

15

The Virus of Governmental Oppression: How the Australian Government is Jeopardising Democracy and our Health

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ABSTRACT

This article discusses the legal and moral consequences of draconian measures adopted by our political elites under the pretence that they were necessary to fight the coronavirus. Shutting down the entire country for many months, in a desperate attempt to save everyone and everywhere from a virus whose mortality rate is relatively low, has done far more damage to the people than the virus itself. Although it is important to recognise that the coronavirus appears to pose some health risks to the population, the key word here is proportionality and the arbitrary measures imposed by the ruling elites not only violate the Australian Constitution, but also unleash unprecedented socio-economic consequences, which threaten our very way of life and what it means to live in a free and open society.

I FIRST CONSIDERATIONS

Since March 2020 Australia's governments, both federal and state, are using their powers to excessively coerce, obstruct or otherwise unreasonably interfere with the life, liberty and property of the citi-

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zen. What these governments are doing is nothing but profoundly arbitrary and unconstitutional. They are using their newly acquired *emergency powers* to oppress the people and undermine basic principles of democratic government – including equality before the law and the right of citizens to be protected from unpredictable and arbitrary interference with their vital interests. In this article I endeavour to demonstrate how, under the pretence of fighting a supposed pandemic, draconian measures have been adopted that not only grossly violate the Australian Constitution but also the fundamental rights of the Australian people.

II GOVERNMENT OVERREACTION

Since the alleged pandemic began, apparently over 500 Australians have died from Covid-19 (25 August 2020). To put this into proper perspective, this is less than half the number of Australians who die every year from skin diseases, and about one-fifth of the number killed in car accidents. Most of these deaths were among people in or above the 80s and living in aged-care homes. We know also that those under 60 without a pre-existing medical condition have an extremely small chance of dying of coronavirus, and little chance of even getting very ill from this virus.

Of course, every life matters. However, according to a seminal study carried out by Justin Silverman and Alex Washburne, the coronavirus mortality rate may well be as low as 0.1 per cent, “similar to that of flu”.¹ Based on data coming from New York City (the hotbed of the pandemic in the U.S.), only 1.7 per cent of those in their 70s who contracted the virus have acquired any symptoms which were severe

¹ *The Economist*, ‘Why a Study Showing that Covid-19 is Everywhere is Good News’, 11 April 2020 <<https://www.economist.com/graphic-detail/2020/04/11/why-a-study-showing-that-covid-19-is-everywhere-is-good-news>>. See also: Edwin Mora, ‘Study: Coronavirus Fatality Rate Lower than Expected, Close to Flu’s 0.1%’, *Breitbart*, 13 April 2020 <https://www.breitbart.com/politics/2020/04/13/study-coronavirus-fatality-rate-lower-than-expected-close-to-flus-0-1/?fbclid=IwAR3_We1yIP-w9ILaFvUnEoyfg60MnUkyuYY7_QEAWckRp5Fwgl7p2WR0CF4>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

enough to require medical care.² For those under 18, hospitalisation from the virus was only 0.01.³

This is only about hospitalisation and not death caused by the coronavirus. Of course, nothing is said about the many others who never became sick enough to even get tested. The overwhelming majority of people who contract this virus do not have any significant risk of dying, says Dr Scott W. Atlas, a former chief of neurology at Stanford Medical Center.⁴ The magazine *Science* reports that 86 per cent of infections are never documented.

In this sense, even if most of us eventually catch the coronavirus, there will be mild or no symptoms for practically everyone. Accordingly, we should be taking special measures only for the most vulnerable – namely the elderly who are already suffering from chronic illnesses – and let the great majority of the population get on with their lives.

Based on fundamental biology and the evidence at hand, the appropriate policy to fight the coronavirus should be focused on protecting only the most vulnerable – those who are very old or suffering from chronic illness. As for the vast majority of us, ‘essential socialising’ is fundamental to ‘generate immunity’ and ‘limiting the enormous harms compounded by continued total isolation’.⁵

According to Professor Mark Woolhouse, epidemiologist at Edinburgh University and adviser to the UK Government, attempting to control coronavirus through lockdown measures as the Australian government has done is a “monumental mistake”.⁶ Professor Wool-

² Ibid.

³ E. Bendavid et al., ‘COVID-19 Antibody Seroprevalence in Santa Clara county, California’, *Stanford University*, 11 April 2020. <<https://www.medrxiv.org/content/10.1101/2020.04.14.20062463v1.full.pdf>>

⁴ Scott W Atlas, ‘The Data is in – Stop the Panic and End the Total Isolation’, *The Hill*, 22 April 2020 <<https://thehill.com/opinion/healthcare/494034-the-data-are-in-stop-the-panic-and-end-the-total-isolation>>.

⁵ Ibid.

⁶ Lucy Johnston, ‘UK Lockdown Was A “Monumental Mistake” And Must Not Happen Again – Boris Scientist Says’, *Sunday Express*, 24 August 2020 <<https://www.express.co.uk/life-style/health/1320428/Coronavirus-news-lockdown-mistake-second-wave-Boris-Johnson>>.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

house believes the harm such lockdowns cause to education, health care access and broader aspects of the economy and society, ‘will turn out to be at least as great as the harm done by Covid-19’.⁷ Not only do these lockdowns constitute an unnecessary “panic measure”, but, according to him, ‘history will say trying to control COVID-19 through lockdown was a monumental mistake on a global scale, the cure was worse than the disease’.⁸

In this sense, hundreds of U.S. physicians have composed an important document on May 19th referring precisely to these social problems, and asking governments to immediately end the coronavirus shutdown. The letter reflects the alarm of these medical doctors at what appears to be a disturbing lack of proper consideration for the future health of the population at large.⁹ Signed by Dr Simon Gold MD JD and more than 500 hundred other medical physicians, the letter authoritatively states:

It’s impossible to overstate the short, medium, and long-term harm to people’s health with a continued shutdown. Losing a job is one of life’s most stressful events, and the effect on a person’s health is not lessened because it also has happened to 30 million other people. Keeping schools and universities closed is incalculably detrimental for children, teenagers, and young adults for decades to come.

The millions of casualties of a continued shutdown will be hiding in plain sight, but they will be called alcoholism, homelessness, suicide, heart attack, stroke, or kidney addiction, unplanned pregnancies, poverty, and abuse.¹⁰

⁷ Ibid.

⁸ Ibid.

⁹ Alex Swoyer, ‘500 Doctors Tell Trump to End the Coronavirus Shutdown, Say it Will Cause More Deaths’, *The Washington Times*, 21 May 2020 <<https://www.washington-times.com/news/2020/may/21/500-doctors-tell-donald-trump-end-coronavirus-shut/>>.

¹⁰ Simone Gold MD & >500 physicians, ‘A letter signed by hundreds of doctors warning of adverse health consequences stemming from the coronavirus shutdowns’, 19 May 2020 <<https://www.scribd.com/document/462319362/A-Doctor-a-Day-Letter-Signed>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

As can be seen, all the Australian governments, both federal and state, have created a problem that appears to be much bigger than the coronavirus. More than a million Australians have already sought mental health treatment during the “health crisis”. In Victoria, access to health crisis services have jumped more than 30 per cent since September this year. Demand for children’s mental health has also skyrocketed. Victoria’s own data reveals a 33 per cent spike in ‘child and youth contacts in community mental health services for eating disorders’.¹¹ According to the official data, there were 3,702 calls to the Kids Helpline by Victorians, a 61 per cent increase in just four weeks.¹²

Of all the most pressing problems created by the Australian governments via these lockdowns and other draconian measures, suicide rates are forecast to rise up to 50 per cent due to the socio-economic impact of government measures, particularly among young Australians aged 15-25 years.¹³ Carried out by the Sydney University’s Brain and Mind Centre and supported by the Australian Medical Association, world-leading researchers predict that the impact of government measures may well result in an extra 1,500 Australian deaths a year over the next five years, which is at least 10 times more deaths than deaths caused by the coronavirus.¹⁴ Of course, as noted by *The Australian*’s columnist Janet Albrechtsen, ‘no politician is going to be held responsible for the suicide of an unemployed young man who has lost hope’.¹⁵

¹¹ Simon Benson, ‘Mental Health Crisis: One Million ‘Lost’ in Coronavirus Lockdown’, *The Australian*, 14 October 2020 <<https://www.theaustralian.com.au/nation/politics/mental-health-crisis-one-million-lost-in-coronavirus-lockdown/news-story/fc8c1da341ca392166fce6aba9ca4f69>>.

¹² Ibid.

¹³ Simon Benson, ‘Coronavirus Australia: Suicide’s Toll Far Higher Than the Virus’, *The Australian*, 7 May 2020 <<https://www.theaustralian.com.au/nation/suicides-toll-far-higher-than-coronavirus/news-story/25a686904b67bdebdcd544b1cab7f96>>.

¹⁴ Ibid.

¹⁵ Janet Albrechtsen, ‘Coronavirus: Charting a Way Out of this Crippling Pollyanna World’, *The Australian*, 7 May 2020 <<https://www.theaustralian.com.au/inquirer/coronavirus-charting-a-way-out-of-this-crippling-pollyanna-world/news-story/cfd6913dfc2c5c7e082b7e8d398d0075>>.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

Professor Ian Hickie, former mental health commissioner and Head of the Brain and Mind Centre, has reportedly said the annual rate of suicide caused by the government answer to the pandemic could rise from 3,000 to up to 4,500, with youth suicides making up almost half of the expected deaths. Apparently Professor Hickie has specifically advised the Australian government about the impact of economic measures with the greatest among the young, and those who particularly live in rural and regional Australia. ‘What happens in recessions is that suicide rates go up dramatically ... and they hurt the young the most’, Professor Hickie says.¹⁶

Apparently this important advice fell on deaf ears. The Prime Minister and the State and Territory leaders and their so called National Cabinet all have their individual and collective responsibility for this unmitigated disaster. These authorities, both federal and state, accepted the seriousness of the pandemic to be real. They blindly accepted the very alarmist and totally inaccurate World Health Organisation (WHO) prediction of 3.4 per cent mortality, and suddenly brought about all these disruptions of personal freedoms that have cost millions of jobs and the closing down of countless businesses.

The anger and resentment is coming particularly from those who have lost their jobs or had their businesses entirely destroyed. Of course, none of the privileged members of the country’s political elite and the two million employees in the public sector are affected. They comprise a superior caste of privileged individuals. For them the present crisis represents no more than an opportunity to increase their power and influence over society as a whole. Government agencies are also acquiring extraordinary powers to monitor people and to detain law-abiding citizens. For example, the Western Australian government has started to use tracking devices on its citizens for monitoring breaches of directions.

Dr John Ionnidis, professor of medicine, epidemiology, population health, and statistics at Stanford University, believes the rate of death for the coronavirus, when adjusted from wide age range, could be as

¹⁶ Ibid.

THE VIRUS OF GOVERNMENTAL OPPRESSION

low as 0.05 per cent.¹⁷ He explains that no less than 80 per cent of all those who contract the virus have no symptoms or these are very mild. Of those under the 50s age group, at least 99.5 per cent will survive, which is even less problematic than the normal round of the flu. If that is the true rate, Ionnidis concludes, locking down the world with potentially tremendous social and influential consequences may be totally irrational.

A similar opinion is expressed by David L. Katz, founding director of Yale University's Yale-Griffin *Prevention Research Center* and former president of the *American College of Lifestyle Medicine*.¹⁸ Dr Katz has three honorary doctorate degrees and is the recipient of numerous academic awards for his "significant contributions to public health". According to him, the "unique" nature of Covid-19 is that it results in only "mild" symptoms in 99 per cent of cases and that it appears to only pose a high risk to the elderly". Hence his sobering conclusion that "our fight against coronavirus' may end up being worse than the disease".¹⁹

By taking an "at war" approach to fighting Covid-19 – widespread shutdowns and isolation of the entire population – rather than a "surgical strike" approach focusing on the truly vulnerable, Dr Katz believes that "we have set ourselves on the path of "uncontained viral contagion and monumental collateral damage to our society and economy". "The [normal] flu hits the elderly and chronically ill hard too, but it also kills children. Trying to create herd immunity among those most likely to recover from infection while also isolating the young and the old is daunting to say the least", Dr Katz explains.²⁰

¹⁷ John P.A. Ionnidis, 'A Fiasco in the Making? As the Coronavirus Pandemic Takes Hold, We Are Making Decisions Without Reliable Data', *Statnews*, 17 March 2020 <<https://www.statnews.com/2020/03/17/a-fiasco-in-the-making-as-the-coronavirus-pandemic-takes-hold-we-are-making-decisions-without-reliable-data/>>.

¹⁸ See: <https://davidkatzmd.com/david-katz-md-biography/>

¹⁹ David L. Katz, 'Is Our Fight Against Coronavirus Worse Than the Disease?', *The New York Times*, 20 March 2020 <<https://www.nytimes.com/2020/03/20/opinion/coronavirus-pandemic-social-distancing.html>>.

