Firing a Shot:
California and America's New Vaccine Wars

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Research about vaccine mandates

- ‘Vaccine Mandate’ is not unitary concept
- We (Attwell and Navin 2019) want to distinguish how mandate policies can:
  - Target different populations (at different times/places)
  - Motivate different vaccination behaviors
  - Impose different risks and costs:
    - Including unintended but foreseeable social and political costs (Navin and Attwell 2019)

Some Social and Political Costs of Tightening (California's) Vaccine Mandates

1. Coopted governance
2. (Badly) Politicized physicians
3. "Illegitimate" governance of dissenters
4. Political polarization

1. Coopted governance

Eliminating nonmedical exemptions forces:

- **Private persons** (e.g. operators of daycare and private schools) to enforce **state laws**
- Public **employees not in public health** (e.g. public school administrators) to enforce **public health laws**
- **Private physicians** to serve as **public health officials**

…and makes **penal spaces** out of

Schools

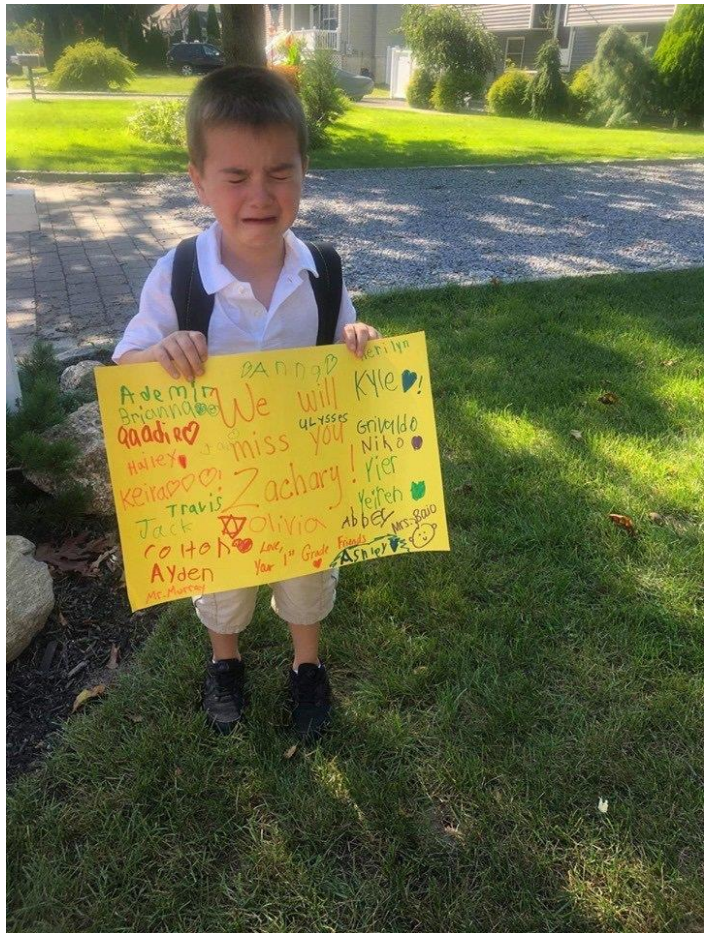
Clinics

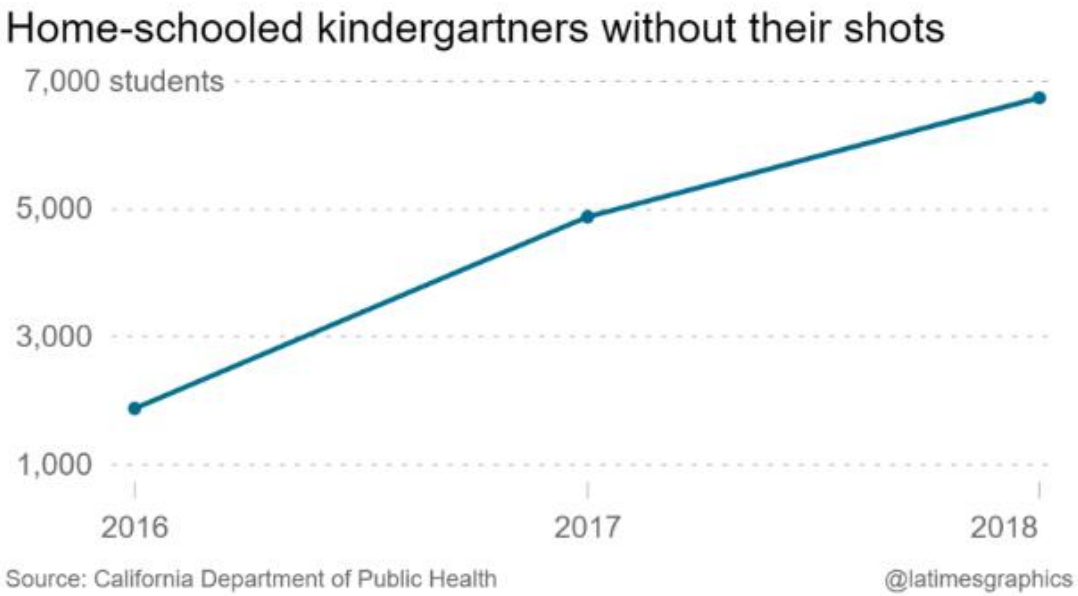
- These agents were **formally** involved in public health governance before, but the ready availability of nonmedical exemptions **previously allowed them to avoid governing**.

