they still practice their own lived religion (Ammerman 2014a, 3). I contend that the lived religion of these individuals, as well as the lived religion of many marginalized people, should be protected under the First Amendment. Furthermore, their religious and spiritual belief and practice should also constitute a “sincerely held belief” in the context of religious vaccine exemptions.

My goal in this essay is to seek an inclusive and equitable interpretation of the meaning of “religion” or “religious” within the context of religious vaccine exemptions. I will introduce the concept of “lived religion” from a religious studies perspective, demonstrate how this concept can be applied, and offer readers an opportunity to consider different viewpoints on religious vaccine exemption cases. I will also reassess the meaning of “religion” or “religious” in vaccine exemptions, drawing on contemporary research in religious studies and the current social context. Based on this reassessment, spiritual belief and practice can potentially be protected by broadening the definition of religion through the lens of lived religion. The essay explores why adopting lived religion makes sense in the context of religious exemptions to vaccination and how it would lead to granting First Amendment protection for vaccine exemptions based on spiritual belief or practice.

It is important to note that I do not argue prescriptively that religious exemptions to health-protective vaccine mandate should be removed or maintained in specific contexts. During the COVID pandemic, millions of people have died, and many bioethicists and public health advocates have argued that religious exemptions should be removed or more strictly regulated in the context of COVID vaccinations. I do not wholly disagree with these perspectives. If the public health interest in protecting the lives and health of people in communities is very strong, religious exemptions may be temporarily limited. Such exemptions should not be exercised at the expense of others’ lives, nor should they be available only to privileged groups (Flescher 2023). Thus, if the decision is made to remove religious exemptions in specific public health emergency contexts, I do not have a strong moral objection. However, if religious exemptions to vaccinations are applied, I argue that we should consider an inclusive and equitable way of implementing them by redefining the concept of religion. Adopting the concept of lived religion would mean that a broader range of applicants, including those who identify as spiritual but not religious, may qualify for religious exemptions.

*A Hypothetical Question*

To illustrate how the concept of lived religion might be applied in the context of religious vaccine exemptions, I want to pose a hypothetical question that has been widely debated among researchers: whether ethical veganism is a religion (Johnson 2015; Kraus 2001; Page 2005; Strumos 2022). Let's assume that a vegan employee sought a religious exemption from mandatory vaccination on the grounds of their ethical veganism. This employee is aware that horseshoe crab blood is used in the safety testing of the COVID vaccine, and that many horseshoe crabs have been captured for lab work related to COVID vaccine development (Fox 2020). Should this employee's ethical veganism be considered a religion?

**LEGAL DEFINITIONS OF RELIGION**

Title VII of the Civil Rights Act prohibits discrimination based on religion against employees who not only possess sincerely religious beliefs but also observe and practice their religion. The US Equal Employment Opportunity Commission (EEOC) states that "Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, subscribed to by only a small number of people, or that may seem illogical or unreasonable to others" (EEOC 2008). The EEOC guidelines suggest that religion typically concerns "ultimate ideas about life, purpose, and death." Furthermore, religious belief should form "part of a comprehensive religious belief system and is not simply an isolated teaching." Although the EEOC offers a relatively broad definition of religion, including "all aspects of religious practice and belief," it does not clearly define the concept of religion.

The EEOC guidelines for federal discrimination cases align with the *Seeger/Welsh* test (Johnson 2015), based on two Supreme Court cases that have been utilized for the past 50 years to define what qualifies as "religious." During this era, conscientious objection was brought to the court, and the concept of religion was broadly construed (Johnson 2015). In 1965, the Supreme Court in *United States v. Seeger* defined religious belief as "an individual's belief in a relation to a supreme being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code" (*United States v. Seeger*, 308 U.S. 163 (1965)). The court interpreted religion as encompassing not only theistic religious beliefs but also non-theistic beliefs (Kraus 2001), citing Paul Tillich's definition of religion as involving the "ultimate concerns of individuals" (McCrory 2022, 171). The *Seeger* case acknowledged increasing secularization and pluralism in the religious landscape in the US during the 1960s (McCrory 2022). In *Welsh v. United States* in 1970, the court expanded the application of the Free Exercise Clause by

including “moral, ethical, or religious beliefs” without a specific claim of religion (*Welsh v. United States*, 398 U.S. 333 (1970)).