²⁰ Ibid.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

These facts make the disease particularly suited for a more strategic containment effort, rather than our current unsustainable, society-wide approach that threatens to undermine the economy. According to Dr Katz, it is deeply concerning that “the social, economic and public health consequences of a near total meltdown of normal life – schools and business closed, gatherings banned – will be long lasting and calamitous, possibly even graver than the direct toll of the virus itself.” “The stock market will bounce back in time, but many businesses never will. The unemployment, impoverishment and despair likely to result will be public health scourges of the first order”, Dr Katz says.²¹

Unfortunately this sort of advice appears to have been largely ignored by the Australian government. This is so regardless of the Prime Minister always telling us that his government is simply doing what a panel of scientists are telling them to do.

First of all, good leaders do not evade their responsibility by conveniently hiding behind a few medical “experts”. Besides, there are a number of leading medical practitioners who strongly oppose any such draconian measures of social distancing and lockdowns solely on health grounds. For instance, a rural GP recently explained:

The government should open up the economy for people under 65 to get back to socialising and working and those of us who are older to play it safe with continued social distancing and voluntary isolation. It appears our medical system will be able to cope with the much lower rates of hospitalisation and mortality becoming evident from the available data especially if we continue to protect the elderly. What can't be coped with is the social and economic cost of this.

Second, as the term itself conveys, a medical expert is only an expert in one particular field. However, this current crisis is not solely a medical issue and it therefore requires a more holistic approach and the balancing of multiple considerations. These advisers carefully hand-picked by the political elites might have no holistic understanding of

²¹ Ibid.

THE VIRUS OF GOVERNMENTAL OPPRESSION

the matter. They have no expertise in the other and equally relevant fields of psychology, sociology, economics and constitutional law.

During a public health emergency, the Australian State's chief health officers can issue public health directions to assist in containing, or to respond to, the spread of coronavirus within the community. However, some of these health officers have no experience in infectious disease management. Indeed, Queensland's chief health officer, Dr Jeannette Young, reportedly not only has almost no clinical experience but also no expertise in infectious diseases.²² Still, Premier Anastacia Palaszczuk blames her for the draconian restrictions imposed by her own government, including the State's unconstitutional strict border closure banning citizens who reside in other States (ACT, New South Wales and Victoria) from entering Queensland.

Economist and company director Judith Sloan refers therefore to "the new tyranny" that has emerged during the coronavirus era: "the tyranny of experts". According to her, such a tyranny must be resisted because our political leaders have relied on a few chosen medical experts to conveniently claim that "science" has made them impose these draconian restrictions on the community. These experts may have a role to play but, as she reminds us, 'not in an uncontested way'. Thus she concludes with this important advice:

When a politician says experts are in charge or the "science" made them do it, be suspicious. These experts don't speak with one voice and many are peddling values they hold dear; as true with COVID-19 as it is with climate change. Politicians are elected to govern us all; this requires judgement about the trade-offs that inevitably exist with all policy decisions.²³

According to Woodhouse, member of the Scientific Pandemic Influenza Group on Behaviours that advises the U.K. Government, gov-

²² Judith Sloan, 'Once It Was Distance, But A New Tyranny Has Emerged In Coronavirus Era', *The Australian*, 16 September 2020 <<https://www.theaustralian.com.au/commentary/once-it-was-distance-but-a-new-tyranny-has-emerged-in-coronavirus-era/news-story/173654a1dfd96ea36e280d0f34b>>.

²³ Ibid.

ernment advisory boards dealing with Covid ‘need to have members from a wider range of fields’. To avoid more people being harmed by the collateral effects of lockdown and other government measures than by Covid-19, he argues that government advisory boards should be comprised of a broader range of people, ‘receiving equal input from economists to assess the damage to incomes, lives and livelihoods; educationalists to assess the damage to children; and mental health specialists to assess levels of depression and anxiety especially among younger adults; as well as psychologists to assess the effects of not being able to go to the theatre or a football match’.²⁴

The federal government estimates unemployment to be about 11 per cent. This is rather deceptive and the real numbers will be revealed only when JobKeeper goes and numerous business will be unable to reopen.²⁵ Out of Australia’s 13 million employed in March 2020, there are now 6 million on JobSeeker and JobKeeper.²⁶ This means that half of those in the private sector are now dependant on government aid and earning at least 30 per cent less than they did. Most of these people will eventually discover they are actually unemployed. They will never be able to resume their jobs simply because the company for which they had been working has been forced to shut down permanently.

The Morrison government has so far spent more than \$500 billion allegedly to protect our jobs, although the unemployment rate is now well above 10 per cent (20 per cent in Victoria), with the national debt heading towards a trillion dollars.²⁷ According to an analysis by the

²⁴ Johnston, above n 6.

²⁵ Sinclair Davidson, ‘The Economic Crisis Is Still to Come’, *The Age*, Melbourne/Vic, 6 August 2020. <<https://www.theage.com.au/national/victoria/the-economic-crisis-is-still-to-come-20200806-p55j5f.html>>

²⁶ Alan Moran, ‘Revealed: The True Cost of Our Stimulus Spending’, *The Spectator Australia*, May 7, 2020 <<https://www.spectator.com.au/2020/05/revealed-the-true-cost-of-our-stimulus-spending/>>

²⁷ Dennis Shanaham, ‘Morrison Keeps Danbusters At Bay Over Second Coronavirus’, *The Australian*, 8 August 2020. <<https://www.theaustralian.com.au/inquirer/morrison-keeps-danbusters-at-bay-over-second-coronavirus-wave/news-story/f6ab-808ca813beb58856810891a06354>>

THE VIRUS OF GOVERNMENTAL OPPRESSION

Institute of Public Affairs ('IPA'), over 230,000 small businesses are expected to close once Covid-19 measures are finally removed. The closure of these small businesses would permanently destroy 470,000 jobs, based on average small business employment.²⁸

'The disproportionate destructing destruction of small businesses by the Covid-19 lockdown measures is demonstrated by their heavy reliance on government support, such as JobKeeper, for survival', writes Kurt Wallace, a research fellow at the IPA. He observes also that it is totally unsustainable for small businesses to continue to rely on government support for survival. 'The legacy of the lockdown restrictions will be an economy dominated by large conglomerates with local communities being stripped of the small businesses that are integral to their character', Wallace argues.²⁹

However, 'both state and federal governments are in denial', writes economics professor Sinclair Davidson, who then correctly reminds us that

The economy is about people; their plans, their expectations, their relationships. For all the talk about competition, the economy is about co-operation. The economy is not a machine that can be switched off and on at will. The interrelated web of co-operative relationships that was the February 2020 economy is gone forever. The economy that now exists is a lot smaller than what it was just six months ago. The problem now being that we can't be sure which part of it will revive and which part of it won't.³⁰

Here are some tough questions the Australian governments would need to answer: 'How did deaths from Covid-19 compare with an awful flu season that kills young people too? How many people died from other medical conditions that were not treated because of

²⁸ Kurt Wallace, 'Small Business And Jobs Smashed By COVID-19 Lockdowns', *IPA Today*, 10 August 2020 <<https://ipa.org.au/publications-ipa/small-business-and-jobs-smashed-by-covid-19-lockdowns>>.

²⁹ Ibid.

³⁰ Davidson, above n 25.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

the lockdown? How many additional suicides were caused by the lockdown?’³¹

Of course, as Janet Albrechtsen correctly points out, ‘no politician is going to be held responsible for the future suicide of an unemployed young man who has lost hope. But they imagine they will be held responsible for the immediate death of a 94-year old from, or with, Covid-19’.³² The level of delusional thinking is truly astonishing, although it certainly reveals the authoritarian mindset of politicians who expect extreme obedience and unquestioning submission from the Australian people.

III THE RISE OF THE PATERNAL LEADER

There was never an emergency that could justify the imposition of these authoritarian measures. Politicians have justified the incredible harm they are causing to the Australian people by getting completely drunk on their own sense of self-righteousness. Full of themselves, they proudly warned that we face a great threat but their policies have saved us from the spread of a deadly virus. The privileged members of our political class are therefore able to block our peaceful protests because they think they know better what needs to be done, and even if we are eventually oppressed, silenced and destitute as a result.

A reasonable concern for our well-being is one thing, but the actions taken by politicians during this pandemic have gone well beyond the extreme. What is happening is simply disgraceful and it gives new meaning to the phrase, ‘The cure is worse than the disease’. Of course, some of the worst crimes against humanity have been committed by individuals who believed they were simply doing a ‘great good’. Listening to their patronising remarks brings to mind a famous quote by Christian apologist and novelist C.S. Lewis:

³¹ Janet Albrechtsen, ‘Coronavirus: Old or Young – Every Life Has a Different Value and We Accept That’, *The Australian*, 6 May 2020. <<https://www.theaustralian.com.au/commentary/coronavirus-old-or-young-every-life-has-a-different-value-and-we-accept-that/news-story/ecc95caa9307a7a047aca5847c6bd88d>>

³² Ibid.

THE VIRUS OF GOVERNMENTAL OPPRESSION

Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive... Those who torment us for our own good will torment us without end for hey do so with the approval of their own conscience.³³

The political philosophy of John Locke is particularly relevant to our understanding of the matter. Locke is known as the ‘Founder of Liberalism’ due to his immense contributions to political philosophy. In the constitutional struggle of parliamentary forces against the Stuart monarchs in 17th-century England, Locke elaborated a theory in which the primary justification for civil government rests on the preservation of our fundamental rights to life, liberty and property. Locke’s main concern in his political writings was the elaboration of a legal-political philosophy to underpin the Glorious Revolution of 1688.

Locke developed a distinctly Western political tradition based on the idea that everyone is endowed by God with inalienable rights, and that no government must ever violate these basic rights of the individual. More importantly, Locke distinguished what is legitimate political power from a situation in which the exercise of power becomes despotic and/or paternalistic. As Locke himself pointed out, ‘the great mistakes about government have ... arisen from confounding this distinct power [political power] with another [paternal power]’.³⁴ Hence, as noted by Dr Kalle Grill, ‘paternalism is opposed by the liberal tradition’ of limited government under the law.³⁵

According to emeritus professor of government Geraint Parry, one of the primary purposes in Locke’s political theory ‘was to separate political power from despotic power and paternal power – in other words, to deny that there is any analogy between the political

³³ C. S. Lewis, *God in the Dock: Essays on Theology and Ethics* (William B. Eerdmans, 1948), 74.

³⁴ John Locke, *The Second Treatise* (Cambridge University Press, 1960), para. 169.

³⁵ Kate Grill, ‘Paternalism’, in R. Chadwick (ed.) *Encyclopedia of Applied Ethics* (2nd ed., Elsevier, 2011) <<http://kallegrill.se/texts/Paternalism%20preprint.pdf>>.

relationship and the relationships which exist between either masters and slaves or father and children.’³⁶ Accordingly, the paternal leader is the political ruler who does not distinguish the difference between such relationships and limits the liberty of the people with the supposed intent of promoting “their own good” regardless of their personal will. Such an attitude displays a profound disregard for the will of other individuals and it involves behaviour that reveals an attitude of superiority coupled with profound arrogance and self-righteousness.

The Australian Prime Minister is a typical paternal leader. Morrison says he is quite happy that his subjects are behaving well. He is thinking about rewarding us for our “good behaviour”. Meanwhile, he says that there will be ‘many more [restrictions] in front of us before [the government] can even possibly contemplate the easing of restrictions’.³⁷ ‘There’s got to be a reward for all of this great effort that’s going in, and there will be, but we’ve got to make sure that’s done at the right time’, the Prime Minister told Sky News.³⁸

Morrison recently urged his subjects to download a phone app that allows the federal government to trace our every move. His government was initially aiming for a 40 per cent take up of control of ‘people’s movements and the people they come in contact with’.³⁹ While the app that the federal government developed apparently is voluntary, its introduction naturally raises concerns of such measures becoming more permanent in the future. It also raises serious privacy issues and concerns that the app will later be used for permanent surveillance. The app presently monitors people’s daily interactions using GPS. It

³⁶ Geraint Parry, ‘Individuality, Politics and the Critique of Paternalism in John Locke’ (1964) 2 *Political Studies* 1, 1.

³⁷ Malcolm Farr and Daniel Hurst, ‘Australian Government Plans to Bringing in Mobile Phone App to Track People With Coronavirus’, *The Guardian*, 14 April 2020 <<https://www.theguardian.com/australia-news/2020/apr/14/australian-government-plans-to-bring-in-mobile-phone-app-to-track-people-with-coronavirus>>.

³⁸ Ibid.

³⁹ Ibid.

