

# THE DISPATCH

## Biden Tries to Change the Subject

*He's stretching the law on the assumption that he can buy himself time.*

Jonah Goldberg

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Dear Reader (including whichever of you released a dazzle of zebras in Maryland),

Because one of the core purposes of the internet is to reveal that nobody actually said any of the things they're famous for saying, I have no idea if Alice Roosevelt Longworth ever said, "If you don't have anything nice to say, come sit next to me."

Still, if you don't have anything nice to say about any of these people right now, come sit by me.

Let's start with President Biden's speech yesterday.

It wasn't good. But I'm not sure whether it will matter that it wasn't good—which doesn't reflect well on a lot of Americans who really don't much care about violations of constitutional or presidential norms as long as they like the results.

When I say his speech wasn't good, I mean that firstly on the most basic level, although there are—like an overstuffed tuna and turkey sub from Subway left on your dashboard in the hot sun—many layers to its ungoodness.

Biden isn't a robotic politician in the way, say, Al Gore was. (Yeah, yeah, I know Gore is still alive—his battery has a very long half-life—but he's not a politician anymore.) But Biden has a robot-like malfunction. Sticking with this metaphor beyond all reason, every politician has a menu of subroutines or modes available to them. Caring, angry, lighthearted, fatherly—or motherly—etc. Bill Clinton had the most range of any politician in my lifetime. Recall how, at Ron Brown's funeral, he was laughing until he realized he was on camera and immediately started crying.

Biden never had that kind of range, although he was better than most. But he's lost the ability to plug-and-play the right emotion—and sustain it—in the right moment. He can sound angry when he should be mournful, mournful when he should be stern, and stern when he should be compassionate, sometimes all in the same paragraph. You can see it best when his eyes lock back on the teleprompter because he's gotten distracted. When he delivers a speech, he sometimes gets lost and, like someone missing a step on the stairs in the dark, he grabs hold of the text like it's a railing. And while he gets a firmer hold on the text, he often loses the context and blurts out the wrong intonation or emphasis. It's like an actor who's given the wrong motivation by a director. The words on the script are, "I love you," but the inflection is, "I'm gonna put my thumb in your eye!"

Then there's the politics and policy. Biden and his subalterns said they wouldn't mandate vaccinations. The reasons covered the waterfront. "That's not the role of the federal

government,” Jen Psaki said when asked about mandates. “That’s the role that institutions, private-sector entities, and others, may take.” When CDC Director Rochelle Walensky floated the idea that the administration was looking into federal mandates, the administration forced her to retract the comment and declare, “There will be no nationwide mandate.”

Hard-hearted cynics might say that Biden reversed course to change the subject from the debacle in Afghanistan and his sagging poll numbers, particularly as we head into the 20th anniversary of the 9/11 attacks.

Well, the hard-hearted cynics are right.

I’m sure there are other motivations at play. Human beings rarely admit to themselves that cynical self-interest is their only reason for doing something. We like to gussy up our baser instincts with high-minded rationalizations. And there are plenty of such rationalizations available. More than 1,000 people are dying every day. The economy is sputtering in the face of the Delta variant. Getting people vaccinated is in the public interest.

But I think I’m right in no small part because the plan Biden put forward is clearly a disjointed mess. Just as a matter of logic, if the administration had always been planning to do this, they wouldn’t have insisted otherwise. And if they had always been planning to do this, *they would have had a better plan—and a better argument.*

Instead, we got a bizarre word salad—all the more bizarre because it was written out beforehand. After—correctly!—pointing out that the vaccines do a good job protecting people from COVID and a fantastic job preventing hospitalization and death, Biden said, “The bottom line: We’re going to protect vaccinated workers from unvaccinated co-workers.”

Huh?

Which brings me to the mandate plan itself. Some of the stuff is fine by me, assuming it passes legal muster. Ensuring that health care workers are vaccinated is good policy—again, if lawfully executed.

The mandate on private businesses, however, is obviously much more problematic. Ilya Shapiro has a good explainer of some of the issues it raises. Andy McCarthy argues that it’s flatly unconstitutional:

There is no general federal health-care power. The constitutional exhortation for Congress to “provide for ... the general Welfare of the United States” (art. I, sec. 8) is not an open-ended authorization. Ours is a federalist system, the states presumptively govern their internal affairs, and Congress’s power to provide for the general welfare is cabined by its enumerated powers.

Andy’s one of my favorite law dudes—and people!—but I’m not entirely convinced this is true. In 1796, during the Washington administration, Congress passed a federal quarantine law in response to yellow fever. In 1824, the Supreme Court in Gibbons v. Ogden recognized the police powers of the state to compel isolation and quarantine “to provide for the health of its citizens.”

I don’t see how federally mandated quarantines are meaningfully different from federally mandated vaccinations. There are two important caveats, though. First, the quarantine measures imposed by the feds back then were grounded in the Commerce Clause—a lot of it had to do with the role shipping played in spreading disease. Second, and more importantly, in 1796

Congress passed a *law*. Joe Biden is invoking his caesarian authority under the Occupational Safety and Health Act of 1970 and its “Emergency Temporary Standard” (ETS).

As Walter Olson—another great law dude—notes, ETS orders far less grandiose than this are frequently blocked by courts. For an ETS to pass, the OSHA website says “OSHA must determine that workers are in grave danger” and that an emergency standard “is needed to protect them.”

