



No, Biden, This Is About Freedom and Personal Choice

It's time to stop "states of exception" that justify government overreach into more and more of our lives.

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There is every reason to believe that President Joe Biden's vaccine mandate for COVID-19 will not survive legal scrutiny even as compulsory vaccination for the disease enjoys broad popularity among the public. As former Rep. Justin Amash (L-Mich.)—like me, a pro-vaccine, anti-mandate libertarian—has bluntly noted, "There is no authority for this. This is a legislative action that bypasses the legislative branch."

The courts will almost certainly strike down this executive branch overreach and the sweeping new rules that wave away longstanding distinctions between public and private spheres of activity. This is what happened to the Centers for Disease Control and Prevention's eviction moratorium. It's foundational to American life that the president is not a king who can subject citizens to his whims.

Yet the most important passage in Biden's remarks reveals a governing philosophy that should give all Americans pause, especially in light of the massive and ongoing expansion of the federal government over the past several decades. After duly noting the "progress" made in terms of vaccinations, Biden pulled up short to say that we the people are just not doing what he wants when he wants:

This is not about freedom or personal choice. It's about protecting yourself and those around you — the people you work with, the people you care about, the people you love.

My job as president is to protect all Americans. So tonight, I'm announcing that the Department of Labor is developing an emergency rule to require all employers with 100 or more employees that together employ over 80 million workers to ensure their work forces are fully vaccinated or show a negative test at least once a week.

Biden, everything is always (or should be) about freedom and personal choice. That libertarian sentiment defines America's ethos and can't simply be written out of the script because it gets in the way of what this or any other president wants. There are legitimate moments when rights can be abrogated due to actual existential threats, but this is certainly not one of them.

As Jeffrey A. Singer, a surgeon and senior fellow for the Cato Institute, has noted, COVID-19 has a "0.2 percent fatality rate among people not living in institutions." Fully 80 percent of deaths have occurred among people over 65 and just 358 children under the age of 17 had died of the disease as of July 29, 2021. We are not talking about smallpox, which affected all populations and had a fatality rate of 30 percent. COVID, argues Singer, "will not be eradicated" and will become a small-scale, endemic problem that should be minimized by targeted interventions to protect the most vulnerable. From a public health perspective, it should not become the *casus belli* for a radical restructuring of society and a massive expansion of presidential (or governmental) powers.

Vaccines are not only effective against getting COVID-19 in the first place, they virtually guarantee you will not die or even be hospitalized if you do contract it. Let Washington state's King County—where the first cases of COVID presented back in early 2020—stand in for the nation as a whole. Unvaccinated people there are seven times more likely to catch COVID, 50 times more likely to be hospitalized, and 30 times as likely to die. Age-adjusted death rates show the benefits of vaccination in unmistakable terms (see chart above).

The rapid development and deployment of safe and effective vaccines—a medical miracle that could have gone months faster had the Food and Drug Administration not acted as ploddingly as a wizened old draft horse—makes possible the return to normalcy that was promised in the early days of the pandemic. We are now capable of setting and enforcing our own risk limits on what sorts of activities we want to do. The information is out there and individuals, employers, and establishments can set and are setting their own rules based on what they want. If we don't all agree, that's not chaos, that's freedom in all its unregimented, varied glory. It allows comedian Patton Oswalt to cancel shows in places that won't follow his protocols while letting other performances to take place under less-stringent conditions.

As important, the "vaccine-hesitant" are hesitant for all sorts of reasons. Poorer people tend to be less vaccinated than average, and so are blacks and Hispanics and younger people, and, weirdly, people with doctorates. A flat, imperious mandate that doesn't speak to these groups' differing concerns will only sharpen political and cultural divides even as Biden claims to be acting in the name of national unity. This is already happening, as individuals and groups are becoming less nuanced in their responses and simply signing up for whatever political tribe they feel bound to. Hence, a sizeable chunk of conservative Republicans are not simply anti-vaccine *mandate* but anti-vaccine, and the ACLU, which only a few years ago denounced most vaccine mandates, has now fully embraced them. While done in the name of protecting "all Americans," Biden's mandate clearly escalates ongoing culture wars.

So even as he ends the war in Afghanistan, Biden beefs up the war on COVID. It's understandable, wanting to be a wartime president, whether the threats to the country are truly existential or mostly invented and overstated (as they certainly were in the war on terror). Being at war ushers in what the Italian philosopher Giorgio Agamben calls a "state of exception," which allows the leaders of nominally limited governments to suspend restrictions on their power.

Heavily influenced by Michel Foucault, who like the public-choice economists argued that power is routinely expanded using medicalized "helper rhetoric," Agamben was a leading critic of the global war on terror when Western powers, including and especially the United States, vastly expanded surveillance, police, and military actions in the wake of the 9/11 attacks—

always in the name of defending a free society ([go here](#) for a video lecture I gave at Bard College on this). When his Italian government started one of the first and most draconian lockdowns related to COVID-19, he sounded the alarm again even as many of his leftist allies called him crazy. Yet over the past several decades, governments at all levels in the United States and elsewhere have squandered whatever trust and confidence we once accorded them. When it comes to the Covid-19 response, our official agencies can no longer claim the benefit of the doubt due to an ongoing series of "arbitrary, dubious, and ever-changing recommendations."

Yet rather than use persuasion and dialogue to get his way, Biden is invoking a state of exception as the pretext for issuing a massive expansion of his power over more and more aspects of our daily lives (Donald Trump, Barack Obama, George W. Bush, and other past presidents all did something similar, of course). We must push back not simply because of what his new order would actually do but because of the expansion of political power it continues and expands.

We want to live in a country and a world in which "freedom or personal choice" is growing, not constantly being swept aside as an obstacle to a leader's plan.