THE VIRUS OF GOVERNMENTAL OPPRESSION

uses Bluetooth technology to record contact with other people even if they do not know each other.⁴⁰

Although people under 60 have an extremely small chance of dying from coronavirus, the Prime Minister strongly believes that 95 per cent of the population must take the vaccine against such a virus. His first instincts are always inherently authoritarian and he appears to have developed a visceral distrust of the Australian people. That being so, he initially wanted the vaccine to be as mandatory as possible.⁴¹ ‘I expect that it would be mandatory as you can possibly make it’, he said, adding that he is ‘talking about a pandemic which has destroyed the global economy and taking the lives of ... 430 Australians’.⁴²

First of all, what has really destroyed our economy is the behaviour of incompetent leaders such as Morrison himself. There were far better and more efficient ways to fight this virus apart from savage bans and gross violations of fundamental rights being inflicted on the people. Second, the Prime Minister appears to ignore that Australia is a country in which the state has been conceived as deriving from the law and not the law from the State.⁴³ The Morrison government has no more powers than those explicitly granted by the Australian Constitution.⁴⁴

⁴⁰ Andrew Probyn, ‘Coronavirus Lockdowns Could End In Months If Australians Are Willing To Have Their Movements Monitored’. *ABC News*, 14 April 2020 <<https://www.abc.net.au/news/2020-04-14/coronavirus-app-government-wants-australians-to-download/12148210>>.

⁴¹ Richard Furgason, ‘Future Vaccine Should Be Mandatory, Says PM’, *The Australian*, 19 August 2020 <<https://www.australian.com.au/nation/coronavirus-australia-live-news-fears-grow-of-sydney-hotel-breach-outbreak/news-story/cf35fb9ac-2901600276fa78ee89a2dc5>>.

⁴² Jade Gailberger, ‘Coronavirus Vaccine Should Be Mandatory: PM’, *PerthNow*, 19 August 2020, <<https://www.perthnow.com.au/lifestyle/fitness/coronavirus-vaccine-should-be-mandatory-pm-ng-fc7dc9cd495bcc7332487c07731b4c98>>.

⁴³ W A Wynes, *Legislative, Executive and Judicial Powers in Australia* (Sydney: The Law Book Co, 1955), vii.

⁴⁴ For instance, whereas Section 51 (xxiiiA) of the Australian Constitution allows for the granting of various services by the federal government, this should not be to the extent of authorising any form of civil conscription. This means that no government in this country, or those acting on its behalf, is constitutionally authorised to make the Australian people take any medicament against their best will, or force children to be vaccinated in order to maintain benefit payments.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

Morrison's comments about vaccination follow the signing of Australia's first vaccine deal with drug maker AstraZeneca.⁴⁵ This vaccine has been rushed through trials and has never been successfully produced for a coronavirus: it might do more harm than good. Of course, this is the same government that told us that roughly 150,000 Australians would die from Covid-19. It is also the government that unreasonably banned therapeutics such as hydroxychloroquine/zinc, which numerous health experts say "could be our best cure" in the fight against the coronavirus.⁴⁶ Furthermore, the Morrison government has miserably failed to protect nursing homes where the highest incidence of victims of Covid-19 has occurred.

We are supposedly living in a free and democratic society. It is therefore quite extraordinary that a supposed democratic leader attempts to coerce citizens to do something they might not really want to do. Instead of using the full power of the State to command his "subjects" to do whatever he might want, the Prime Minister still needs to learn that true democratic leaders do not use their legal authority primarily to coerce, but instead to persuade and convince their fellow citizens to do what is right.

IV "IN GOVERNMENT WE TRUST"

I have never witnessed so much hatred in this country. As stated by The Australian's Chris Kenny, 'some of the worst aspects of our society have come to the fore through panic buying, hysterical reporting dependency and, from some, a masochistic desire to take orders'.⁴⁷ The response to Covid-19 is prompting a remarkable number of Australians to effectively treat their fellow citizens as enemies – potential

⁴⁵ Jade Gailberger, 'Coronavirus Vaccine Should Be Mandatory: PM', *PerthNow*, 19 August 2020 <<https://www.perthnow.com.au/lifestyle/fitness/coronavirus-vaccine-should-be-mandatory-pm-ng-fc7dc9cd495bcc7332487c07731b4c98>>.

⁴⁶ Andrew Bolt; 'I must call Prime Minister Scott Morrison to Account', *Sky News*, 10 August 2020 <https://www.skynews.com.au/details/_6179768424001>.

⁴⁷ Chris Kenny, 'If Politicians Know Best, Why So Many Mistakes?', *The Australian*, 15 August 2020 <<https://www.theaustralian.com.au/commentary/if-politicians-know-best-why-so-many-mistakes/news-story/61184b5377a4638fbd70b9ef53253f40>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

sources of infection. Daily, citizens are being patronised, spoken down to, as if it is beyond their ability to understand the complexities of the present crisis. As Henry Ergas points out, ‘being surrounded by people wearing masks coats daily life with a deep glaze of oddness, casting ourselves and everyone around us as simultaneously risky and at risk, contaminable and contaminable’.⁴⁸

I have also noted how so many people have developed an utterly distorted view of government, or what a government can do for them. Such individuals now expect almost everything to come from government. They blindly worship at the altar of the all-mighty government, expecting their “benevolent” rulers to act as their almighty saviours, believing in government basically as the ultimate provider for all good things. Perhaps this is a result of society’s lost faith in the God of Christianity. Be as it may, the undeniable truth is that far too many Australians have acquired a disturbingly unshakable faith in their ruling political masters. Call it a form of idolatry if you wish.

Fortunately, the only discernible benefit of this ongoing pandemic has been to expose the authoritarian behaviour of the ruling elites led by the Australian Prime Minister and State Premiers. It has now become clear that such privileged individuals are developing a real taste for power and unlawful control over the population. The Prime Minister, Premiers, senior advisors and politicians have never had such an energising time as this. They are so full of importance and power that one can only expect them to continue running the country in such a heavy handed manner.

During this supposed pandemic, it almost appears that the political elite is promising to abolish even death itself, and create a new society of people who are happy to exchange their freedoms for “security” and be entirely subordinate to the ultimate control of their absolute masters. This “new politics” has been exercised by political class that has manifested a desires of acquiring absolute control over the population.

⁴⁸ Henry Ergas, ‘Our Face Work Diminished, We Cannot Mask the Cost’, *The Australian*, 7 August 2020 <<https://www.theaustralian.com.au/commentary/our-face-work-diminished-we-cannot-mask-the-cost/news-story/ed3fed8d5e8bc4f8903bf42915e302ba>>.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

Perhaps nothing reveals more the mindset of the ruling class than the statement of Finance Minister Mathias Cormann, when he stated in early April that there would be no changes to social-distancing rules over the following six months.⁴⁹ Why such measures would need to take six months? On what medical-scientific evidence are such government mouthpieces basing this “six months” timeline?

Of course, a six-month lockdown would cause massive damage to the economy and at the cost of countless Australian lives and livelihoods. As we speak, the state authorities of every Australian jurisdiction have acquired full powers to enforce people to return to their homes if they are supposedly not complying with any directions or regulations regarding Covid-19, under threat of hefty fines and imprisonment.

These measures are in force across every jurisdiction, where there are rumblings of overzealous police officers abusing their power. Meanwhile, the Australian Premiers assure us that the police force will use its powers only in specific circumstances. These circumstances presently include sitting on a park bench, walking too close to another person, meeting with a few friends for a barbecue, or even changing flowers’ at a late spouse’s grave. This happened in Melbourne last weekend, where a man was told to leave the cemetery shortly after arriving, or he would be receiving a \$1,600 fine.⁵⁰

In this Covid-19 crisis we are witnessing a ruling class that claims absolute control over our private associations, our work or business, our schools and churches, our families, and over individuals. The police in Victoria are still interrogating those who are outside without permission. Presumably a couple sitting at a table in a public park ob-

⁴⁹ Richard Ferguson, ‘Coronavirus Australia: NO Early End to Six-Month Lockdown, says Morrison Government’, *The Australian*, 11 April 2020 <<https://www.theaustralian.com.au/nation/politics/coronavirus-no-early-end-to-sixmonth-lockdown-says-morrison-government/news-story/5cdf7db1f8a3ce598f8672d58cdc38d1>>.

⁵⁰ Elizabeth Daoud, ‘Melbourne Man Devastated After Turned Away From Wife’s Grave Amid Coronavirus Restrictions’, *7 News*, April 13, 2020 <<https://7news.com.au/news/vic/melbourne-man-devastated-after-turned-away-from-wifes-grave-amid-coronavirus-restrictions-c-973169>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

serving the social distance and sipping water will also be found guilty of a crime. Indeed, anyone who deliberately engages in such activity may face arrest and imprisonment. Such politicians view people not as citizens to be engaged with, but as disease carriers to be controlled.⁵¹ In the name of fighting Covid-19, authorities are acquiring new powers to monitor and to detain citizens. This includes powers to use surveillance like drone technology, vehicle license plate recognition and electronic tracking devices.

In New South Wales, and just after another person in his 90s died with coronavirus at Liverpool Hospital, Premier Gladys Berejiklian declared that ‘tough social-distancing laws will stay until a vaccine [for Covid-19] is found’.⁵² Although acknowledging ‘how devastating this is for families’, she went on to communicate that such restrictions would not be eased and that social-distancing is now ‘the new way of life until a vaccine can be discovered’.⁵³

In Western Australia (WA), the police have provided 200 electronic ankle bracelets with GPS tracking to be strapped on any member of the public, for monitoring purposes of non-compliance with police directions. ‘We are in a state of emergency ... A non-compliant [person] in quarantine will have one of these devices fitted [to them]’, Labor Premier Mark McGowan stated.⁵⁴

Passed by the Western Australian Parliament, the *Iron Ore Processing Agreement Amendment Act* provides the State Premier and his Attorney General exemption from the criminal law and civil liabilities. The Act also bans any matter being taken to court so that, in

⁵¹ Brendan O’Neill, ‘The Luxury of Apocalypticism’, *Spyked*, 17 March 2020 <<https://www.spiked-online.com/2020/03/17/the-luxury-of-apocalypticism/>>.

⁵² Paige Cockburn, ‘NSW Coronavirus Social-Distancing to Stay Until Vaccine is found, Premier Gladys Berejiklian says’, *ABC News*, 7 April 2020 <<https://www.abc.net.au/news/2020-04-07/nsw-coronavirus-social-distancing-to-stay-until-vaccine-found/12126802>>.

⁵³ *Ibid.*

⁵⁴ Aaron Fernandes, ‘Electronic Tracking Devices Among New Coronavirus Powers for WA Security Agencies’, *SBS News*, 12 April 2020 <<https://www.sbs.com.au/news/electronic-tracking-devices-among-new-coronavirus-powers-for-wa-security-agencies>>.

theory, it would ban even actions in the High Court of Australia. The Act explicitly terminates legal proceedings in relation to coronavirus measures which were underway in the Supreme Court of Western Australia, the Supreme Court of Queensland, the Supreme Court of New South Wales and the Federal Court of Australia.

Clause 12 of the Act provides that decisions and actions in relation to certain government decisions cannot be appealed. It adds that ‘[t]he Rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to; or in relation to, any conduct of the State that is, or is connected with, a disputed matter’.⁵⁵ In addition, this Act prohibits freedom of information by preventing citizens from obtaining the proper information about what the Western Australian government is doing to hold it accountable. In other words, this legislation ‘seeks to make documents connected to a “disputed matter” exempt from freedom of information association laws and grants criminal immunity to the State and its agents’.⁵⁶

Finally, the Act gives the State Premier the power to make laws without reference to Parliament. In essence, this an unconstitutional piece of legislation that completely violates the most basic elements of the rule of law and democratic government, including separation of powers, natural justice and due process of law. This draconian legislation attacks some foundational principles of a free and just society, namely that governments must not apply law retrospectively, that court proceedings are fair, and government decisions subject to review or appeal.⁵⁷

The Western Australian Parliament has also passed the *Emergency Management Amendment (COVID-19 Response) Bill*. Under this Act authorities are allowed to issue directions to a ‘class’ or group of people, rather than an individual; and to impose penalties of \$12,000 fines and 12 months of imprisonment for non-compliance. While these

⁵⁵ Morgan Begg, ‘You Don’t Need To Be Like Clive Palmer To Dislike His Arbitrary Treatment’, IPA Today, 27 August 2020 <<https://ipa.org.au/publications-ipa/you-dont-need-to-like-clive-palmer-to-dislike-his-arbitrary-treatment>>.

⁵⁶ Ibid.

⁵⁷ Ibid.

THE VIRUS OF GOVERNMENTAL OPPRESSION

expanded security powers can only be used during a state of emergency, only one of these several amendments to the Act carries a 'sunset clause', guaranteeing its expiry with the end of such emergency. In sum, the Act does not include a sunset clause but it allows for expanded security powers during an unlimited period of time.

As can be seen, these extraordinary measures may last much longer than that of the duration of the pandemic. This effectively means that the Western Australian government will be using for an indefinite period of time invasive technology to analyse, control and determine everyone's actions according to a plan carefully designed by the political elite. This, of course, is not really about the people's health but about political oppression. For nothing can produce a police state more rapidly than such draconian measures. Not only Western Australians but also Australians in general would be wise to pay attention to the words of Thomas Jefferson, the principal drafter of the American Declaration of Independence: 'A government big enough to give you everything you want, is strong enough to take everything you have'.

