

COVID Mandates and Liberty

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Abstract

The purpose of this paper is to examine three different points of view on COVID policies and their impact on liberty. It begins with the case for universal mandates, explaining why some people support massive restrictions on our personal choices and professional activities during a pandemic. The paper continues with the case for limited mandates based on a judicial decision that examined the specific circumstances of one school that required proof of vaccination as a condition to attend classes in person. It ends with the case against vaccine mandates and mandatory vaccinations based on the principles of self-ownership and limited government. In the conclusion, the paper calls for reversing legal precedents that, starting with a SCOTUS case in 1905, have unleashed executive-branch powers to infringe on our unalienable rights.

The 2016 elections were not about the White House and the U.S. Congress. They were about one vacant seat in the Supreme Court. Political passions ran higher than usual because of the sudden death that year of a conservative Justice. For 30 years, Antonin Scalia had firmly stood for enforcing the Constitution as it was meant by the Founders. The opportunity to replace him with a radical progressivist such as today's Attorney General Garland split America into two camps, the anti-Clintonians and the anti-Trumpians. As it often happens, those who feared losing something valuable organized more effectively than those who attacked them in order to gain some new advantage. Trump went to Washington and appointed not one, but three Supreme Court Justices.

How consequential was the loss of Hillary? This became evident in 2022. Earlier this year, SCOTUS struck down a federal vaccine mandate that would have impacted negatively tens of millions of American employees. In the spring of 2020, we were told to accept a series of unprecedented restrictions on our personal and professional lives. The measures were advertised as "two weeks to flatten the curve." Two years later, the global elites seem more adamant than ever in their convictions that the disease can only be beaten by political acts. It is time to evaluate the arguments for and against the COVID mandates.

President Trump had a superb knack for alienating people. His mean Twitter posts forced the Democrats to oppose all his decisions. First, he took early preventative measures against the spread of COVID by restricting travel from China. The reaction from the leaders of the minority party in Congress was to denounce his decision as "racist." That term has been applied to people and things the Left dislikes so often as to become almost as impotent and meaningless as the label "fascist" in the previous decades.

Trump could have continued with tough measures by calling for mandatory shutdowns and masks. Had the President chosen to move in that direction, the Democrats would have surely opposed him by advocating for the laissez-faire Swedish approach. Trump, however, argued that his fellow Americans and their governors must be treated as responsible adults, capable of making personal decisions and handling the crisis based on individual circumstances and local conditions. Such a position from the White House inevitably pushed the Left to demand that we emulate the radical Chinese restrictions. Let's explain their point of view first.

The case for universal mandates

The American Left, including the leadership of the Democratic Party, most of their electorate, the mainstream media, the Hollywood celebrities, the woke corporate world, and the public schools unions, took a strictly utilitarian position on COVID mandates. According to their legal activists, the ACLU, requiring vaccines must be a judgement call depending on 3 considerations: (1) how deadly or disruptive this particular disease is; (2) how safe and effective the existing vaccines are; and (3) how disruptive and effective the alternative measures to protect public health may be. (Cole & Mach, 2021)

Proponents of COVID mandates note the high rate of transmissibility and unusual mortality of the novel virus. They point out to the availability of many vaccines and the lack of viable options to swiftly end the pandemic. This, in their view, justifies the passing of laws and executive orders that violate bodily autonomy. The argument weighs the costs and benefits in terms of possible human lives lost or saved. They want us to act as the fictional federal agent Jack Bauer. In the popular TV show "24," he complies with demands of terrorists to murder

one of his colleagues and to return a child sex slave to her captive in order to prevent a catastrophe such as the detonation of a nuclear device in Los Angeles.

The Left rarely agonizes over laws that restrict the rights of individuals to make their own healthcare choices, except in the case of abortion. That is why it comes as no surprise that, faced with COVID fears, they have no qualms about violating the freedom of the American people to take their own risks. Restrictions, in that view, are warranted on the grounds that we must protect our most vulnerable neighbors. They bring up the problem with people whose immune systems are compromised and those whose medical conditions or age prevents them from being vaccinated.