Angelika Stalman @angelikastalman · Sep 18

Replying to @LorenaSGonzalez

Today was Zach's last day at school. **The class made him a card to let him know** how much they will miss him. This little boy can't go back to school. Why? Because the state is "rounding up" students and separating them based on their medical status. Soon in CA with SB276.

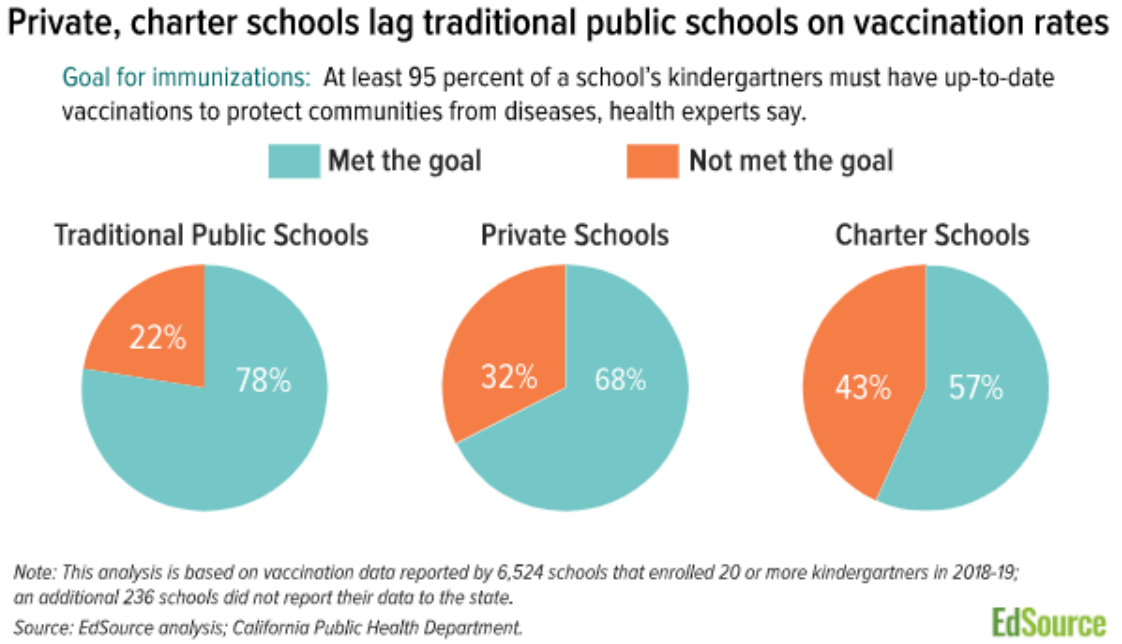




1. Coopted governance: daycare and schools

- Operators of daycare and private schools need tuition dollars to keep schools open
- Public school administrators need enrollment numbers to receive state funding

BOTH have an incentive to allow provisional/overdue students to enroll



1. Coopted governance: medical exemptions

- Physicians may have an incentive to provide **medical exemptions**, on the grounds that doing so is in the all-things-considered **best interests** of the child, e.g. to keep child in school.

These kinds of 'fraudulent' medical determinations – relying on **expansive conceptions of best interests** often occur in other contexts:

- Avoiding military conscription
- Disability determinations

Case 1: Autism in sibling and fear regarding vaccinating subsequent children with the measles, mumps and rubella (MMR) vaccine

A family with a 5-year-old boy with non-verbal autism are too afraid to vaccinate their next child with the MMR vaccine. No amount of discussion regarding the facts or evidence can persuade them that there is no link between MMR and autism – their first child regressed developmentally within 1 month of the MMR vaccine and he did not get the second MMR vaccine or any further vaccines. Serology showed that he was not immune to measles and needs a second dose. Their younger child cannot get into 3-year-old child care because he is not up-to-date with his vaccines and the family cannot receive the relevant payments. The parents have decided to move interstate to get him into child care, but this means moving away from family supports and the father is concerned about finding further factory work. The other option is for the family to stay in Victoria but the mother will have to give up her job to care for the 3-year-old. This will mean substantial financial hardship for the family as there will only be one full-time salary.

