



## The libertarian myth at the heart of legal challenges to Biden's vaccine mandates

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The U.S. Supreme Court will hear arguments on President Biden's vaccine mandates on Friday, Jan. 7. Officially, the cases are about questions of federal power, administrative law and the capacity of Congress to delegate authority to agencies. But what is fundamentally driving the litigation is the libertarian myth — one that may be embraced by the new conservative Supreme Court majority — that freedom can be promoted by hamstringing the capacities of government.

Emergencies such as COVID-19 remind us why a powerful and effective state is indispensable. For most of human history, plagues were a misfortune that had to be patiently borne. Big Government has saved us from that. Massive federal spending induced a higher level of risky investment in COVID-19 vaccine research than the private sector would otherwise have been able to muster while enlisting the stupendous capabilities of Big Pharma. The work undertaken by those businesses built upon decades of state-funded basic science, especially in the expensive field of molecular biology. The speed with which the vaccines were developed is one of the most astounding accomplishments in history.

Another modern innovation is the use of government power to get people vaccinated. That has been going on for well over a century. It eliminated smallpox. It is why it has been years since any American child died of measles or polio. COVID-19 showed yet again that vaccine mandates work.

But “conservatives” — as I’ll shortly explain, this is the wrong word for them — including some members of the Supreme Court, have been on a long-standing campaign to enfeeble the modern administrative state. A pandemic is the worst possible time to do that, but that hasn’t stopped the lower court judges whose injunctions are being appealed.

In an important recent Niskanen Center report, Brink Lindsey observes that the capacity of government to do its job is one of the basic measures of development: “Rich countries are all

distinguished by having large, strong, and relatively capable states; poor countries, by contrast, are generally characterized by weak and frequently ineffective states, while those polities dysfunctional enough to be characterized as ‘failed states’ are among the poorest and most miserable on Earth.”

In the United States, after the bungled Iraq invasion and the 2008 financial crisis, “declining state capacity has led to declining trust in government – and a growing impatience with the often messy and muddled workings of democracy,” Lindsey says. Rebuilding that capacity, he shows, is urgently necessary. Lindsey, who used to work at the libertarian Cato Institute, learned the limits of libertarianism from the inside.

Libertarians come in flavors, but their anti-vaccination ideology is consistently incoherent. The ones who emphasize rights have difficulty justifying the most basic functions of the state, such as taxation, but they understand that there can’t be a right to infect others with deadly diseases. Others focus on the good consequences of economic liberty. But keeping people unvaccinated has no good consequences.

One lesson of the battles over COVID-19 (and ObamaCare before it) is that libertarianism rests on a deeper emotional source: a peculiar vision of the heroic solitary individual, self-sustained without any external support. I don’t depend on anybody. I can take care of myself.

It is a delusion. Humans are communal animals. We are born helpless. We are not able to forage for ourselves at birth like lizards. Without settled practices of mutual aid, we would die within a few hours. It is because early hunter-gatherer groups cared for each other’s children 90,000 years ago that there were still humans 89,900 years ago. And, of course, if we survive into old age, we again become vulnerable and dependent.

Admirers of capitalism are fond of quoting the late biologist E.O. Wilson’s dismissal of socialism: “Karl Marx was right, socialism works, it is just that he had the wrong species.” Ants can have systems in which individuals care only about the colony as a whole, but humans do best when they look after themselves. But Wilson’s point can easily be overstated. Wilson thought “we get maximum Darwinian fitness by looking after our own survival and having our own offspring,” but in fact humans have always lived in cooperative groups.

Humans need both self-reliance and cooperation. Doctrinaire libertarians, too, have the wrong species. (Libertarianism’s growing popularity is probably a reaction to disappointment about institutions, which tempts people to fantasize that they can get along by themselves.) The burgeoning markets and diversity of lifestyles that libertarians laud can only happen in a state strong enough to operate autonomously from the powerful interests within it.

Freedom is an achievement. It is a *collective* achievement. Libertarianism tends to consider people in isolation from the systems in which they are embedded, but the risks to which they are vulnerable are often systemic risks. The notion of a life without vulnerability, dependence and need is an infantile fantasy.

That fantasy has captured the imagination of many conservative judges. They are prepared to do violence to facts and law in order to hamstring Biden's COVID-19 initiatives because they think that this promotes freedom. But there's no freedom in a failed state.

One reason for America's remarkable prosperity since the Great Depression has been the willingness of the judiciary to get out of the way and let government do its work. The new conservative majority on the Supreme Court appears to have a very different future in mind. Libertarian ideals lead them toward novel legal arguments that would cripple America's capacity to protect itself from disasters like this one.

Today, Republicans call themselves conservative, but many are actually radicals who seem to hate the America they have inherited and want to replace it with a quasi-anarchist fantasy. They rail against socialism, but they resemble Stalin and Mao in their blithe willingness to accept quite a lot of death as the price of their utopia.