V THE NATIONAL CABINET

Established by the federal government, the pompously self-entitled 'National Cabinet' has relied on a discredited modelling based on the misleading assumptions of the Imperial College model, which are notoriously prone to significant exaggeration.⁵⁸ Such cabinet has 'unlawfully suspended and destroyed jobs, small business and much of the economic life of the nation, as unconstitutional. These extraordinary controls have no validity because they are not powers intended to be exercised in its present form. They violate both the spirit and letter of the Australian Constitution. There has never been a crisis to justify the use of such extreme measures well as limiting the people's freedom with something approaching house arrest'.⁵⁹

⁵⁸ David Flint, 'Can Someone Please Change ScoMo's Autocue...?', *The Spectator Australia*, 6 June 2020 <<https://www.spectator.com.au/2020/06/can-someone-please-change-scomos-autocue/>>.

⁵⁹ David Flint, 'Professor Lockdown and the Hypocrisy of the Elites', *The Spectator Australia*, 16 May 2020 <<https://www.spectator.com.au/2020/05/professor-lockdown-and-the-hypocrisy-of-the-elites/>>.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

The Prime Minister is presently using his ‘National Cabinet’ to ban Australians from leaving their country. He oversees a regime that has shut down international travel, enforcing prohibitions matched only by some of the world’s worst totalitarian regimes, notably North Korea and Cuba.⁶⁰ As a result, Australians currently need a special certificate even to see their own parents and relatives overseas. They need permission to attend a funeral or seeing a relative who is dying overseas. Now, 57,000 people have so far been allowed to leave Australia, but 16,000 have not. Numerous other Australians did not even bother to try since they know their application would be summarily rejected.

This goes without mentioning thousands of Australians overseas who desire to return but are not being allowed to come back.⁶¹ There is indeed a limit on how many of our fellow citizens can return to Australia. According to the Department of Foreign Affairs and Trade (‘DFAT’), there are about 20,000 Australians under such conditions. They are trapped overseas and some are effectively running out of money. They are truly experiencing a desperate situation overseas.⁶²

‘Essentially you have a humanitarian disaster all around the world that Australian citizens are stranded in terrible conditions’, argues Dr Joseph Forgas AM, a renowned social psychologist and one of those prevented from returning to the country. Currently Scientia Professor at the University of New South Wales, Forgas was born in Hungary

⁶⁰ Paul Collits, ‘When We Needed Churchill – We Got ScoMo’, *Freedoms Project*, 16 September 2020 <<https://www.thefreedomsproject.com/item/567-when-we-needed-churchill-we-got-scomo>>.

⁶¹ Jade Macmillan, ‘Travel and Coronavirus Boarder Closures On The Agenda At National Cabinet After Qantas Chief Alan Joyce’s Criticism’, *ABC News*, 21 August 2020 <<https://www.abc.net.au/news/2020-08-21/travel-borders-closed-national-cabinet-agenda-coronavirus/12580580>>. See also: Yasmeen Jeffery, ‘Stranded On Their Own’, *ABC News*, 23 July 2020. <<https://www.abc.net.au/news/2020-07-23/coronavirus-pandemic-why-so-many-australians-still-to-come-home/12464258?nw=0>>.

⁶² ‘Prime Minister Scott Morrison Says National Cabinet Agreed To Keep Current Cap On Overseas Returners’ *ABC News*, 21 August 2020. <<https://www.abc.net.au/news/2020-08-21/coronavirus-australia-live-news-scott-morrison-national-cabinet/12580216>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

and migrated to Australia at the age of 22 as a political refugee from communism. He is now facing a similar position in which one of his most fundamental rights as a citizen has been grossly violated: the right to return home and be reunited to his wife and children.⁶³

Like numerous other Australians overseas, Professor Forgas first obtained a special permission from the foreign affairs department to attend his mother's funeral in Hungary. But he is now facing the serious problem of being prevented from returning home. 'My human rights are being violated. I am deeply disappointed and I believe the Australian government has caused an immense damage to the country's reputation', Forgas says.

The Prime Minister contends that his National Cabinet has agreed 'on the balance of risk' that the number of Australians allowed to return from overseas at present is 4,000 a week. He argues that this must be so because the States may have more people that they can place on quarantine hotels. He does not want to take responsibility and, as a result, Australians overseas are having to suffer enormously. Of course, quarantine should be only for the sick and never for the healthy. And yet, all travellers arriving in Australia, including Australian citizens, not only must quarantine for 14 days at a designated facility, such as a hotel in their port of arrival, but also may be forced to pay for all the costs of their quarantine.⁶⁴

These actions of the 'National Cabinet' are profoundly unconstitutional.⁶⁵ Relying on a few experts, politicians are using extraordinary powers to violate fundamental rights and to destroy jobs and much of the productive sector, while leaving the public sector intact.⁶⁶ These privileged individuals have chosen a course of action that are destruc-

⁶³ 'Politicians Again Turn Coronavirus Problem Into A Human Disaster', *Sky News*, 15 September 2020 <https://www.skynews.com.au/details/_6190888629001>.

⁶⁴ 'Travel Restrictions', *Australian Government – Department of Home Affairs*, 17 September 2020 <<https://covid19.homeaffairs.gov.au/travel-restrictions-0>>.

⁶⁵ Ibid.

⁶⁶ David Flint, 'Recover Reparations, Restore Independence', *The Spectator Australia*, 11 April 2020 <<https://www.spectator.com.au/2020/04/recover-reparations-restore-independence/>>.

tive of the rule of law, although there were far more reasonable alternatives.⁶⁷

Although the meaning of the rule of law is always open to interpretation, there is a general agreement that the rule of law is essentially about protecting citizens from unreasonable interference with their vital interests, and ensuring a legal-institutional ‘solution to the problem of abusive, external control over the life, liberty and property of the common citizen’.⁶⁸ Forestalling a situation whereby legislation can be oppressive, and fundamental laws become worthless, the rule of law denies political rulers any ‘right to destroy, enslave, or designedly to impoverish the subjects’.⁶⁹

It should not be a surprise that we are hearing numerous stories of overreacting government, draconian guidelines, and the countless cases of arbitrary exercise of power. Although most police officers are good people, they are following the orders of an arbitrary government devoid of any commitment to the rule of law. Because there is no deadline for the termination of measures that seriously attempt against the basic rights of the people, what such governments have done in Australia is to effectively undermine the rule of law.

Indeed, the rule of law implies the effective existence of constitutional checks and balances by which ‘government can act only through law and law checks the power of government’.⁷⁰ Historically, wrote the English constitutional law professor, Owen Hood Phillips, ‘the phrase [rule of law] has been used with reference to a belief in the existence of law possessing higher authority — whether divine or natural — than that of the [positive] law promulgated by human rulers which imposed limits on their power’.⁷¹

⁶⁷ Ibid.

⁶⁸ Suri Ratnapala, *Welfare State or Constitutional State?* (Centre for Independent Studies, 1990), 19.

⁶⁹ John Locke, *Second Treatise on Civil Government* [1689], Section 135.

⁷⁰ Mighel Schor, ‘The Rule of Law’ in D Clark (ed), *Encyclopedia of Law and Society: American and Global Perspectives* (Sage, 2005) 231.

⁷¹ O H Phillips and P Johnson, *O Hood Phillips’ Constitutional and Administrative Law* (Sweet & Maxwell, 1987) 37.

THE VIRUS OF GOVERNMENTAL OPPRESSION

As can be seen, this ideal of legality presupposes the existence of law serving as an effective check on the executive power. The phrase is designed to minimise government power, so that our fundamental rights and freedoms are adequately preserved by the law. By forcing the executive branch to follow proper rules of law, the rule of law operates to reduce the possibility of government being able to excessively coerce, obstruct or otherwise unreasonably interfere with the life, liberty and property of the citizen. The tradition operates in terms of providing legal and institutional instruments to protect citizens against the arbitrary power by the state. As St Thomas Aquinas pointed out,

...once the government is established, this must be so arranged that opportunity to tyrannize be removed. At the same time, the power of government should be so tempered that it cannot easily fall into political tyranny.⁷²

The political principle supported by Aquinas – namely, the supremacy of the legislature over the executive – aims ultimately at the protection of fundamental rights and freedoms. As such, his analysis is a prescription for limited government, providing a rational basis on which to affirm that there must be very clear institutional limits to what governments can rightly do. His insistence that the power of the executive be explicitly limited implies a right of the citizen not to be subjected to authoritarian rule by means of executive decree.

On the other hand, modern discussions of the rule of law often start with the views of Albert Venn Dicey (1835–1922). This celebrated 19th-century English constitutional lawyer argued that the rule of law implies three basic elements, namely: (1) supremacy of the law as opposed to the arbitrary exercise of executive power; (2) equality of all before the law to be administered by ordinary courts; and (3) judicial protection of individual rights and freedoms.⁷³

The concept of the rule of law therefore stands in frontal opposition to extemporary decisions expressing the arbitrary will of the executive

⁷² St Thomas Aquinas, *De Regimine Principum*, Book I, Chapter 2.

⁷³ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* [1885] (Liberty Fund, 1982), 107-122.

branch of government. It is generally observed that the exercise of executive powers invariably necessitates the existence of clear, stable, general rules to regulate such exercise of powers, which must therefore be approved by elected legislature and receive proper public scrutiny. Above all, truly democratic governments are bound to exercise power according to the rule of law.

VI THE LEFTIST PRIVILEGE

While the Australian governments implement draconian measures to allegedly contain Covid-19, thousands of left-wing activists have defied the law to take part in the “Black Lives Matter” and other Leftist protests and marches across Australia. It’s one rule for them and another rule for the rest of us. The level of hypocrisy is truly staggering, especially because law-abiding citizens have been forced to withhold wedding ceremonies or been excluded from the funerals of our loved ones.

Until the protests erupted in last April, the order of Australian governments, both federal and state, was that people should not attend gatherings of any kind. Spreading new cases of coronavirus and force more governmental intervention may very well have been the hidden agenda of some protest organisers. They might have hoped that these protests could result in more infections which would then lead to further deaths and government interventions, the greatest burden falling on black communities.

These Leftist rallies were organised in Brisbane, Melbourne, Hobart, Adelaide and elsewhere.⁷⁴ They were held throughout the country following the death of an American citizen, George Floyd, by an American police officer, in the U.S. on 25th May. Protesters took to the streets on Saturday, campaigning for, among other things, an end to Aboriginal deaths in custody, for open borders and a new influx of undocumented migrants.

⁷⁴ Melissa Davey, ‘Black Lives Matter: health experts assess risks of Covid-19 transmission at Australia protests’, *The Guardian*, 12 June 2020 <<https://www.theguardian.com/australia-news/2020/jun/12/black-lives-matter-australia-protest-will-blm-protests-spark-second-covid-19-coronavirus-wave-health-experts>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

Once again these unpopular Leftist groups have achieved their ultimate goal and proven that laws which are supposedly valid for all, and passed to protect us, mean absolutely nothing to them. In Sydney these protests initially defied a court order to take to the city's streets. But organisers took the case to the State Court of Appeal and the ban was astonishingly lifted at the last minute. Although health ministry directions would normally prohibit public gatherings of more than 10 people, the protest in Sydney was legally authorised for 5,000 people. There were violent scenes in the evening at Sydney's Central Station and police used pepper spray to protect themselves, but there were only three arrests in the city overall, police said.⁷⁵

In Victoria it is still illegal to go to work if you can work from home, with fines of \$100,000 for employers. However, it is perfectly acceptable to break social distancing rules and gather thousands of people to protest something that happened overseas. A Victorian man who attended the BLM protest in Melbourne was later diagnosed with the virus, with health authorities saying he was likely infected before the rally.

Josh Karpin is an academic with a special interest in democracy and the rule of law. When Premier Andrews, in reference to those who do not wish to be wearing masks, said 'their behaviour is appalling, their views have no basis in science or fact or the law', Karpin notes that the Premier could easily have talked about himself and his government.⁷⁶ As Karpin asks rhetorically: 'If there was science to staying apart, with emphasis on social distancing, to keep Victorians together, why was the Black Lives Matter protest in Melbourne not seriously opposed by the government?'

According to Karpin, this lack in consistency in the enforcement of government measures in Victoria have lasting consequences not so

⁷⁵ 'George Floyd death: Australians defy virus in mass anti-racism rallies', *BBC News*, 6 June 2020 <<https://www.bbc.com/news/world-australia-52947115>>.