Although the EEOC guidelines adopt the standards set by these two cases to handle religious exemption cases, applying those guidelines is complicated by the fact that the court often “favors one religion over another, or religion over nonreligion” (Kraus 2001). One legal study has found that the definition of religion is narrowly interpreted in vaccine religious exemption cases, and it argues that individuals who do not belong to any specific religious organization should not face discrimination when applying for religious exemptions to vaccination (Colombo 2022). Although the court made efforts to be inclusive of non-Western, non-theistic religions by adopting Tillich’s definition of religion, the court’s definition is still narrowly construed and not inclusive and equitable enough to embrace today’s religious landscape in the US.

### *Changes in the US Religious Landscape*

The religious landscape in the US today is significantly different compared to the 1960s and early 1970s, when the *Seeger* and *Welsh* cases were adjudicated. According to a Pew study, an increasing interest in spirituality has been observed among both religious and non-religious respondents over the past few decades, with over a quarter of the US population identifying themselves as spiritual but not religious (Lipka and Gecewicz 2017). A 2015 Gallup survey reported a significant decline in believers’ confidence in the church and organized religion, with confidence in the church and organized religion recorded at 42%, a stark contrast to 68% in 1975 (Saad 2015). There has also been a loss of trust in religious organizations due to perceived corruption (French 2003). Consequently, over the last 25 years, the number of religiously unaffiliated adults has tripled in the U.S. (Jones, Cox, and Raney 2017).

These shifts in the US religious landscape also include a growing interest in spirituality among people who left their religious organizations. Even though they reject organized religions and top-down religious teachings, many continue to seek metaphysical realities beyond the scientific and physical world (Miller 2016). Influenced by the new age movement, many postmodern era spiritual seekers strongly reject institutionalized religion (French 2003). The advent of the internet, along with increased international travels and immigration, has significantly broadened exposure to a diverse range of religious and spiritual beliefs and practices, and an increasing number of individuals who desire to choose and create their own religious or spiritual practices are turning to various spiritual practices adopted from around the world (Miller 2016). These individuals often use the term “spiritual” to describe experiences and practices that cannot be adequately defined by ordinary means (Ammerman 2013b). Given these individualized and disenfranchised religious phenomena and the detachment from

traditional religious institutions, it may be necessary to revise the application of vaccine religious exemptions to reflect today's social realities.

### **SPIRITUALITY AND RELIGION**

“Spirituality” is a fuzzy concept, with a wide array of definitions having been used in academia (Helminiak 2010). The modern term *spirituality* derives from the Latin word *spiritualitas*, used in Christianity to describe theological relationships among God, body, soul, and spirit (Wong and Vinsky 2009). The concept of spirituality has often been limited to an internal, individual, authentic experience (Ammerman 2013b). Although the definitions of both *religion* and *spirituality* remain unclear, researchers have sought to distinguish between them. Religion has been understood as an organized, institutionalized system of beliefs, practices, and rituals that connect human beings to the sacred, whereas spirituality is understood as an individual, experiential connection to the divine (Miller 2016). Furthermore, religion focuses on orthodoxy with a shared set of doctrine, while spirituality highlights orthopraxy with the subjective, sacred experience that can exist outside a particular religious context (Miller 2016).

However, many studies suggest that the boundaries between religion and spirituality are extremely blurred. Although researchers have often viewed religion and spirituality as zero-sum trends, due to the rise of religious individualism and the rapid declines in religious participation in Europe and the US (Ammerman 2013b), numerous studies demonstrate that religion and spirituality are not mutually exclusive. Indeed, there is substantial overlap between them (Pargament 2011; Roof 2003).