(Leask and Danchin 2017)

2. (Badly) Politicized physicians

Walter Orenstein: “In my heart, and from a **purely medical point of view**, I agree with it [eliminating nonmedical exemptions]…I’m a little worried it will backfire.”

Vaccine mandates are **not purely medical policies**

It is **bad politics** to pretend they are.

A Good (but Uninteresting!) Argument

1. Vaccines are good for children.
2. Physicians should recommend what is good for children.
3. Therefore, physicians should recommend vaccines.

Premise 2’ is false: It is often **net harmful** to forcibly intervene to prevent parents from making (moderately) suboptimal decisions (Diekema, Ross).

A Bad (but Unfortunately Common!) Argument

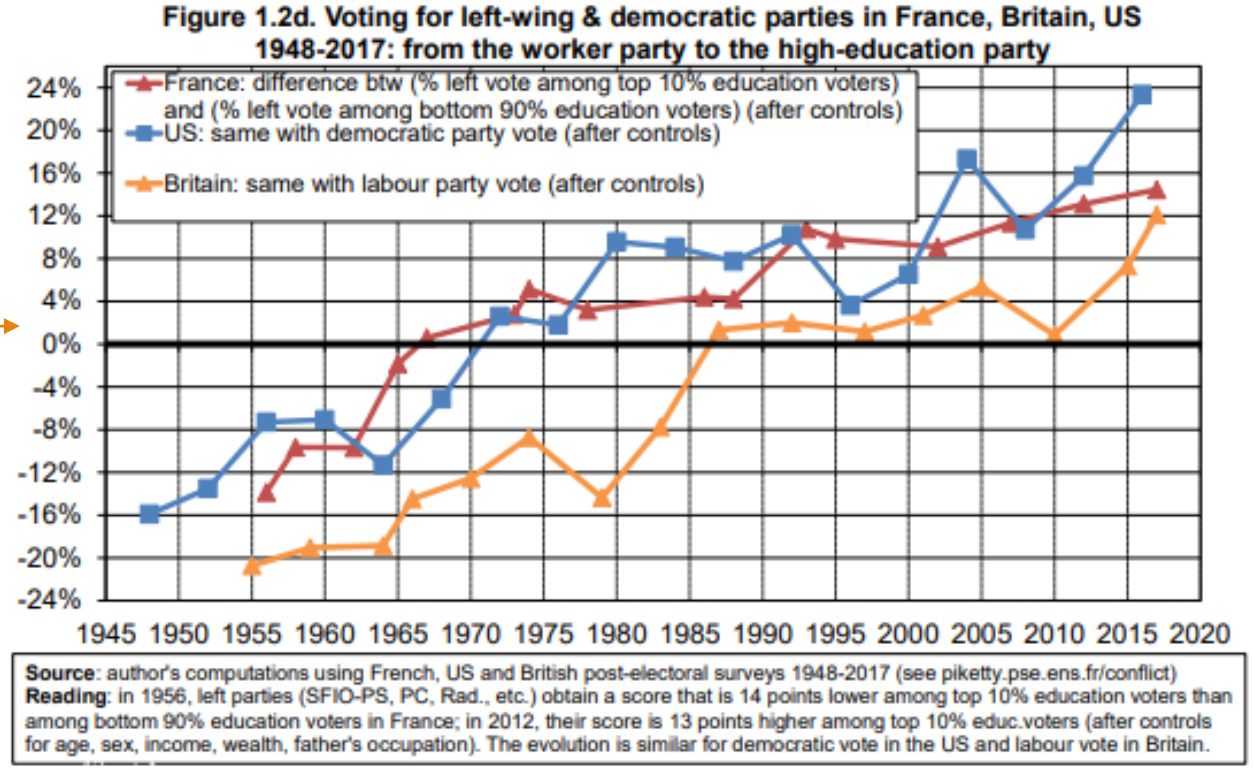
1. Vaccines are good for children.
2’. Physicians should intervene in parental decision making (directly or through the state) to promote what is good for children (Bester, Kopelman).
3’. Therefore, physicians should intervene in parental decision making (directly or through the state) to ensure that children get vaccinated (e.g. dismiss refusers, support tighter mandates).