⁷⁶ Josh Karpin, 'Government Has Failed Victoria – And Victoria Has Failed Government', *The Spectator Australia*, 6 August 2020 <<https://www.spectator.com.au/2020/08/government-has-failed-victoria-and-victoria-has-failed-government/>>.

much for the transmission of the disease, ‘but the transmission to Victorians of the notion that government policy was insincere and could be conveniently disregarded’.⁷⁷ Unfortunately he also reminds us that the Liberal opposition in Victoria has fared no much better, miserably failing to provide any form of ‘alternate vision of government in policy or principle’.⁷⁸ And this goes without stating also the failure of people in Victoria ‘to demand more of those who are trusted to lead the state and to apply adequate scrutiny before ceding liberty’.⁷⁹

In Perth, the turnout for the BLM protests in June was at least double the 8,000 organisers had expected. They completely ignored the pleas of West Australian Premier Mark McGowan and Aboriginal Affairs Minister Ben Wyatt to delay the protest until after the alleged pandemic was over. Instead of punishing the protesters for breaking the law, WA Police Commissioner Chris Dawson had earlier ruled out shutting down the protest amidst concerns that this would further extend the draconian restrictions on businesses, social gatherings, and interstate travel currently imposed by the State government.⁸⁰

Curiously, the Western Australian Premier did not ban the rally but simply urged protesters to maintain some physical distance. He conveniently used the protest to further expand the powers of the State, as an excuse to prolong restrictions and to confirm that the State border will now remain closed for a “considerable period” amid concerns “the protests could add to community transmission of the virus”.⁸¹ My thoughts and sympathy go to those in Western Australia who cannot travel interstate or have cancelled their holidays of a lifetime.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Michael Ramsey, ‘Thousands at WA’s Black Lives Matter Rally’, *The Australian*, 13 June 2020 <<https://www.theaustralian.com.au/news/latest-news/perth-readies-for-black-lives-matter-rally/news-story/dacf3efdf6f9436a34dd50b29d0850f0>>.

⁸¹ Paul Carvey, ‘Protests Ensure Borders are Closed’, *The Australian*, 7 June 2020 <<https://www.theaustralian.com.au/nation/coronavirus-australia-live-news-health-officials-fear-second-covid19-spike-after-black-lives-matter-protests/news-story/6ee48b5a626d2391217e59c9ada2c632>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

Incidentally, the constitutionality of board control measures in Western Australia have been thoroughly analysed by law professor Anthony Gray, particularly in light of section 92 of the Australian Constitution. These board control directions have the object of impeding interstate intercourse, or have the predominant purpose of doing so. However, such directions target and attack a fundamental right that every Australian citizen has, namely their freedom of movement guaranteed in Section 92 of the Australian Constitution. As Professor Gray points out, the High Court of Australia has consistently adopted ‘an essentially absolutist prohibition on laws which have the object of impeding interstate intercourse’.⁸²

As explicitly recognised by one of Australia’s most celebrated former chief justices, Sir Anthony Mason, the constitutional protection to freedom of movement was deemed by the drafters of the Australian Constitution as one of the most essential goals of constituting the Australian Federation, thus ‘bring[ing] into existence one nation and one people’ (Mason CJ). Indeed, the Australian founders saw fit to emphatically enshrine this particular freedom in the constitutional text, when they generally eschewed other express rights protections.⁸³

However, freedom of movement is precisely the constitutional right being presently violated by the Western Australian government, with the full support of the Morrison government. This important right of every Australian citizen not only has been enshrined in the Constitution, but it is also what gave effect to the very concept of Australia as a free, united and independent nation, thus reflecting in the eyes of our founding fathers one of the primary reasons for the country’s very establishment and existence.

The Prime Minister has refused to uphold the Constitution and protect an explicit right of every Australian citizen. In an official letter dated 7 August 2020, Scott Morrison communicates Premier Mark McGowan that the Commonwealth will do nothing to challenge the

⁸² Anthony Gray, ‘COVID-19 Border Restrictions and Section 92 of the Australian Constitution’ (2020) 11 *The Western Australian Jurist*.

⁸³ *Ibid.*

unconstitutional boarder-control measures imposed in Western Australia, but rather it will ‘immediately and completely withdraw from the proceedings, doing exactly what was asked of it by the Western Australian government’.⁸⁴ If the court eventually seek a view of his government regarding the submission the Western Australian government is making, Morrison stated that the Commonwealth will ‘positively support [the government of] Western Australia in any way it could outside the courtroom, having withdrawn from the proceedings at [the government of] Western Australia’s request’.⁸⁵

But going back to those left-wing protests who marched on the streets of our capital cities with absolute impunity, there is the reasonable assumption that such protests may have inadvertently assisted the general population to better understand the radical agenda behind government measures to fight the pandemic, which is essentially justifying an enormous concentration of power on a small minority of privileged people, especially the so called “experts” and a few other bureaucrats and politicians. As noted by Henry Ergas, in a column for *The Australian*, ‘with people retreating into isolation of their private sphere, ... society becomes weaker and the state – vastly empowered by the crisis, and always poised to abuse ordinary citizens – becomes even stronger’.⁸⁶

VII DISCRIMINATION AGAINST PLACES OF WORSHIP

Churches services are said to provide hope and comfort in the midst of despair, especially in times of sickness and death. However, the Australian governments are adopting measures which are clearly discriminatory against religious people. In New South Wales, until recently pubs and clubs were allowed to open for 50 people. However,

⁸⁴ Prime Minister Scott Morrison, ‘Letter to The Hon Mark McGowan MLA, Premier of Western Australia’ (7 August 2020)

⁸⁵ Ibid.

⁸⁶ Henry Ergas, ‘Our Face Work Diminished, We Cannot Mask the Cost’, *The Australian*, 7 August 2020 <<https://www.theaustralian.com.au/commentary/our-face-work-diminished-we-cannot-mask-the-cost/news-story/ed3fed8d5e8bc4f8903bf42915e302ba>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

churches remained restricted to 10 people and only 10 people could attend a funeral at a chapel.

The limit of 10 to attend a place of worship also applied in Queensland, Tasmania, South Australia and the ACT. Up to 20 people could attend a place of worship in Western Australia.⁸⁷ ‘I guess that’s because having a beer and playing pokies is an “essential” service, whereas worshipping God and having a cup of tea or coffee with a small group of people is just too dangerous’, wrote Mark Powell ironically to *The Spectator Australia*.⁸⁸

Fortunately there were some religious people with enough courage to speak out on behalf of the people. Catholic Archbishop of Sydney Anthony Fisher openly called on the New South Wales Premier to allow more than 10 people to attend places of worship. As he pointed out, a “double standard” had been applied to people of faith, given that pubs, clubs, cafes, and restaurants could host up to 50 customers from June 1, but religious gatherings and places of worship were only allowed to host up to 10 people. Archbishop Fisher reminded the state government that ‘the Church is not asking for special treatment, we are asking for treatment’.⁸⁹ He stated also that churches had co-operated at every stage with the government’s health directives but religious people were missing gatherings for worship, praying in a sacred space and there were ‘spiritual and mental health effects of such isolation’.⁹⁰

Australians of all faiths were denied their fundamental right to come together in worship by their own governments, which used the spurious “safety” argument in order to justify the inconsistent applica-

⁸⁷ Angelica Snowden, ‘Coronavirus: Churches Seek Same Rules as Pubs and Cafes’, *The Australian*, 28 May 2020 <<https://www.theaustralian.com.au/nation/politics/coronavirus-churches-seek-same-rules-as-pubs-and-cafes/news-story/be9e7ddb79dd30cb953e3054675563a>>.

⁸⁸ Mark Powell, ‘In a Mental Health Crisis Church Controls Don’t Pass the Pub Test’, *The Spectator Australia*, 27 May 2020 <<https://www.spectator.com.au/2020/05/in-a-mental-health-crisis-church-controls-dont-pass-the-pub-test/>>.

⁸⁹ Snowden, above n 87.

⁹⁰ Ibid.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

tion of rules that are in many respects still negatively impacting their daily lives. Although the Prime Minister and State Premiers often argue that such decisions discriminating churches are based on “expert health advice”, the truth is that they have shown the arbitrary and discriminatory nature of these draconian restrictions. It was certainly not fair and reasonable that in most of the Australian states pubs and strip clubs were allowed to operate up to a certain number of patrons, and yet places of worship were sometimes prohibited to operate or restricted to no more than 10 people who should then be recorded on a special register, allowing for their control and contact tracing by the government.

VIII DE FACTO MARTIAL LAW IN VICTORIA

On August 2, 2020, Victorians began to live under a “state of disaster” that has seen one of the world’s severest restrictions of fundamental freedoms imposed on its citizens and their fundamental freedoms. As state-wide curfew is in place, leaving home after 8.00 pm is strictly banned with hefty fines imposed on those pulled over by the police. There are roadblocks to prevent citizens from moving interstate or, much closer to home, more than the permitted 5 km from their listed addresses.

The Victorian government has effectively become an elected dictatorship. It is August 9 as I write and the latest 19 coronavirus deaths from coronavirus brought the death toll in the state to 247. These 19 deaths were of a man in his 50s, a woman in her 50s, two men in their 70s, one man and six women in their 80s, and one man and seven women in their 90s.⁹¹

Approximately 99 per cent of all infections for coronavirus have been mild. And yet, Victoria has a public administration crisis. Of the 515 people in hospitals across Australia with coronavirus, 496 are in Victoria. Most of those who have died were in their 80s and living in

⁹¹ Rachel Baxendale, ‘Victoria Deaths Include Men in 50s’, *The Australian*, 10 August 2020 <<https://www.theaustralian.com.au/nation/politics/new-deadliest-day-in-victoria-as-coronavirus-claims-19/news-story/02bbe6b57264d24e37348ca563cc4e14>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

aged-care facilities.⁹²

Unfortunately, none of these relevant considerations have prevented the Victorian government of imposing what is by far the greatest violation of fundamental rights in Australia's history. Victorians have now been forced into stage 4 lockdown; almost 5 million people have been informed that the police can and will enter their homes for any reason and without a warrant. Police can also stop anyone anywhere at any time and demand to see their papers and determine if they have a valid reason to be away of their homes.

These extraordinary rules imposed on the citizens of Melbourne, Victoria's capital city, will remain in force for at least the next five weeks. They include:

- The police can enter a person's home to carry out spot checks without permission or a warrant.
- Between the hours of 8.00 pm to 5.00 am nobody is allowed to leave their home except for work, medical care or caregiving.
- Daily exercise can only take place within a 5-kilometre distance of a person's home.
- Apart from of maximum 1-hour of daily exercise, never in groups of more than two (even if they are members of the same household), a person is only allowed to leave home for essential supplies and food. Such shopping trips are permitted only once a day.
- In the whole of Victoria nobody is allowed to buy more than two of certain essential items, including dairy, meat, vegetables, fish and toilet paper.
- Schools, childcare and kindergarten have been closed until further notice.
- Golf and tennis venues have been closed; fishing is banned.

⁹² Rachel Baxendale, 'Promising Trend for Victoria's Active Cases', *The Australian*, 10 August 2020 <<https://www.theaustralian.com.au/nation/coronavirus-australia-live-news-victorias-deadliest-day-amid-mental-health-crisis/news-story/bbb466e-22a064a01667a6aa59ab66647>>.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

- Weddings are no longer allowed, and funerals limited to only 10 mourners.
- Facemasks are mandatory for all activities outside the home. A farmer on his tractor, along in the middle of an empty paddock, must be masked. This applies across the entire length and breadth of the state.
- Nobody can receive visitors unless it is for the purpose of giving and receiving care.

The maximum fine for breaching any of these orders currently stands at \$4,999. I am unaware of any state/country in the world which levies such enormous on the spot fines for leaving home without a legitimate reason. In just one day, August 6, Victoria Police conducted no less than 4,418 stop checks on homes, businesses and public places, bringing the total to 234,275 since March 21. Also on that very day, more than 50 people were fined for not wearing a facemask as well as 43 penalties were issued for curfew breaches.⁹³

Victorians living in Melbourne are forced to remain in their homes for at least 23 hours a day. Police officers have been quick to tackle any locals out on the streets without a 'valid reason', an approach reflected in the 17,682 vehicles whose drivers and occupants have been quizzed at checkpoints. Police have already checked more than 17,682 vehicles in total at vehicle checkpoints. 'We had to smash car windows and pull people out because they wouldn't give us details', declared a senior Victorian policeman. 'They wouldn't tell us where they're going!'⁹⁴

Police issued 276 fines in a single day (August 9). In the midst of these oppressive actions, police have fined a family with little children

⁹³ Remy Varga, 'Arrested Made Over Planned 'Freedom March in Melbourne'', *The Australian*, 7 August 2020 <<https://www.theaustralian.com.au/nation/coronavirus-australia-arrests-made-over-planned-freedom-march-in-melbourne/news-story/58ff8b5ac2b04f71496990edb0c62757>>.

⁹⁴ James Delingpole, 'Australian State Goes Full Coronafascist', *Breitbart*, 7 August 2020 <<https://www.breitbart.com/europe/2020/08/07/delingpole-australian-state-goes-full-coronafascist/>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

over a trip to playground; five young friends for listening to music in a suburban garage.⁹⁵ A 41 year-old man from outer suburban Mooroolbark and a 41 year-old man from Chirnside Park have been charged with “incitement” and bailed to appear at Melbourne Magistrate’s Court for the alleged crime of attempting to organise a protest against the arbitrary proscriptions detailed above. Images prompting their August 9 rally upset the Victorian regime by inviting concerned citizens to safeguard their traditional liberties and “fight the good fight”.⁹⁶ The *Spectator Australia* points out that ‘curfews are tools of political oppression, of martial law, of military occupation. They are not part of living in a thriving parliamentary democracy’.⁹⁷ However, Victorians are living under a nightly curfew. From 8 pm to 5 pm the streets of Melbourne are but deserted, save for police cars.