A study by Zaloudek and colleagues (2017) analyzed 32 academic articles that include elements of religion and spirituality in their definition. This study found that there are some distinctive features of religion and spirituality. For instance, religion tends to stress collective aspects by highlighting a larger human community rather than individuals, whereas spirituality stresses individual experiences connected to oneself, nature, or others. Nevertheless, the study also identified areas of overlap between religion and spirituality: both underscore aspects such as “meaning,” “connection/belonging,” “transcendence,” and “beliefs and practices/rituals.”

The Fetzer Institute's 2020 study also illustrates the overlap between religion and spirituality in people's perceptions within the US. The Institute's comprehensive report found that three out of five survey respondents believe that “religion and spirituality are either the same or more similar than they are different” (42). According to the study participants, “religion is like communal spirituality and spirituality is an individualized form of religion”; “Spirituality is expressed through one's personal belief system that is enhanced by religion”; “Religion offers the foundation for expressing one's spirituality”; “Spirituality is a byproduct

of religion”; and “Spirituality is a manifestation of religion” (43–44). In other words, spirituality can be viewed as “the lived experience of one’s religion,” and thus can be expressed within the context of “lived religion” (42). The vast majority of study participants, whether they identified as religious or spiritual, reported feeling “touched by the beauty of creation and having experienced peace, awe, wonder, or mystery in the natural world” (54). These participants responded that “both religion and spirituality offer similar benefits (e.g. peace, love, inspiration, values, purpose, morality, clarity, belonging, wonder, security, transformation, transcendence, structure)” (56). These comments by study participants confirm that the boundaries between religion and spirituality are extremely blurred.

Ammerman’s (2013b) qualitative study argues that the dichotomy between religion and spirituality fails to capture the complex empirical reality of these concepts in the US. The study suggests that spirituality is “neither a diffuse individualized phenomenon nor a single cultural alternative to ‘religion’” (258). In this study, participants used various concepts and key terms to describe spirituality, including “religious tradition, ethics, divine presence, practices, mystery, meaning, belief, connection ritual, awe, self” (163–64). These terms significantly overlap with the key terms used to describe “religion,” which frequently appear in the EEOC guidelines.

McGuire (2008) asserts that “we should not accept the distinctions between religiosity and spirituality at face value” (6). She contends that religious organizations often prefer setting these boundaries in order to exert religious authority to approve individual practices. McGuire provides examples of boundary crossings in spiritual practices. For example, a spiritual practitioner might practice contemplative spirituality and engage in social activism, considering these as significant spiritual practices, or seek peace and social justice, which can stem from religious traditions. Another practitioner might consider gardening as a daily worship service, thereby cultivating “patience, hope, and nurturing love” (7–8). These virtues can also be inspired by religious traditions, while gardening is often considered as a spiritual discipline. In these people’s spiritual practices, religious beliefs or ethical guidelines are infused, demonstrating the interconnectedness of religion and spirituality.

Although the quest for spirituality often emphasizes individual, personal inward experiences, people who define themselves as spiritual but not religious also demonstrate strong communal aspects. While spiritual people may be more committed to their own growth rather than to a community, many still seek spirituality within a committed community setting. For instance, Mercandante’s (2014) study found that many Alcoholics Anonymous (AA) attendees view the AA community as their spiritual community, considering addiction as a spiritual problem. Despite AA identifying as a spiritual group and refraining from aligning with any religious groups, it nevertheless functions much like a religious group. Attendees experience emotional bonds and share moral values, a common focus,



mutual responsibility, and strong commitment to the group, all of which closely resemble religious experiences. Similarly, many charitable organizations or political activist groups are run by spiritual tribes (Ammerman 2014). As the aforementioned studies illustrate, while we can find general distinctions between the two concepts, they are neither mutually exclusive nor completely independent.