COVID mandates are seen as necessary to improve safety for those who work in close contact with people such as your doctor, your kids' teacher, the bus driver, and the cashier at Walmart. Some even argue that certain communities are hit harder by the disease and therefore race must be a factor in prioritizing or denying treatments. (Patteson, 2022) Certain hospitals went as far as implementing such discriminatory rules. (Chasmar, 2022) Further, to accelerate the building of herd immunity and to punish those who selfishly refuse to take the jab, hospital administrators feel justified in their decisions to deny life-saving organ transplants to unvaccinated patients. (N/A, Unvaccinated man denied heart transplant by Boston hospital, 2022)

The kernel of truth in that position is that our right to choose what to do with our own bodies is indeed limited by the rights of the people around us. I can stretch my fist as much as I like so long as I do not hit your chin. No right is absolute in the sense that we have no right to

cause pain or threaten the life of someone. Using these universal truths as a trampoline, the Left jumps to the desired conclusion. Since the unvaccinated increase the risk of serious sickness and death in their communities, all COVID mandates, including mandatory vaccinations, are necessary and justifiable.

Governments all over the world want us to believe that the COVID restrictions actually promote freedom. In an Orwellian fashion, “experts” tell us that by sacrificing some liberty, we gain more liberty. Only after we manage to inoculate close to 100% of the people in America, we can “return to normalcy.” Vaccine mandates will allow us to travel anywhere we want and socialize at close distance with more than a handful of relatives without being muzzled. After we get an X number of booster shots, all recreation and entertainment facilities can reopen at full capacity, students will not be forced to study online, children can return to daycare centers, parents will not fear going back to work, and medical personnel will not be overwhelmed. Case closed? Not so fast. Let’s examine alternative arguments.

The case for limited mandates

An argument in favor of COVID mandates has also been made on the Right. Consider the fact that vaccine requirements are nothing new. Public schools and the military impose such restrictions while allowing religious and medical exceptions. These institutions have been using different vaccine mandates due to the lack of viable options to prevent mass infections that might cripple the educational process and undermine our national defenses. Libertarian philosophers and legal scholars like Brennan, Epstein, and Flanigan have argued long before the current pandemic in favor of such restrictions when a deadly or crippling disease is highly likely to spread among many people.

Is it possible to uphold America's foundational faith in liberty as an unalienable right while supporting COVID mandates? Some libertarians think so based on the premise that such restrictions may "prevent acts that do direct, significant and foreseeable harm to others." (Carter, 2021) To help the reader appreciate the reasoning behind this position, imagine a Cossack wedding with 5,000 inebriated guests. Everyone celebrates by shooting their unregistered rifles at the clouds. Suddenly, a stray bullet kills the bride. If a forensic analysis were possible, it could identify the weapon and a lawsuit might restore justice. Unfortunately, as with coronavirus infections, it may be prohibitively expensive to allocate the blame.

The libertarian case for COVID mandates, however, is fundamentally different from the arguments on the Left. This is evident in the opinion of judge Leichty in the case of *Klassen v. Trustees of Indiana University*. (N/A, *Klaassen v. Trustees of Indiana University*, No. 21-2326 (7th Cir. 2021), 2022) In 2021, the school required proof of vaccination as a condition to attend classes in person. They used a century old precedent, the 1905 SCOTUS decision in *Jacobson v. Massachusetts*, which did not find mandatory vaccination against smallpox to be a violation of the Constitution. The Indiana judge, however, declared that "Jacobson doesn't justify blind deference to the government when it acts in the name of public health or in a pandemic."

Forcing all Americans to vaccinate against SARS-CoV-2 in order attend school, make a living, eat in a restaurant, or walk in the park cannot become legitimate based solely on the opinion of experts. It is true that judge Leichty did not strike down the University mandate. He also did not bend the knee to orders from the World Health Organization, the Center for Disease Control, the National Institute of Health, the Food and Drug Administration, the White House, Dr. Fauci, or

even from “Science” herself. Instead, he examined the evidence presented by the school and determined that only vaccines would allow this particular institutions to reopen because it faced specific challenges.

What Yale law professor Carter appreciates from a libertarian perspective in this case is the limited scope of the mandate. The restriction was enforced only on those who chose to work and study at a single school rather than the residents of a whole state. The American principle of self-government in making decisions at the lowest possible level was respected. In this manner, the people whose lives will be affected can have more influence in shaping the rules. The judicial decision also allows for any other university in Indiana to reopen without any COVID mandates in accordance with their values and local cost-benefit analysis.

The case against mandates

Political elites all over the world imposed various restrictive measures over the past two years. They and their supporters still need to present a plausible argument for the need to ruin the economy and violate our liberties over this particular disease. Yes, the novel coronavirus has infected hundreds of millions, perhaps billions of people, after it allegedly got out of a Wuhan lab sponsored by the US taxpayer. Yet, eight hundred days later, it has been credited with the death of less than 0.1 percent of the global population. (Worldometer, n.d.) On top of this, we now know that most of those victims had one or more preexisting terminal conditions.