But by Biden’s own words, vaccinated workers are not in danger—never mind grave danger—from the unvaccinated.

More importantly, who in their right mind thinks OSHA *should* have this power?

It kind of reminds me of the X-Files movie—which was a harbinger of a lot of the paranoia we see all around us today. In it, a sinister cabal aiming to pave the way for an alien takeover of the planet uses the pretext of a virus in Texas to suspend the Constitution via FEMA. The amazing thing is that using OSHA is even more ridiculous.

I’ll get to right-wing paranoia in a second, but let’s cut to the chase with what Biden is doing. He’s playing on left-wing paranoia. I think John Podhoretz gets it right: “This speech was a Rube Goldberg message aimed at neurotic vaccinated people. Biden was saying that they shouldn’t worry ... but if they’re worried, their worries are justified.”

This was the meat of the dog whistle in Biden’s condescending swipe: “We’ve been patient, but our patience is wearing thin.” He likes to say this is a “pandemic of the unvaccinated”—and he’s right. But he’s sending the signal here that he is the president of the vaccinated. His promise to steamroll governors who don’t do his bidding—“If these governors won’t help us beat the pandemic, I’ll use my power as president to get them out of the way”—didn’t mention Greg Abbott or Ron DeSantis. But you know this anti-constitutional boob bait was crafted entirely to troll them.

### **The bell trolls for thee.**

Let’s move on. I, too, am impatient. At this point, for the average person, there is no rational reason to refuse vaccination. Vaccines work. They’re safe. More Americans have died from COVID than in the Civil War. The economic, social, and psychological toll is now beyond incalculable and the pandemic isn’t close to being over globally. And a whole industry of asininity has sprung up around telling people it’s unpatriotic and idiotic to get vaccinated. Lecture me all you want about how ivermectin is a wonderful drug—stipulated counselor! But the only reason we’re even talking about it is because politicians and media personalities—most of whom are surely vaccinated themselves—want to monetize telling other people they’re right to refuse vaccination. That’s grotesque.

There’s a bizarre tautology that’s ensorcelled people: Biden is a tyrant. Wanting people to get vaccinated is therefore tyrannical. Therefore I will not get vaccinated because vaccination is part of his tyrannical agenda. The only problem with this own-the-libs nonsense is that it’s, well, nonsense. Wanting people to get vaccinated isn’t tyranny. It’s not liberal fascism, contrary to what a thousand bandersnatches keep yipping at me. It’s basic civics and common sense. When anti-vaxxers were mostly left-wing, many of the same people replacing the boot with a syringe in the Gadsden flag had a jolly old time making fun of this sort of thing. It’s like if Biden gave an

address saying, “We will do everything we can to keep people from eating Tide pods,” there’d be a run on Tide pods.

And that’s what’s so infuriating about all of this. Biden is in a very bad place of his own making. On the 20th anniversary of 9/11, he has handed Afghanistan to the Taliban. Not some “new” Taliban, but literally the same Taliban we went to war with two decades ago. His agenda in Congress has stalled, perhaps fatally, because he foolishly listened to people who said he could be a new FDR. The problems with the economy and the pandemic aren’t all of his making, to be sure. But his failures to live up to his rhetoric are his own. Cornered, he is trying to turn the page. That’s why he’s not speaking tomorrow—the last thing he wants to do is shine a light on what he has done.

And so he has maneuvered into a strategy that he thinks will be win-win. Much like his unconstitutional gambit on the eviction ban, he’s stretching the law on the assumption that he can buy himself time before the courts trim his sails. In the meantime, the vaccination rate will go up, and the vaccinated electorate—or a sizable chunk of it—will reward him in the polls. That’s the first prong, and it relies on the second: He needs to elicit a wave of outrage from the right. I’m not saying outrage is unreasonable, but he is counting on the media to shine a light on the most unreasonable actors to play to type. And you know they will. There is a Baptists-and-bootleggers codependency at work here. When he trolls the right, many—or at least enough—figures on it will react precisely the way he wants. It’s a strategy we’ve seen before. FDR was a master at it. Bill Clinton brilliantly—and cynically—used the Oklahoma City bombing as a way to demonize conservative talk radio, and conservative talk radio was only too happy to be demonized.

You know who’s most ecstatic about Biden’s gambit? People like Marjorie Taylor Greene, J.D. Vance, and those who think Twitter is the real world.

Even those who offer reasonable criticism—and there are many, including, I think, myself—are still doing what he wants: Changing the subject.

## **Various & Sundry**

**Canine update:** First, the sad news. Pippa’s wrist (ankle?) has gotten much worse. The vet told us that surgery would probably be necessary one day, and it looks like that day is upon us. She gets very limpy and it makes it hard to take her for a walk of any length. But because she’s still full of spanielly silliness, the lack of exercise causes her to eventually get spazzy and she makes the injury worse. We have a brace for her but she hates it, and will often remove it herself unless we duct tape it. Today we let her go on the big midday walk for the first time in a couple of days and she was downright giddy about it.

Other than that, everything is good with the beasts. Gracie’s vet visit went well. She hasn’t lost weight, which appears to be a good thing because she has kidney trouble. Zoë is concerned about Pip, but she also likes getting a little quality one-on-one time with me. And Zoë is extremely excited about the news that zebras are on the loose in the area. Chasing a zebra has been on her bucket list for years. Also, I want to give a shout out to Tripp Whitbeck for this inspired idea. I’m going to get a poster of this.