### *Spiritual But Not Religious*

Spiritual but not religious individuals have significantly increased in numbers in the US (Kitchener 2018). Spirituality can be seen as a “postmodern expression of one’s religious belief” (Miller 2016, 857). Some researchers regard spirituality as akin to lived religion, as both emphasize experiential aspects and share numerous overlapping concepts (Miller 2016; Roof 2003). Rather than becoming secular, these nonreligious adults have turned to spirituality, finding “a sense of peace, wonder, purpose, and morality” in spiritual experiences (Jones, Cox and Raney 2017). They often feel connected to something bigger than themselves “beyond the ordinary,” experiencing awe through nature, beauty, and art. Many individuals find solace in the immanent experience of nature, beautiful objects, art, music, the sound of the ocean, a sense of interconnectedness with the community, or the inner self beyond the mundane (Ammerman 2013).

For younger generations, religion is often perceived as a negative, institutional entity, whereas spirituality is seen as an individualistic, appealing path (Ammerman 2013). Four in ten (40%) of spiritual but not religious individuals are liberals under the age of 50, and Democrats and politically independent individuals are more likely than Republicans to report being spiritual but not religious (Jones, Cox, and Raney 2017). These spiritual but not religious individuals often find group cohesion within spiritual communities while seeking a sense of belonging (Mercandante 2014). Their beliefs can be sincere, with many devoting significant time and energy to their spiritual practices (Miller 2016). All of this suggests that if we do not consider certain spiritual practices as lived religion, we may fail to recognize the religious and spiritual practices of specific demographic groups—particularly young, liberal individuals who have lost trust in religious organizations.

In addition, many spiritual but not religious people have had negative experiences with religious groups, particularly Christianity, on emotional or cognitive levels (Mercandante 2014). They often disagree with religious values or practices and view religious organizations as “repressive, isolated, hypocritical, blaming people, and often sexist” (168–69). Many have been disappointed by not living up to religious ideals and standards, leading to feelings of shame and religious distress. Though they believe in a deity—often described as God—they often disagree with their churches on strict political and moral issues (Jones, Cox, and Raney 2017). For example, many individuals in the LGBTQ community have had neg-

ative experiences with religious groups due to their gender identities. A study by Halkitis and colleagues (2009) found that many LGBTQ participants perceived religion negatively due to its use to stigmatize and ostracize them, and despite being raised in religious families, only a quarter remained affiliated with religious organizations. Many had changed their religious affiliation from their earlier life.

Barton's (2012) study also explored the exclusionary role of religion in the Bible Belt, describing Christianity as a "Bible Belt panopticon" (24–25). Studies show that spirituality can help maintain a sense of worth, meaning, and connectedness for LGBTQ individuals in relation to the divine, universe, or others (Halkitis et al. 2009), with spirituality acting as "the replacement or residue left behind by religion" (Ammerman 2014, 3). It can help them overcome challenges posed by bias in religious communities and experience transcendent relationships with higher power and human communities.

It is crucial to respect the spiritual practices of people who are unaffiliated with a particular religion. If we do not, we risk further marginalizing those who have experienced trauma from religious organizations by failing to recognize their everyday religious and spiritual practices. Furthermore, their practices should be protected under the Free Exercise Clauses.

#### *Spirituality and First Amendment Protection*

In light of contemporary postmodern trends, Miller (2016) asserts that the beliefs of those who identify as "spiritual but not religious" warrant the same legal protection as traditional religious beliefs under the First Amendment. Miller argues this on the basis that some spiritual beliefs and practices are sufficiently analogous to religious beliefs and practices today. The Ninth Circuit echoed this emphasis on the spiritual aspects of religious belief and individual life in 2007, citing William James, who highlighted the significance of the "spiritual" and the "subjective" in individuals' lives (*Navajo Nation v. US Forest Service*, 479 F.3d 1024 (2007)).