And the irony as Melbourne is transformed into Tumbleweed Town is that lockdowns don’t work. Evidence suggests that the economic destruction they bring is worse than the virus, with large numbers going to die because of the lockdowns and restrictions. Victoria’s mental health minister, Martin Foley, has actually confessed that there has been a 9.5 per cent increase in reports of self-harm in the state compared with the same time last year. For young people, there has been a 33 per cent.⁹⁸

Victoria is in this mess because of the staggering incompetence of its government. Business have been closed and jobs are being destroyed. Many shops will never be open again. Many people who lost their jobs will never work again. All this is happening while the gov-

⁹⁵ Lucy Mae Beers, ‘Record Number of State 4 Fines in Victorias Parents Take Children to Playground’, *7 News*, 10 August 2020 <<https://7news.com.au/news/victoria-police/record-number-of-stage-4-fines-in-victoria-as-parents-take-children-to-wyndham-playground-c-1227897>>.

⁹⁶ Varga, above n 93.

⁹⁷ Editorial, ‘State of Disastrous Decision-Making’, *The Spectator Australia*, 8 August 2020 <<https://www.spectator.com.au/2020/08/state-of-disastrous-decision-making/>>.

⁹⁸ Jon Lockett, ‘Australia Records Highest Coronavirus Daily Death Toll as Victoria Sees 17 Fatalities While Cops Thwart Anti Mask Rally’, *The Sun*, 9 August 2020 <<https://www.thesun.co.uk/news/12353559/australia-records-highest-coronavirus-daily-death-toll-as-victoria-sees-17-fatalities-while-cops-thwart-anti-mask-rally>>.

ernment refuses to explain its actions to Parliament, which has been effectively been shut down since March.

We keep hearing that we are all together. But no public servant has lost their job and politicians continue to receive their six figure salaries. They have no understanding of the productive economy are receiving pay rises. Research by the Institute of Public Affairs suggest that stage 4 lockdown will rob mainstream Victorians of almost \$3.2 billion dollars a week in lost income, prosperity and living standards. And we can expect as many as 300,000 jobs to be lost. Is this cruel and undemocratic lockdown really proportional to the risk? Will the poverty and mental health crisis be worth it? Of course, being part of the decimated private sector is even more galling when the politicians and bureaucrats who are causing much of the pain have not suffered the loss of a single cent during this whole incident.

One would suspect that, in order to justify these measures, the state of Victoria is experiencing an unprecedented crisis where many people are dying of the virus. In reality, Victoria has seen just 162 deaths attributed to coronavirus (the figure as I write). What is more, 137 of 162 those who died were in aged-care homes. As it turns out, writes Chris Kenny in *The Australian*, without a proper focus on the elderly, we have ended up [as a nation] ended up with the worst of both worlds, society in a coma and our elderly suffering anyway (90 per cent of deaths have been aged over 70, and two thirds have been in aged care homes)'.⁹⁹

There was much made the week before about a person who died in his 30s but the Premier refused to say if he had any other medical conditions. Incredibly, having announced the death, the Premier insisted that releasing any further details would violate privacy considerations. His silence is understandable. With the average age of those who die at standing at 82, the Andrews regime is frantic to both justify its Stasi-like approach to public health and obscure its inept hotel quarantine

⁹⁹ Chris Kenny, 'If Politicians Know Best, Why So Many Mistakes?', *The Australian*, 15 August 2020 <<https://www.theaustralian.com.au/commentary/if-politicians-know-best-why-so-many-mistakes/news-story/61184b5377a4638fbd70b9ef53253f40>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

program by broadcasting the word that anyone can contract coronavirus and die, not just the elderly.

Step back, survey the actual death numbers and the only conclusion is that they are pathetically low. This goes without saying that positive cases are astronomically inflated. The testing process is not designed to test coronavirus. One can be at the age of 90 and die of heart attack. But if they suspect the elderly person had coronavirus, this is how it may be recorded as the cause of death. Despite these inflated numbers, there were actually more deaths in Australia last year from flu with a vaccine, than from coronavirus this year without a vaccine. According to Health Department figures, there were 1,257 deaths from influenza last year and more than 3,010 presented to hospital. Strangely enough, the most recent data reveals no flu-related deaths in Victoria so far this year during the so called coronavirus pandemic.¹⁰⁰ This has prompted a Victorian joke: ‘Thank God for coronavirus. No one is dying from cancer, heart disease or anything else.’

Victoria become a police state, but there is no legal basis for what it is being done. Under the so called Disaster Act, any law in Victoria can be suspended with the stroke of a pen. Of course, such legislation is constitutionally invalid as it contradicts basic principles of constitutional government. Indeed, the Victorian government has neither constitutional validity nor democratic mandate to introduce such draconian legal measures. Those responsible for this should be held criminally accountable. It is they, not families in park playgrounds, who should be facing the full force of the law.

The Chief Health Officer Brett Sutton, whose former crusade was to avert the “climate crisis”, recommended against parliament sitting because the government did not define it as an essential function. As noted by *The Australian*’s Greg Sheridan, ‘his insistence that parlia-

¹⁰⁰ ‘Coronavirus: Victoria Records Zero Flu-Related Deaths This Year’, *The Sydney Morning Herald*, 9 June 2020 <<https://www.msn.com/en-au/news/australia/coronavirus-victoria-records-zero-flu-related-deaths-this-year/vi-BB15dvrX>>.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

ment should not sit is unambiguously a disgrace'.¹⁰¹ Of course, if you can allow people to shoot up heroin, surely you can allow the state parliament. As reported by the Herald Sun, the government-operated supervised injection room located in North Richmond not only disrespect social distancing rules, but still remains open well past the 8 pm curfew.¹⁰²

Premier Andrews has avoided any reasonable scrutiny and accountability by effectively abolishing democracy in that Australian state.¹⁰³ According to Sheridan, 'there has never been a more arrogant episode of disdain for normal democracy than the Victorian Health Minister's decision not to answer any questions on the virus ... in the Legislative Council, sitting only because the Coalition and crossbenches insisted'.¹⁰⁴ Furthermore, Health minister Jenny Mikakos has refused to give a verbal answer to questions in the Upper House's question time. She made reference to a retired judge's board of inquiry into the failed hotel quarantine system, although such a person explicitly stated that her inquiry is not a court, so 'there is no general restriction or prohibition which would prevent a person from commenting publicly or answering questions to which they know the answers'.¹⁰⁵

Naturally, there is no need for a "sham inquiry" to tell us that 'every case of coronavirus in Victoria today stems from this government's utter failure to design and implement an effective quaran-

¹⁰¹ Greg Sheridan, 'Daniel Andrew's Leadership is Superficial and a Failure', *The Australian*, 6 August 2020. <<https://www.theaustralian.com.au/commentary/daniel-andrews-cleverly-leads-in-a-vacuum-of-democracy/news-story/075dce1f0b2dda2c693077e92e3ac467>>.

¹⁰² 'Richard Safe Injecting Room Remains Open', *The Herald Sun*, 8 August 2020 <<https://www.heraldsun.com.au/news/victoria/north-richmond-residents-livid-drug-users-are-breaking-social-distancing-rules-and-curfews/news-story/5037dfc68749f92868e07279f77f6ce>>.

¹⁰³ Sheridan, above n 101.

¹⁰⁴ Ibid.

¹⁰⁵ Rachel Baxendale, 'Andrews to Give Updated at 11 pm', *The Australian*, 10 August 2020 <<https://www.theaustralian.com.au/nation/coronavirus-australia-live-news-victoria-ranks-alongside-african-nations-for-virus-increase/news-story/b5559007e-7b700a3fd18f360b783cd92>>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

tine program'.¹⁰⁶ Under Andrews, 'all the mechanisms of democratic accountability have virtually disappeared ... [and] Victoria has become a dysfunctional one-party state with a mostly compliant local media', Sheridan wrote.¹⁰⁷ He lists other failures including the catastrophic failure to manage quarantine hotels, and not issuing fines at the Black Lives Matter demonstration, thus 'tacitly endorsing a huge event that broke social distancing restrictions and undermined the message'.¹⁰⁸

The fact of the matter is that it appears most of Victoria's second wave of the coronavirus apparently came from the breaches of hotel quarantine processes in Melbourne, not least the employment of security guards who were neither properly equipped nor trained.¹⁰⁹ The hotel quarantine program was designed to shield the state from the virus by placing returned travellers in 14-day isolation in hotels manned by private security companies.¹¹⁰

Victoria is indeed a state of disaster due to the absolute incompetence of a Premier who behaves far more like a ruthless dictator than the leader of an authentic parliamentary democracy. Alarming, the Public Health and Wellbeing Act, the appalling piece of unconstitutional legislation conferring arbitrary powers to the Victorian Premier was passed by the state parliament in 2008 entirely unopposed by the Liberal opposition, 'despite Labor then, as now, not having an upper

¹⁰⁶ Sheridan, above n 101.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Dennis Shanahan, 'Morrison Keeps Danbusters At Bay Over Second Coronavirus', *The Australian*, 8 August 2020 <<https://www.theaustralian.com.au/inquirer/morrison-keeps-danbusters-at-bay-over-second-coronavirus-wave/news-story/f6ab-808ca813beb58856810891a06354>>. See also: Gerard Henderson, 'How Did Victoria Get So Much So Wrong', *The Australian*, 8 August 2020 <<https://www.theaustralian.com.au/inquirer/coronavirus-how-did-victoria-get-so-much-so-wrong/news-story/e2c926209c92533971c12f6bba83be7e>>

¹¹⁰ Rachael Dexter and Marissa Calligeros, 'Hotel Quarantine Problems? 'I Found Out In The Media', Says Sutton', *The Age*, Melbourne/Vic, 7 August 2020 <<https://www.theage.com.au/national/victoria/hotel-quarantine-problems-i-found-out-in-the-media-says-sutton-20200807-p55jls.html>>.

house majority'.¹¹¹ It is therefore no virtue for the opposition to complain about these authoritarian measures when the Liberal state MPs allowed for the enactment of legislation that provides for ruling by executive decree without proper democratic accountability.

Perhaps even more disturbing is the Prime Minister's refusal to criticise Premier Andrews, in keeping with his strong belief in "national leadership unity".¹¹² This is despite Victoria's bungled quarantine system, believed to be responsible for the outbreak of community transmission. As stated by Janet Albrechtsen in *The Australian*, the imposition of stage-four restrictions on Victorians, particularly those living in Melbourne, may lead to far 'more people dying', and also to 'untold economic harm to millions of Victorians and damaging the economy, a dangerous spike in mental health illnesses especially among young Victorians, and negative educational outcomes'.¹¹³

However, Scott Morrison has publicly backed the Victorian Premier, including his imposing of *de facto* martial law across the State. Indeed, Morrison not only has refused to criticise the Victorian Premier for being unable to stop the spread of the virus, he has further encouraged political arbitrariness and oppression in Victoria by, in his own words, 'encouraging the Victorian government to ensure that there are appropriate penalties for those who do break public health notices'.¹¹⁴ As Paul Collits points out, 'Morrison and Andrews need one another. While Andrews exists, Morrison escapes even the merest

¹¹¹ Editorial, 'State of Disastrous Decision-Making', *The Spectator Australia*, 8 August 2020 <<https://www.spectator.com.au/2020/08/state-of-disastrous-decision-making/>>.

¹¹² Shanahan, above n 106.

¹¹³ Janet Albrechtsen, 'She Won't Talk, She Tweets – Pericles Would Wince', *The Australian*, 11 August 2020 <<https://www.theaustralian.com.au/commentary/she-wont-talk-she-tweets-pericles-would-wince/news-story/44919481b8d7da08c923b96bb8b027e0>>.

¹¹⁴ Heath Parkes-Hupton, 'Scott Morrison Urges Australians to Support Victoria Through Critical New Lockdown Measures', *The Australian*, August 3, 2020. <<https://www.theaustralian.com.au/breaking-news/scott-morrison-urges-australians-to-support-victoria-through-critical-new-lockdown-measures/news-story/a7a62eab55ef290185cd06d72a4d9720>>

THE VIRUS OF GOVERNMENTAL OPPRESSION

modicum of scrutiny. While Morrison exists, with his “national cabinet”, Andrews get protection’.¹¹⁵

Surely we should expect the leader of a Liberal government to be interested in protecting personal freedoms, not suppressing them. Instead, we get this spineless guff: ‘Daniel Andrews has my full support ... I will give him every support he needs’. Offering such enthusiastic support to the authoritarian measures of the Victorian government is, according to Morrison, ‘the only thing that matters’.¹¹⁶

The Prime Minister is also on the record for notoriously stating that he is totally unconcerned about ongoing attacks on freedom of speech, because, according to him, “free speech does not create a single job”. Well, he supporting for a premier’s oppressive measures that can only destroy the economy is certainly not going to create a single job either, at least not in the productive sector. To the contrary, federal connivance can only lead to more human rights violations as well as inevitable economic disaster and massive unemployment.