But what if this virus mutates or another laboratory releases something much deadlier for the general population? How much of our freedom should we trade for the sake of more public safety? Is it acceptable to violate bodily integrity and inject those who try to free ride on the

vaccinated population's collective defenses? Should the risky choices of the anti-vaxxers be respected when Biden tells us that "science" is settled and the vaccines are safe and effective? If that were indeed the case, Murphy (Murphy, 2016) notes that "the *individual* cost-benefit analysis of taking the vaccine will only yield a temptation of "free riding" once a sufficient fraction of the population has become vaccinated, thus ensuring "herd immunity." Obviously, in that scenario mandatory vaccinations become unnecessary.

"Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place." Classical liberals like Bastiat clearly see that the only legitimate application of force is to repel or prevent aggression against our individual rights. Government is force and the only proper way to use it is to protect our private property in our life, free choices, and the fruits of our labor. The CDC has already admitted that the vaccines pose health risks and certain groups should not take them. Claiming that mandatory inoculations are justifiable in that case is as absurd as claiming that two plus two equals five.

What about vaccine mandates i.e. a requirements that a person gets "boosted" multiple times before he gains access to places where he may find himself within a few feet of people with immunodeficiency or germaphobia? Questions about neighborhood effects have no simple answers, but the worst way to fix such problems is a one-size-fits-all state, federal, or global rules. As with pollution, resource depletion, and immigration, pandemics expose the inferiority of politics compared to markets. Natural law, the foundation of the American Republic, does not provide justification for coercive government interventions in the form of mandatory vaccinations or vaccine mandates. Private property, however, suggests a solution.

Imagine a bar with two customers, a smoker and a non-smoker. Does the smoker have the right to light a cigarette or does the non-smoker have the right to clean air? The right answer is: Neither one has the right to impose his preferences on the other. The bar belongs to the owner and only he has the right to set the rules, making smoking permissible or not. The government has no business owning or imposing any restrictions over most places where people congregate. It has just one obligation--to protect the freedom of disposition of the property owners. If a store wants to profit from germaphobic customers, they have the right to require proof of vaccinations and hazmat suits as a condition for entry. If restaurant proprietors do not wish to discriminate against their maskless patrons, it is their God-given right to do so. Customers and employees have the same right to weigh risks versus benefits and engage in, or avoid, all such voluntary transactions.

Conclusion

When Obama became President, he often spoke of his dream to dismantle America and reconstruct her as a progressivist utopia. Just three years after he left office, the Democratic Party elites found the perfect excuse to implement those radical changes. To accomplish that, they followed some of the worst legal precedents of America (*Jacobson v. Massachusetts*, *Buck v. Bell*, *Sherbert v. Verner*, *Roe v. Wade*, and *South Bay Pentecostal Church v. Newsome*).

When the pandemic began, the governors of many states swiftly imposed restrictions on our freedoms that, prior to 2020, we associated only with communist regimes and Third World dictatorships. They did so without announcing any clear standards based on scientific evidence and with no debate in their legislative branches. All opposition to COVID mandates was silenced with repressive measures while the same politicians encouraged violent woke protests.

The inconsistency of the COVID mandates and their complete disconnect with the principles of individual rights and responsibilities, with common sense, or with medical science was evident from the start. Restrictions wildly varied between countries and states, with little or no correlation between their strictness and the rates of infections, hospitalizations, or mortality. Some measures were repealed under public pressure as soon as they went into effect. Surgeries that alleviated pain were banned but abortions went on. Establishments where you could buy pot were kept open as “essential” for our welfare while places of worship were shut down.

For the first time in our history, we experienced unilateral rule by executive order justified by outdated, obscure and unconstitutional laws meant to provide emergency powers for events like world wars. The new COVID mandates were implemented during apocalyptic media coverage of the events, causing panic on the Left and resentment on the Right. In an environment of intense political divisions, this led to hostility within many families. At first, people yelled at each other at home or on social media. Then they stopped communicating, concluding that their relatives who disagreed with them were evil, intending to either kill them with a virus or enslave them with restrictions.

To prevent the country from suffering another civil war, we need our courts to re-examine all the bad precedents that carved an “escape hatch from the Constitution” during times of crisis.

(Blackman, 2021) With the appointment of Amy Barrett to the Supreme Court of the United States, we see the first indications that the judicial branch of our federal government is coming out of its sabbatical and will review all COVID mandates in light of their impact on liberty in America.

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