Similar to Miller's legal argument, I argue from the standpoint of lived religion that spirituality should also be categorized as a form of "religion" in vaccine exemption contexts, thus warranting protection under the First Amendment. From the lived religion point of view, spirituality focuses on all four features of lived religions: (1) it is often pursued by ordinary people rather than elite religious practitioners; (2) it emphasizes religious practices, including embodiment, over religious doctrines; (3) practicing spirituality tends not to focus on universal beliefs or scriptures, but rather unfolds within particular social and cultural contexts; and (4) spiritual practice often occurs outside institutionalized religious environment (Ammerman 2014; McGuire 2008). Therefore, from the perspective of religious studies, spirituality can be classified as lived religion. Courts and health policies considering religious exemptions for vaccinations should incorporate the

concept of lived religion when defining religion, as this approach would better reflect social realities and ensure a more inclusive and equitable application of religious exemptions to vaccinations.

### LIVED RELIGION

As mentioned above, I believe that in order to achieve inclusion and equity in the application of legal protections for religious practice, we should reinterpret the meaning of religion by adopting a lived religion perspective. This concept has been extensively researched and developed by notable scholars, such as David Hall, Meredith McGuire, Robert Orsi, and Nancy Ammerman.

The term “lived religion” was first introduced by historian David Hall in 1994, and it encapsulates a broad concept of religion that encompasses “how religion happens in everyday life” (Ammerman 2021, 5). Lived religion focuses “how religion and spirituality are practiced, experienced, and expressed by ordinary people within the context of their everyday lives and particular cultural settings” (McGuire 2008, 12). The key features of lived religion highlight the disruption of hierarchy among religions and the inclusion of diverse peoples’ religious beliefs and practices from equitable perspectives.

Historically, religious studies have primarily focused on elite religions. For example, social scientific studies of US religion have disproportionately concentrated on American Protestantism, with little exploration of religion as a source of discrimination (Edgell 2012). By contrast, leading scholars in lived religion have asserted the need for a reevaluation of “what they study and how they study religion” (McGuire 2008, 4), and lived religion scholarship has revolutionized the concept, definition, and methodology of studying religion (Knibbe and Kupari 2020; Mccrary 2022, 180). Lived religion scholarship presents a method of investigating the religious beliefs and practices of ordinary people, based on their perspectives, rather than on doctrines and theology sanctioned by official religious organizations. It emphasizes the personal narratives of the practitioners, which often portray a more personalized and less institutionalized form of religion. For example, practitioners of lived religion often report that they encounter a “more than ordinary” reality within mundane time and space, drawing on spiritual realms traditionally associated with religion (Ammerman 2021, 21). Researchers in the field pay particular attention to these spiritual practices in everyday life, and their scholarship values empirical case studies and focuses on religious practices of marginalized groups within specific contexts (Knibbe and Kupari 2020). Researchers also delve into the themes of deinstitutionalization, globalization, and privatization of religious practices (Beyer 2007), and they continually question what constitutes as “religious” or “religion” in the contemporary social contexts.

*Inclusivity*

The lived religion approach in religious studies strives to reconceptualize traditional boundaries of religion by embracing the lived experiences of marginalized groups (McGuire 2007). Historical religious practices or rituals associated with immigrants, women, the poor, enslaved individuals, and colonized people have often been dismissed as magic, superstition, or folk beliefs. In contrast, mainstream, white-Eurocentric practices are considered part of elite religions. Lived religion scholarship has shed light on many marginalized peoples' religious and spiritual experiences that had been overlooked or unarticulated by traditional religious studies (Knibbe and Kupari 2020), and it has enabled greater appreciation for these historically marginalized religious beliefs and practices.