Granted, the Liberal governments in New South Wales, South Australia, and Tasmania are also far too willing to rule by decree and impose their own arbitrary measures on their citizens. For example, South Australian Liberal Premier Steven Marshall increased restrictions on home and public gatherings after just two new infections in his state, both from known sources.¹¹⁷ As noted by Chris Kenny, the draconian measures imposed by the Andrews regime, and supported by the Australian Prime Minister, have been matched, ‘scold for scold’, by several Liberal state governments across the nation.

The fact that Liberal governments can also completely ignore and

¹¹⁵ Collits, above n 59.

¹¹⁶ Natalie Oliveri, ‘PM Says Victoria’s Premier Has His Full Support to Tackle State’s Coronavirus Crisis’, *Today Channel 9*. <<https://9now.nine.com.au/today/coronavirus-australia-scott-morrison-says-daniel-andrews-has-full-support-victoria/fd460c9a-db46-408f-82d2-a6e82ef3b865>>

¹¹⁷ Chris Kenny, ‘If Politicians Know Best, Why So Many Mistakes?’, *The Australian*, 15 August 2020., <<https://www.theaustralian.com.au/commentary/if-politicians-know-best-why-so-many-mistakes/news-story/61184b5377a4638fbd70b9ef53253f40>>

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

violate fundamental rights should not come as a surprise for those who have read the most recent *Legal Rights Audit 2019*. The main author of this important report, Morgan Begg, first explains that ‘fundamental legal rights are necessary to achieve justice within a legal system and act as a vital constraint on the coercive power of the state’.¹¹⁸ However, he claims these legal rights have been explicitly breached by 381 separate provisions in Acts of Australia’s federal Parliament. As Begg points out, the Morrison government is directly responsible for the substantial increase in the violation of these fundamental legal rights. ‘The Coalition [Liberal/National] government is trashing fundamental legal rights of all Australians, creating unprecedented challenge to individual freedom and human dignity’, writes Begg, who is a research fellow with the Institute of Public Affairs.¹¹⁹

IX THE USE OF THE STATE OF EMERGENCY IN VICTORIA

Victorians have watched their local government use a broad range of extraordinary powers to remove fundamental freedoms and control almost every single aspect of their personal lives. It did so by both declaring a state of emergency and a state of disaster, thus imposing draconian lockdown measures after a “surge” in coronavirus infections.

Imposed under the pretence of protecting the health of the people, the state of disaster came into effect in Victoria on August 2. Under the *Emergency Management Act*, a state of disaster can be declared

¹¹⁸ Morgan Begg and Kristen Pereira, ‘Legal Rights Audit 2019’, *Institute of Public Affairs*, Melbourne/Vic, February 2020, p 1. As Begg points out in his excellent Legal Rights Audit, the federal Liberal governments have been directly responsible for at least 279 fundamental legal rights breaches since 1976, compared with only 102 breaches under Labor. This is the equivalent to 11 breaches for each year of Liberal government compared with 5 breaches each year on average under Labor. – See also: Morgan Begg, ‘Coalition Government Trashes Legal Rights’, *IPA Today*, 7 February 2020. <<https://ipa.org.au/publications-ipa/media-releases/coalition-government-trashes-legal-rights>> See also: Nicola Berkovic, ‘Coalition Worse than ALP on Human Rights’, *The Australian*, 6 February 2020 <<https://www.theaustralian.com.au/business/legal-affairs/coalition-worse-than-alp-on-human-rights/news-story/0bc3d71cd4daf8ab425f3bd5d8edba11>>.

¹¹⁹ Begg and Pereira, above n 118, 1.

THE VIRUS OF GOVERNMENTAL OPPRESSION

if the Premier is satisfied an emergency “constitutes or is likely to constitute a significant and widespread danger to life or property in Victoria”.¹²⁰

But Victoria is also under a state of emergency, which came into effect on March 16. The declaration was made under the *Public Health and Wellbeing Act 2008*, which allows health officials to detain people, search premises without a warrant, and force people or areas into lockdown if it is deemed necessary to protect public health.

And now the Victorian Premier expresses his desire to extend the state of emergency for an indefinite period. He is effectively repeating history by revealing his intention to extend his emergency powers indefinitely. The Premier is currently working with the State’s Solicitor General to enact another provision to extend the state of emergency for an indefinite period of time.¹²¹ He claims this is necessary because of ‘the authority and the effectiveness of all the measures that we’ve put in place’.¹²²

This appears to confirm the worst fears of Friedrich Hayek, an Austrian-British economist and philosopher who won the Nobel Prize in Economics in 1974. In his seminal ‘Law, Legislation and Liberty’ (1981), he contended that “temporary” measures seem to have a way of becoming permanent after the emergency is over. Hayek offered this sobering reflection:

The conditions under which such emergency powers may be granted without creating the danger that they will be retained when the absolute necessity has passed are among the

¹²⁰ Rachel Clayton, ‘Why Victoria Needs Both State of Emergency and State of Disaster Powers to Fight Coronavirus’, *ABC News*, 16 August 2020 <<https://www.abc.net.au/news/2020-08-16/victoria-state-of-emergency-disaster-explained-coronavirus/12563680>>.

¹²¹ ‘Vic Premier Moves to Extend State of Emergency Capabilities Indefinitely’, *News.com.au*, 17 August 2020 <<https://www.news.com.au/national/vic-premier-moves-to-extend-state-of-emergency-capabilities-indefinitely/video/33c6bc50e2176e504d3e7-38c9309b696?fbclid=IwAR1yWMSDzckVCs0tzs5TPOknhwtEQ9dckJZlgTijFfhhW5RommASpOYyIhA>>.

¹²² Clayton, above n 118.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

most difficult and important points a constitution must decide on. ‘Emergencies’ have always been the pretext on which the safeguards of individual liberty have been eroded – and once they are suspended it is not difficult for anyone who has assumed such emergency powers to see to it that the emergency will persist.¹²³

This is not so dissimilar to what happened to a certain European country in the 1930s. There a certain German Chancellor also turned his own state of emergency into a more permanent one. The correlation between the instrument used by that particular government to continue exercising its emergency and the intention of the Victorian government to turn its emergency power into a permanent one is irrefutable. It can be manifested, among several other things, in the disregard for fundamental rights coupled by the passive behaviour of the population and a considerable silence of the legal profession in upholding the rule of law.

It might be important to remind how dictatorial regimes are brought into existence. There is always a state of emergency used to justify the suspension of constitutional rights and I wish to be absolutely clear about this. However, I do not wish my words to be misconstrued and my opinions mischaracterised. As such, I wish to make myself absolutely clear that I am not comparing the use of emergency powers by the Victorian Premier and the use of similar instruments by a particular German dictator in the 1930s.

This is therefore not about how emergency powers can be used by the respective governments, but the instrument by which such powers can be used to justify arbitrary power and governmental control over the life, liberty and property of the people. After making this proviso I can now explain how emergency powers that appeal to the “health” of the community have served as an instrument of perpetuation of power and oppression of the people.

¹²³ Friedrich A. Hayek, *Law, Legislation and Liberty*, Vol. 3 (University of Chicago Press, 1981), Ch. 17.

THE VIRUS OF GOVERNMENTAL OPPRESSION

The history of Germany in the 1930s provides a good case point. When Adolf Hitler was appointed German Chancellor, on 30 January 1933, the consolidation of the National Socialist regime was in no way assured. To add validity to the new regime, the public needed to be convinced of the necessity, and legality, of the measures justifying the violations of constitutional rights by the government.

Initially, that German government took a strong interest in preserving the impression of legal “normality”. When the Enabling Act was passed in March 1933, handing over legislative power to the executive for four years, everything was done under the appearance of absolute legality. That act was passed via an amendment approved by two-thirds of the Reichstag (German Parliament), as strictly required by Article 76 of the Weimar Constitution. According to R C Caenegem, emeritus professor of legal history at Ghent University, the re-enactment of those enabling powers in 1937, 1939 and 1943 provided ‘an interesting indication of the regime’s schizophrenic combination of legal formalism with ruthless violence and basic contempt for the rule of law’.¹²⁴

The principal characteristic of lawyers who gave the German regime its legal legitimacy was narrow legal positivism, coupled with a blatant disregard for individual rights and freedoms.¹²⁵ Those lawyers rationalised that if government had acquired those powers in a strictly legal manner, then the rule of law had also been respected and whatever the government was doing was entirely valid from such a narrow perspective.¹²⁶

By not questioning the renewal of the state of emergency powers in any tangible way, the German legal community failed to protect the rule of law and the fundamental rights of the people. Those lawyers merely acted as “yes-men” to a brutal regime which opposed anything that could jeopardise the “health of the German community”,

¹²⁴ R C Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge University Press, 1995), 277.

¹²⁵ Paul Johnson, *Modern Times: The World from the Twenties to the Ninetieths* (HarperPerennial, 2001), 111.

¹²⁶ Caenegem, above n 124, 283.

as perceived by the regime's leadership.¹²⁷ Curiously, the more those lawyers made efforts to legitimise the regime, the greater the contempt displayed towards them by the Nazi leadership. As the German dictator once declared, to the delight of so many people, 'the health of the German nation is more important than the letter of the law'.¹²⁸

Under Article 48 of the Weimar Constitution, the German President was authorised to govern by decree during such times of emergency.¹²⁹ In February 1933, President Hindenburg relied on that particular provision to sign an executive decree which suspended constitutional rights and granted the National Cabinet authority to enact any decree to be deemed necessary for the protection of the people.¹³⁰

What followed was a total suspension of individual rights 'until further notice'.¹³¹ Of course, that 'further notice' did not occur until May 8th, 1945, when the decree was finally cancelled by the military government of the Allies. As noted by German jurist Carl Schmitt, in his influential *Political Theology* (1922),

Once this state of emergency has been declared... the decision exempts the political authority from any normative restraint and renders it absolute in the true sense of the word. In a state of emergency, the constituted authority suspends the law on the basis of the right to protect its own existence.¹³²

Ultimately, the advent of National Socialism cannot be isolated, like some sort of accident, from the prevailing sentiments of the people. In those days Germans were quite willing, even anxious, to receive

¹²⁷ A. Kolnai, *The War Against the West* (Viking Press, 1938), 300.

¹²⁸ M Broszat, *The Hitler State: The Foundation and Development of the Internal Structure of the Third Reich* (New York/NY: Longman, 1981), 293.

¹²⁹ These special powers remained in effect for four years, after which they could be renewed if the state of emergency was still in place. Whether or not the fire was really set by the communists, the fact is that that section served the purposes of the declaration of a state of emergency.

¹³⁰ R J Evans, *The Third Reich in Power: 1933–1939* (Penguin Books, 2006), 6.

¹³¹ Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (Harvard University Press, 1991), 37.

¹³² Carl Schmitt, *Politische Theologie* (2nd ed, 1934), 20

THE VIRUS OF GOVERNMENTAL OPPRESSION

their ultimate protection from government. They rejected the idea of liberal democracy and preferred instead to be ruled by a government that could “protect” the community from real or imaginary threat.

History tells us that those Germans paid a very heavy price for their trust in government. Such a government led them to a disastrous military conflict that eventually resulted in 75 million casualties. Germany alone sustained 8 million losses, 3 million of them civilians who died because of deliberate massacres, mass-bombings, disease and starvation.¹³³

Of course, I am not stating here that Victorians are facing the same challenges. Absolutely not and nobody would be so irresponsible to make such comparison. However, as stated above, history repeats itself in the sense that emergency powers have been used once again to justify the implementation of draconian measures that profoundly violate the most fundamental rights of the individual.

To make things worse, the Victorian government has introduced a bill in Parliament that gives sweeping powers to certain “authorised officers” to arrest and detain people for an indefinite period of time. The proposed legislation will effectively consolidate Victoria as a police state where informers and collaborators will assist the authorities in tracing and incarcerating their fellow citizens without warrants, on the basis of prospective conduct.

Called the *COVID-19 Omnibus (Emergency Measures) Amendment Bill*, this proposed legislation will operate side-by-side with the powers already in operation under the current emergency powers. Its provisions are so broadly construed that any person could be detained for almost anything. These laws will override all other laws and confer extraordinary powers to the Secretary of the Department of Health to appoint public servants as “authorised officers” with the same powers as police. As candidly stated by Jill Hennessy, Victorian Attorney General, in her second reading speech:

¹³³ ‘Research Starters: Worldwide Deaths in World War II’, *The National WWII Museum of New Orleans* <<https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-worldwide-deaths-world-war>>

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

The Bill will provide further emergency powers to authorised officers to issue detention notices and detain particular high-risk persons if the authorised officer reasonably believes that a person is likely to refuse or fail to comply with a direction made by the Chief Health Officer... This amendment will enable the authorised officer to detain individuals for the purpose of ensuring compliance with the relevant direction during the COVID-19 state of emergency.¹³⁴

In other words, these laws allow any person the Department of Health and Human Services deems appropriate to become an “authorised officer” to detain people on the belief that they are unlikely to comply with emergency directions. Anyone may be arrested for an indeterminate period of time if such an officer happens to believe the individual is likely to fail to comply with an emergency direction. As such, fundamental legal principles inherited from our common-law tradition, including due process, the presumption of innocence and recourse to the writ of habeas corpus, would be substantially undermined.