2. (Badly) Politicized physicians

- Major US physicians organizations (including AMA and AAP) call for eliminating nonmedical exemptions.
- Their arguments are based on **narrow evidence**:
  1. Vaccines are good for kids
  2. Eliminating nonmedical exemptions will lead to more kids getting vaccinated.
- But these arguments are often inattentive to unintentional (but foreseeable) costs associated with tightening mandates.

2. (Badly) Politicized physicians

- There is a crisis of epistemic and moral authority in many of the world's liberal democratic societies (certainly in the US).
- This is a perennial problem for liberal democracy (e.g. as was obvious to Plato!).
- But, it seems to be getting worse, especially as educational expertise becomes increasingly politically polarized.
- When physicians advocate *in clinic*, physicians do so as members of one of the most trusted and respected professions.
- But when physicians advocate for using state power against their fellow citizens, they do so as members of one side of a politico-cultural war.
  - Furthermore, physicians' **scientific authority** does not give them a claim to any greater **political authority** than other citizens.



(Piketty 2018; reprinted in Piketty 2019)

3. “Illegitimate” governance of dissenters

There are many different **kinds of normative questions** about mandates:

Are they **ethical** (e.g. do they well balance harms and benefits)?
Are they **legal** (e.g. do statutes authorize mandates, have courts upheld them)?
Are they **just** (e.g. do mandates uphold people’s political rights)?

A neglected question: Are (more coercive) mandates **legitimate**?

Political Legitimacy is about whether a regime or its commands should/does cultivate a willingness to obey (e.g. Weber, Rawls).

- Usually legitimacy is understood as a question about whether a regime or its commands are consistent with the **fundamental values** of the governed.
- So, I may have a duty/willingness to *obey* laws or regimes that are (somewhat) unethical or unjust, if they are consistent with my fundamental values.
- And I may have a duty/willingness to *disobey* laws that are ethical or just, if they are inconsistent with my fundamental values.

3. “Illegitimate” governance of dissenters

Some vaccine refusers may experience (tightened) vaccine mandates as inconsistent with their **fundamental values** (and, therefore, as **illegitimate**):

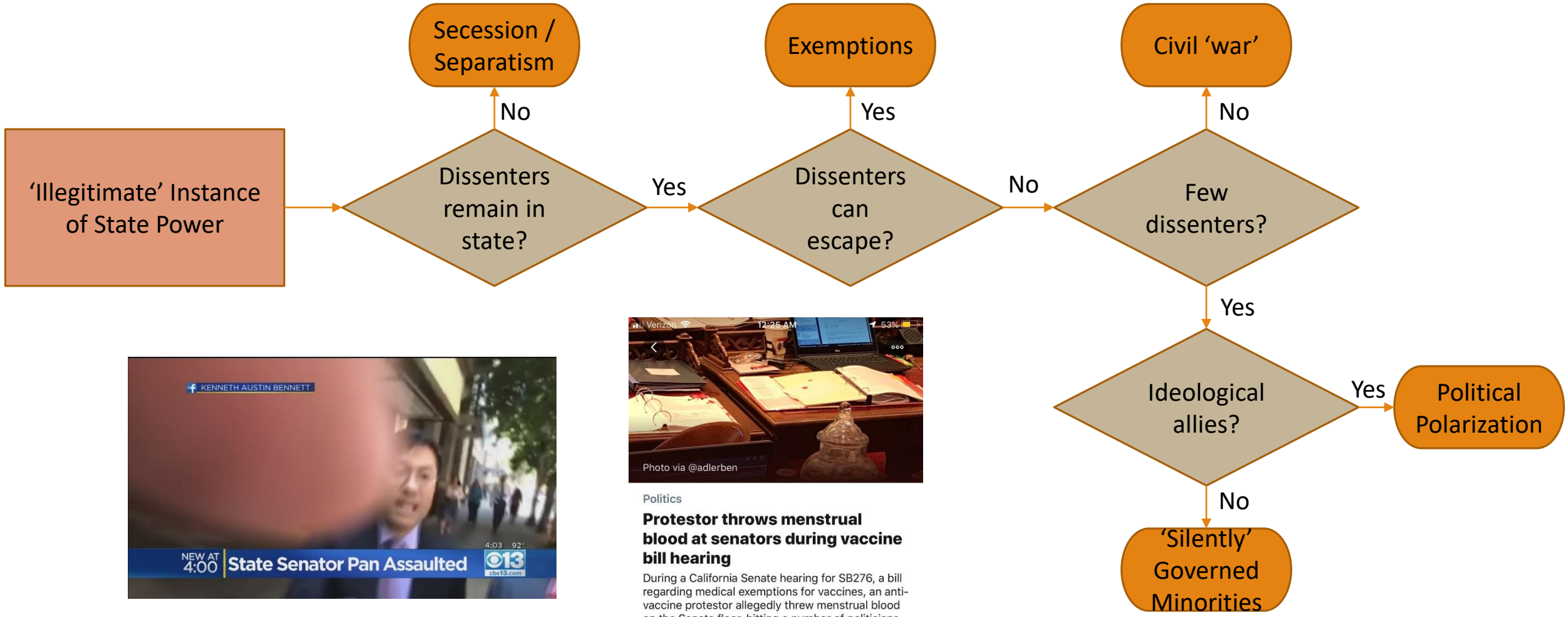
1. Children have a right to an education.