The daily practices of marginalized people in their personal, mundane spaces might remain invisible to outsiders, including vaccine exemption application reviewers. Particularly in the context of vaccine exemptions, marginalized peoples' minoritized religious beliefs may not be well-articulated, as they are often practice-centered rather than doctrine-focused. For example, they may hold to an Indigenous religio-cultural tradition that sees the human body as a sacred temple for a spirit and therefore believe that they should reject unnatural substances. Such individuals may lack the resources to make a sophisticated argument in their application, and in comparison to established orthodox religious beliefs, their claims may appear weak due to their unfamiliarity with articulating their religious beliefs. However, an approach grounded in lived religion would pay attention to the applicants' religious practices in their everyday life, rather than focusing on official religious doctrines. In this way, employing a lived religion approach in vaccine exemption cases would work to eliminate discrimination against minoritized religious practices among marginalized groups.

*Removing Discrimination*

Because the hierarchy of religious beliefs and practices has historically been constructed within a colonial framework, one that has been primarily defined by Protestant ideas and a narrow, Western, Christian-centered framework, religions rooted in non-Western cultures have often been misinterpreted (McGuire 2007). For example, one of the measurements of religiosity has been the attendance and frequency of religious services and activities. However, many non-Western, less institutionalized religions may not emphasize weekly services or reading sacred texts. Instead, they may place greater importance on individual meditation, setting up a home shrine, or maintaining a daily diet that aligns with their spiritual framework. When reviewers of religious exemption applications apply a measurement of religiosity based on Western Christian-centered norms, the religiosity of non-Western, colonized people might not be fairly or accurately

assessed. Thus, adopting a lived religion perspective can lead to a more equitable and appropriate evaluation of religious exemption applications.

Furthermore, the colonial framework not only determines the hierarchy of religious beliefs and practices but also discriminates against those religions deemed syncretic, often associated with colonized peoples. The term *syncretic* is frequently used to describe various popular religions with a negative connotation, suggesting a corruption of the “original” religion (Knibbe and Kupari 2020). For example, the Christianity practiced by colonized peoples was often labeled “syncretic,” thereby contrasting it with the “authentic” Christianity of the colonizers. Because the religious beliefs and practices of colonized people were often hybridized with their Indigenous religio-cultural traditions, their forms of Christianity could differ significantly from the Christianity practiced by the colonizers. Accordingly, this hybridization might give rise to views on vaccination that differ from “official” Christian teachings.

The lived religion approach would embrace these hybridized religions and could help explain and accommodate any discrepancies between official religious teachings about vaccination and the lived religious views and practices on vaccination among the believers. For example, a study of Indigenous Mexican religions has indicated that the concept of lived religion could more effectively express the religious life of Indigenous Mexicans than the term “popular religion,” which is used more frequently in existing literature (Rieger 2022). The lived religion approach would highlight aspects of Indigenous or hybridized cultural heritage, including traditional medicine, shamanic traditions, rites connecting practitioners to nature, and dances and festivals—elements of their culture that have often been suppressed by official.

### *Embodied Practices*

One of the hallmarks of lived religion scholarship is a focus on embodied practices. This approach emphasizes the crucial role the human body plays in religious or spiritual practices, which traditional religious studies have often devalued (Knibbe and Kupari 2020). From chanting, gardening, dancing, cooking, smoking, and meditating, embodied practices engage the senses, involve physical movement, stir emotions, and evoke memories (McGuire 2007, 2008). These activities serve as key components of individuals’ spiritual development. In contrast to the Eurocentric, elite religious traditions that tend to prioritize cognition, lived religion underscores and seeks the link between spiritual matters and material matters, such as the human body (McGuire 2007). It emphasizes “the lived body as the vehicle through which individuals engage with the material world” (Knibbe and Kupari 2020, 161).

The lived religion approach acknowledges that material concerns like health and pain are deeply relevant to religious and spiritual life (McGuire 2008). Because vaccination is a topic that intimately involves the human body and health,

it can be seen as a material concern that intersects with practitioners' religious or spiritual worldviews. Thus, the decision to accept or refuse a vaccine isn't just a medical or ethical choice; it is also a spiritual or religious choice. Therefore, adopting the lens of lived religion in the context of vaccine exemptions seems to be a logical step. Lived religion would help health-care providers and vaccination inspectors understand how people perceive vaccination as the embodiment of artificial substances, which could potentially interfere with their spiritual or religious practices. This in turn could shed light on the religious or spiritual rationales behind vaccine exemptions.