This latest development in the consolidation of an oppressive, authoritarian regime, ‘seeks to enlist the population as informers and arms of the state in rounding up others who are guilty of no offence’.¹³⁵ Under these laws “authorised officers” will be able to detain fellow citizens if ‘a direction has been given in the exercise of an emergency power’, or if they ‘reasonably believe that a person who is required to comply with the direction is a high-risk person and is likely to refuse or fail to comply with the direction’.¹³⁶ Citizens will be detained by

¹³⁴ Hansard, *Parliament of Victoria*, 17 September 2020 <https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-09-17.pdf>.

¹³⁵ Editorial, ‘Bill To Create Police State Has No Place In This Nation’, *The Australian*, 23 September 2020 <<https://www.theaustralian.com.au/commentary/editorials/bill-to-create-police-state-has-no-place-in-this-nation/news-story/0820634e3c835cc8c6733bf6a45bb793>>.

¹³⁶ *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020*, Victorian Legislation <https://www.legislation.vic.gov.au/bills/covid-19-omnibus-emergency-measures-and-other-acts-amendment-bill-2020>.

THE VIRUS OF GOVERNMENTAL OPPRESSION

such officers for an indefinite period and there is no reference to what sort of training is required. As political adviser Ian Hanke points out,

These extraordinary powers are arbitrary and extreme. They are a draconian attack on civil liberties the like of which Australia has never seen before. Further because all laws are overridden there would appear to be little recourse to any excesses by an authorised officer or their civilians co-opted by them. These laws are so broad and ill-defined that you could be detained for almost anything.¹³⁷

Passed without amendment in the Labor-controlled Lower House on 18 September, the bill is now being debated in the Upper House and will be put to vote soon.¹³⁸ Premier Andrews says he is engaged in a “negotiation” process with the Upper House backbench. He argues the provisions are necessary but is unable to specify circumstances where they had previously been required. If this bill is passed, an authoritarian regime will be finally consolidated and there will be an end to the rule of law and legal guarantees that so far have protected the population against all sorts of abuses of power by the State.

It is important to consider that we have already seen police arresting people simply because they have promoted on social media protests against draconian measures. One example of such arbitrariness occurred on September 3, when Victoria police arrested a pregnant mother in front of her little children in their Ballarat home. Zoe Buhler was arrested and charged under section 321 of the *Victorian Crimes Act* 1958, which makes it an offence for a person to ‘pursue a course of conduct which will involve the commission of an offence’.¹³⁹ Her crime: posting a Facebook message encouraging people to protest against lockdowns in the regional town on 5 September.

Ms Buhler said she was totally unaware that she could be doing

¹³⁷ Ian Hanke, ‘Daniel Andrews’ Plan For Indefinite Detention – And More’, *The Spectator Australia*, 18 September 2020 <<https://www.spectator.com.au/2020/09/daniel-andrews-plan-for-indefinite-detention-and-more/>>.

¹³⁸ Above n 136.

¹³⁹ *Crimes Act* 1958 (Vic), s 321.

anything illegal and police could just have called her, to simply ask to remove the post. She also said she did not believe Covid-19 as a hoax, but just wanted to protest about the impact of lockdown measures on employment and suicide.¹⁴⁰ She had lost her job due to such draconian measures and thought Ballarat's lighter restrictions in comparison to Melbourne's stage 4 lockdown would allow these protests for human rights, 'if people wore masks and socially distanced'.¹⁴¹

There are serious questions whether Ms Buhler committed any offence under that specific Act, given the lack of intentionality required by the criminal law. There was no element of intentionality in her behaviour, since she was unaware of any illegality. Besides, her Facebook post did not incite people to protest in a manner that is inconsistent with the city's stage 3 lockdown.

This is leaving the irrefutable violation by Victoria Police not only of the State's *Charter of Human Rights and Responsibilities* but also the constitutional right to freedom of political communication. The Victoria Charter explicitly guarantees to every person their fundamental legal rights to privacy and peaceful assembly as well as freedom of association, movement, thought, conscience, and expression.¹⁴²

As for the constitutional right to freedom of political communication, under the Australian Constitution sovereignty ultimately resides in the people. It is Australian electors who elect representatives to legislative on their behalf. As noted by Justice Brennan of the Australian High Court, in 1992, representative and responsible government 'are constitutional imperatives intended ... to make the legislature and executive branches of [government] ultimately answerable to the Australian people'.¹⁴³ It follows that, as sovereign, 'the Australian people

¹⁴⁰ Tessa Akerman and Rachel Baxendale, 'Arrested Anti-Lockdown Mum: Police Admit 'We Stuffed Optics'', *The Australian*, 3 September 2020 <<https://www.theaustralian.com.au/nation/absolute-overkill-jacqui-lambie-slams-arrest-of-pregnant-lockdown-protester/news-story/8951edcf08e3cc5e18006cad8b033354>>.

¹⁴¹ *Ibid.*

¹⁴² *Charter of Human Rights and Responsibilities Act 2006* (Vic), ss 12 to 16.

¹⁴³ *Wills* (1992) 177 CLR 1, 47 (Brennan J).

THE VIRUS OF GOVERNMENTAL OPPRESSION

must also be free to communicate about government and political matters fully and freely'.¹⁴⁴

How does the democratic nature of our Constitution can be reconciled with police going into homes without warrant and arresting a mother in front of her children because of a Facebook message? This does not look like a democratic government but the actions of a deeply authoritarian regime. It certainly should never happen in a true democracy.

However, Victoria's Police Commissioner Luke Cornelius has justified that arrest by saying he was completely "satisfied" that police officers had acted "properly" and "reasonably". He actually said on television that Ms Buhler was engaged in "serious criminal activity", and also warned that hundreds of such officers would be deployed to make other similar arrests,¹⁴⁵ and then attacked people protesting against the State Government as "selfish" and deserving of punishment: 'We are very concerned, and in fact, outraged is probably a fair word, to say there are still people in our community who think it's a good idea ... to leave home and protest on our streets ... Take the selfish option and leave home to protest, we'll be there for you'.¹⁴⁶

The arrest of citizens for merely speaking out against their government is a mark of every dictatorial regime.¹⁴⁷ However, Premier Andrews has described the appalling arrest of a pregnant woman as an 'operational matter for Victoria Police'.¹⁴⁸ When asked whether the left-wing organisers of the Black Lives Matter protest in Melbourne's CBD, on 6 June 2020, should have also been charged with incitement

¹⁴⁴ Joshua Forrester, Lorraine Finlay and Augusto Zimmermann, *No Offence Intended: Why 18C is Wrong* (Connor Court, 2016), 123.

¹⁴⁵ Naaman Zhou, 'Victorian Bar Criticises Arrest of Pregnant Woman for Facebook Lockdown Protests Post as Disproportionate', *The Guardian*, 3 September 2020 <<https://www.theguardian.com/australia-news/2020/sep/03/victoria-police-arrested-pregnant-woman-facebook-post-zoe-buhler-australia-warn-lockdown-protesters>>.

¹⁴⁶ Ibid.

¹⁴⁷ Tessa Akerman and Rachel Baxendale, 'Arrested Anti-Lockdown Mum: Police Admit 'We Stuffed Optics'', *The Australian*, September 3, 2020 <<https://www.theaustralian.com.au/nation/absolute-overkill-jacqui-lambie-slams-arrest-of-pregnant-lockdown-protester/news-story/8951edcf08e3cc5e18006cad8b033354>>.

¹⁴⁸ Ibid.

as the Ballarat woman, he refused to give a proper answer and said he would have to defer the matter to Victoria Police.

Above all, the Victorian Premier exhibits no intention to uphold or defend the Australian Constitution. He has demonstrated an undisputable belief that the executive branch holds all power, and that the other branches of government exist solely for the benefit and enjoyment of the leader. This certainly explains his strong support for the Chinese communist regime, amid growing criticism from the U.S. government. ‘Daniel Andrews is standing firm on China’, writes political report Richard Willingham for the *ABC News*.¹⁴⁹

The Victorian government appears to be sending the police into family homes in order to demonstrate the leader’s power and strength. In fact, a case could be made that the Andrews Government might be developing a strategy of targeting peaceful protesters so that he can exert more control and fear over the population. With the joblessness and suicide numbers growing every day, this is a leader who appears to demonstrate no empathy for others, being incapable of understanding human pain and suffering at a massive scale.

If the ongoing events taking place in Victoria are not disturbing enough by themselves, the tacit support of the Australian Prime Minister and the passivity of the Victorian Liberal opposition certainly are. In a letter to the Victorian, shadow attorney general Edward O’Donohue contemplates the acceptance of these extraordinary powers being extended. After reminding the Premier that they ‘represent a significant erosion of individual freedom and recognising this’, he goes on to tacitly accept their continuation by meekly requesting the Premier that ‘any further extension must be accompanied by enhanced scrutiny and safe guards enshrined in the legislation’.¹⁵⁰

¹⁴⁹ Richard Willingham, ‘Victorian Premier Daniel Andrews is Standing Firm on China Amid Growing Criticism from US, Opposition’, *ABC News*, 25 May 2020 <<https://www.abc.net.au/news/2020-05-25/daniel-andrews-victoria-standing-firm-on-belt-and-road-deal/12283520>>.

¹⁵⁰ Hon Edward O’Donoghue MLC, Shadow Attorney General, ‘Letter to the Hon Daniel Andrews MP, Premier of Victoria – Re Proposal to Extend State of Emergency for Indefinite Period’, Melbourne, Vic, 17 August 2020.

THE VIRUS OF GOVERNMENTAL OPPRESSION

Due to the impact of these measures on fundamental rights, clearly this is not nearly good enough. And it is really disheartening to see that so many Victorians have accepted this terrible oppression without offering any proper resistance and quite to the contrary. Also deeply disheartening is to witness the tacit consent of the Morrison government to all these authoritarian measures. The Prime Minister has the moral (and legal) duty to inform the Victorian Premier of the unconstitutionality of such oppressive measures, and that this government will intervene in favour of the people of Victoria in order to prevent any further violation of fundamental rights.

Of course, if the Morrison government really valued fundamental legal rights and the principles of constitutional government, there would already be enough grounds for a federal intervention in the State of Victoria. The Prime Minister might begin to show his disapproval by no longer allowing the Australian Defence Forces ('ADF') to back up Victoria Police as they harass people, including pregnant women and old ladies, in Melbourne's parks.

But the sad reality is that Victorians have been miserably betrayed by their federal and state governments in many ways and on many levels. Premier Andrews is a leader of authoritarian inclinations and the Morrison government has tacitly consented to the deplorable oppression of the Victorian population. For all intents and purposes the State of Victoria has now effectively become an elected dictatorship.

X FINAL CONSIDERATIONS

During this coronavirus crisis, our politicians seem to be driven less by a reasoned, evidence-fuelled strategy of limiting the spread of the disease and the disorganisation of economic life, than by an urge to be seen to be taking action.¹⁵¹ As a result, countless people are losing their jobs, particularly in the entertainment industry. Inevitably, job losses will lead to far more homelessness, with financial pressures leading to more marriage breakdowns and a dramatic growth in crime, which always increases in times of economic crisis.

¹⁵¹ Ibid.

FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

What is happening is nothing short of deeply tragic because, in many ways and on many levels, Australians have been miserably betrayed by their own federal and state politicians. In this present context our political class should be reminded of John Locke, that great ‘Founder of Liberalism’. He famously argued that governments have no other end ‘but the preservation of these rights, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects’. If a government exceeds the limits of its legitimate power, citizens have the fundamental right to resist. As Locke famously put it:

Whenever the legislators endeavour to take away and destroy the rights of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any further obedience, and are left to the common refuge which God hath provided for all men against force and violence.¹⁵²

We should not be too hasty in dismissing Locke’s advocacy for fundamental rights and the traditional concept of lawful resistance against political tyranny. This is our classical liberal tradition and it firmly communicates that there cannot be one rule for some and another for the rest of us. Federal, state, and territory leaders in this country have been exposed for their authoritarian behaviour as there was never an emergency that could possibly justify the exercise of such arbitrary powers.¹⁵³ The Australian people have a lawful right to resist such acts of tyranny and demand from their ruling political class the lifting of arbitrary restrictions and full restoration of our fundamental rights and freedoms.

¹⁵² John Locke, *Second Treatise on Civil Government* [1690] Ch 19, Sec 222.

¹⁵³ *Ibid.*