2. People (including children) have an absolute right to bodily integrity.

3. Parents have a (nearly) absolute right to make medical decisions for their children.
    Or, more generally, the family is a pre-political institution that the state exists to protect, rather than to regulate (e.g. Locke).

“Illegitimacy” can be contagious and is toxic to a political system.
-- It expresses skepticism about the authority of the state, so the state cannot invoke its authority to resolve questions about illegitimacy.

Possible Reponses to (and Outcomes of) State Acts Perceived to be Illegitimate



Politics

Protestor throws menstrual blood at senators during vaccine bill hearing

During a California Senate hearing for SB276, a bill regarding medical exemptions for vaccines, an anti-vaccine protestor allegedly threw menstrual blood on the Senate floor, hitting a number of politicians.

4. Political Polarization

In 2013, Dan Kahan worried that (unintentionally) politicized **science communication** (in the context of immunization education/persuasion efforts) could backfire and polarize views about vaccine science:

- If you say "vaccine hesitancy is like climate change denialism / evolutionary biology denialism" to try to persuade someone to vaccinate…
- They might reason (via *cultural cognition*) from "I reject climate change science and/or evolutionary biology" to "I should be vaccine hesitant."

◦ Imposing or tightening immunization mandates introduces **new risks of political polarization** of immunization policy and vaccine science.

4. Political Polarization

From ‘parental rights’ to ‘critical of vaccine mandates’
If new or revised immunization mandates restrict parental rights (e.g. by eliminating nonmedical exemptions), then political parties that favor expansive parental rights (e.g. the US Republican Party) are going to be mobilized to resist immunization mandates (even if they would not otherwise be critical of mandates or vaccines).

From ‘critical of vaccine mandates’ to ‘anti-vaccine’
If advocates of tightening immunization mandates claim that the only way to be pro-vaccine is to support (tightened) mandates, then critics of mandates will be inclined to be **(at least sympathetic to) anti-vaccine sentiments**.

“The state must respect parental rights and can only step in when there’s overwhelming evidence of neglect or abuse” Maine state Rep. Jeff Hanley (R).

“I’m not here to say don’t vaccinate your kids… but I still don’t favor giving up on liberty for a **false sense of security**” Sen. Rand Paul (R-KY).

4. Political Polarization

Dan Salmon, in 2019: “I don’t think this [vaccine policy] is a partisan issue.”

BUT

“[From 2011-2017] [s]tate legislators proposed 175 bills…92 (53%) bills expanded access to exemptions, and 83 (47%) limited the ability to exempt…Bills that expanded access to exemptions were more likely to come from Republican legislators and Northeastern and Southern states” (Goldstein, Suder and Purtle 2019).

<u>In California</u>
Assembly Bill 2109 in 2012, 98% of Yea votes in the Assembly were from Democrats, while 93% of Nay votes were Republicans. A similar breakdown (96%/93%) was true for the votes in the California Senate.

SB 277 and SB 276 replicated these partisan divides.

California's political polarization

Republicans reject Democratic attempts to tighten vaccine laws

The stakes are high: The U.S. is experiencing its worst measles outbreak in decades.

By **ARTHUR ALLEN** | 04/16/2019 06:27 PM EDT | Updated 04/17/2019 01:07 PM EDT

Democrats in six states — Colorado, Arizona, New Jersey, Washington, New York and Maine — have authored or co-sponsored bills to make it harder for parents to avoid vaccinating their school-age children, and mostly faced GOP opposition. Meanwhile in West Virginia and Mississippi, states with some of the nation's strictest vaccination laws, Republican lawmakers have introduced measures to expand vaccine exemptions, although it's not yet clear how much traction they have.

International Comparisons and Contrasts

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