*Moral Life as Spiritual Practice*

Many of those who do not identify as religious but still engage in practices or have experiences that they consider spiritual might find spirituality in an array of ordinary activities, such as walks in nature, yoga, or communal painting, all of which can foster a connection to the sacred. They often encounter moments of spiritual power or sacred presence without the need for traditional sacred objects, rituals, or space. Lived religion scholarship frequently investigates these individual religious experiences in contexts that are traditionally not considered religious. This approach helps to blur the boundaries between what is considered religious and non-religious, and to effectively encompass spiritual beliefs and practices that were traditionally considered to belong to folk religion or nonreligious categories (Edgell 2012).

Studies have shown that spirituality can guide practitioners' ethical decisions and provide moral guidelines beyond mere self-interest. For example, one such study identified ethical spiritual discourses across various groups, regardless of their religious identities, and demonstrated that "ethical spirituality exists both inside and outside religious groups, and that pursuing an ethical life can be a form of spiritual practice" (Ammerman 2013, 272). This challenges current theories that often presuppose that moral agents are rational beings solely seeking self-interest in their decision-making. Even among those who reject participation in religious institutions, their spiritual life can guide their moral decisions, including about contentious issues such as vaccination.

However, despite the fact that "spiritual but not religious" peoples' spiritual belief systems work similarly to religious peoples' belief systems (Miller 2016), the court has traditionally been reluctant to protect "spiritual but not religious" belief systems under the Free Exercise Clauses. If the court were to adopt a broader, more inclusive understanding of religion, encompassing the concept of lived religion, it could potentially offer protection for these spiritual beliefs and worldviews under the First Amendment. This would thereby grant adherents of these belief systems the same consideration as those who follow traditional, institutionalized religious belief systems.

**TENTATIVE ANSWER TO THE HYPOTHETICAL QUESTION**

“Is ethical veganism a religion?” The court has been reluctant to consider spiritual beliefs to be protected on the Establishment Clause grounds. In *Moore-King v. Country of Chesterfield* (708 F.3d 560-571 (4th Cir.) (2013)), the court did not grant legal protection to the spiritual beliefs of a self-described spiritual counselor. However, researchers have asserted that religious protection should include secular claims of conscience, and they have pushed the boundaries of legal protection for religion by including atheists, agnostics, and nonbelievers. For example, Johnson (2015) argues that “ethical veganism” is religious in nature, and that a belief in veganism meets the definition of religion under US law. “Ethical veganism” is defined as a stance guided “by the moral concern for nonhuman animals used in the production of food, clothing, entertainment, or medical treatments, and it is distinguished from veganism that involves refraining from the use of nonhuman animal products without accompanying beliefs” (Johnson 2015). Johnson’s study shows that respondents who practice ethical veganism adopt terms or concepts of religion from the *Seeger/Welsh* test, EEOC regulations, or the Adams test (*Malnak v. Yogi*, 592 F2d 197 (1979)). The data from Johnson’s social scientific research make a valid point that ordinary people who practice ethical veganism perceive their veganism as religious. While I don’t disagree with Johnson’s claims, I would take a different approach by adopting a lived religion approach to answer to this question.

Assuming reviewers apply the concept of lived religion to this case, I would recommend that they seek reasons and evidence to determine whether the applicant’s ethical veganism qualifies as lived religion. What kinds of beliefs does the applicant hold regarding veganism? Is the applicant’s veganism spiritual, or does it emphasize spirituality? What kind of religious or spiritual experiences did the applicant have? Does this applicant consistently practice ethical veganism in everyday life? What are the social and cultural contexts of practicing ethical veganism? What motivated the applicant to become a vegan? Where does the ethical veganism experience occur? Does the applicant participate in activities or activism in a vegan community? The last question I would pose is not about lived religion, but from the standard of the *Seeger* case: is the applicant’s veganism the most significant interest and the ultimate concern in that person’s life?

Courts can still challenge the sincerity of claimed religious exemption based on individuals’ spiritual beliefs or practices. They can also take into account the consistency of prior actions, the timing of the exemption request, and motivations for secular reasons. Reviewers of religious exemptions can request applicants to provide a written testimony about the sincerity of their spiritual beliefs or practices. Given the characteristics of lived religion, listening to applicants’ narratives would be essential in the assessment, as this would enable the reviewers to assess whether the applicant demonstrates the good faith of an adherent of their spirituality. It is worth noting that not every wellness-oriented “lifestyle brand” that promotes

concepts like peace and love through veganism or yoga would qualify as spiritual (Foxen 2023). Even though their communal spiritual practices can sometimes resemble a lifestyle brand, applicants should demonstrate their spiritual motivations for their exemption requests to pass the sincerity test.

What if the applicant had a significant transcendent spiritual experience involving a strong connection to every living being while taking a walk in nature, and this spiritual experience led the applicant to practice ethical veganism? In this case, the applicant's veganism could become a spiritual practice to honor the divine nature of every life. This transcendent sense of wonder could lead the applicant towards a specific moral life. As Ammerman's (2013a) study finds, "real spirituality is about living a virtuous life by helping others, acting kindness, and transcending one's self interests for seeking what is right" (45). The moral belief to become a vegan arising from this spiritual experience should be distinguished from a philosophical belief, because the applicant's individual spiritual practice equates to their lived religion. This spiritual vegan practice might not only be an individualized phenomenon but also a collective one. The applicant may have experienced this initial spiritual episode with a group of friends during the walk, leading to the establishment of a spiritual vegan community with strong spiritual and emotional bonds. Or the applicant might find a vegan activist group and participate in their activism, which could also constitute this applicant's spiritual practice as lived religion. The applicant's case can show evidence of why ethical veganism is their "sincerely held religious belief" as long as reviewers adopt a lived religion approach rather than focusing on finding religious doctrines. In addition, it is important to distinguish spiritual motivations from philosophical motivations or mere personal preferences. Spiritual motivations are often characterized by "mysterious happenings, a sense of awe or sacredness from mystical union with humanity or the natural world" (Ammerman 2021, 52). These experiences are likely to guide applicants towards practicing ethical spirituality.

Religion has been construed in various ways at different courts, and the interpretation of "religion" or "religious" has evolved throughout history. Reflecting the current trend of the US religious landscape, the lived religion approach should be adopted in interpreting the meaning of religion. The courts have protected atheism on Establishment Clause grounds (*Kaufman v. McCaughtry*, 419 F.3d (7th Cir.) (2005)). They also have upheld religious protection for Native American beliefs or spirituality, which is based on ethnic spiritual traditions (*United States v. Antoine*, 318 F.3d (9th Cir.) (2003); *United States v. Hardman*, 622 F. Supp. 2d (D. Utah) (2009)). So why shouldn't the courts protect diverse people's spiritual practices and lived religions? The spiritual beliefs and practices of marginalized people run parallel to elite traditional religions and deserve constitutional protection. Some spiritual practices should be considered as lived religion under the protection of the Free Exercise Clause.



Expanding a meaning of religion through the lens of lived religion would make religious vaccine exemption implementation more inclusive and equitable. Although religious exemptions can be limited in specific public health emergencies, when they are implemented, the lived religion approach should be adopted by reviewers of exemption applications. Reviewers should set questions and standards to assess applicants' exemption applications, discerning whether applicants sincerely hold religious or spiritual beliefs. They should pay attention to applicants' narratives about their everyday religious or spiritual practices. Lastly, the legal protection of vaccine religious exemptions should not only cover privileged religious groups but should also inclusively and equitably cover various groups of people, including marginalized people, colonized people, immigrants, people of color, and those who are spiritual but not religious.

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