

Liberty After the Lockdown

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Summary

- Laws passed in late March 2020 to deal with the COVID-19 pandemic are the greatest restrictions on liberty in modern British history.
- Any benefits that have emerged as a side effect of the restrictions have been far exceeded by the costs to the economy and to civil liberties.
- Civil society and the media should maintain pressure on the government to repeal the Coronavirus Act and its associated regulations as soon as the crisis has passed.

Introduction

New laws and regulations introduced in late March 2020 to slow the transmission of COVID-19 represent the greatest restrictions on liberty in modern Britain. This briefing paper looks at what they are and explains what needs to be done to ensure that freedom is not permanently diminished as a result of the pandemic response.

The Coronavirus Act

Introduced to Parliament on 19 March 2020, the Coronavirus Act passed through the House of Commons without a vote four days later and passed through the House of Lords without amendment on 25 March (HM Government 2020a). Extending to 356 pages, this legislation handed the government extraordinary new powers to restrict liberty in the name of reducing the transmission of COVID-19. The civil liberties group Big Brother Watch called them ‘the most draconian powers in peace time Britain’ and Amnesty International cautioned that the Act ‘must not give a green light to trample on our basic human rights and liberties’.

Its main restrictions on civil liberties include:

- The Secretary of State has the power to restrict or prohibit ‘entry into, or departure from, or location of persons in, premises’ (ibid.: 274). Note that “‘premises” includes any place’ (ibid.: 272).
- The Secretary of State has the power to close premises (ibid.).
- Powers granted to the government to temporarily close schools, childcare centres and higher education institutions (ibid.: 156).
- Powers granted to close ports and airports (ibid.: 230).
- Powers granted to public health officers to isolate individuals whom they believe may be infectious, by force if necessary, for up to 48 hours ‘for the maintenance of public health’ (ibid.: 235-7).
- Further powers granted to public health officers to ‘impose such requirements and restrictions on the person [who is proven or suspected to have COVID-19] as the officer considers necessary and proportionate’, including compulsory detention ‘for a specified period’ and restrictions on travel and ‘the person’s activities (including their work or business activities)’ (ibid.: 239). A fine of £1,000 can be given to those who do not comply.
- The number of doctors required to detain a person under the Mental Health Act is reduced from two to one.

The Health Protection (Coronavirus, Restrictions) (England) Regulations

On 26 March, a day after the Coronavirus Act was given royal assent, the government introduced the Health Protection (Coronavirus, Restrictions) (England) Regulations under the Public Health (Control of Disease) Act (1984). This is the legal basis for the 'lockdown'. It gives the government authority to close:

- All hotels, bed and breakfasts, caravan parks, campsites and hostels, except for a limited set of residents in special circumstances (e.g. those attending a funeral) or 'for any purpose requested by the Secretary of State, or local authority' (HM Government 2020b: 3).
- All places of worship, except for funerals, broadcasts and 'essential voluntary services or urgent public support services' (ibid.: 4).
- All community centres 'except where it is used to provide essential voluntary activities or urgent public support services' (ibid.).

The regulations include the most severe restrictions on the movement of individuals in modern British history. The principal stipulation is that 'no person may leave the place where they are living without reasonable excuse'.¹ Reasonable excuses are limited to the following:

- Obtaining 'basic necessities', i.e. 'food and medical supplies' and 'supplies for the essential upkeep, maintenance and functioning of the household' (ibid.: 4).
- Taking exercise alone or with members of the household (ibid.).
- Seeking medical assistance.
- Providing care or assistance.
- Donating blood.
- Travelling to work when 'it is not reasonably possible' to work from home.
- Attending funerals.
- Fulfilling a legal obligation, e.g. attending court.
- Accessing critical public services.
- Moving house 'where reasonably necessary'.
- Continuing existing arrangements between parents to access children.
- Avoiding injury, illness or risk of harm.

The regulations also state that 'no person may participate in a gathering in a public place of more than two people' unless they are from the same household, except when:

- Attending a funeral.
- It is essential for work purposes.
- It is necessary to 'facilitate a house move'.
- Providing care or assistance to a vulnerable person.
- Providing emergency assistance.
- Taking part in legal proceedings.

Breaching any of these rules can incur a fine of £60 which doubles for a second offence and doubles again for any subsequent offences, up to a limit of £960.

¹ To close a perceived loophole, the regulations were amended on 22 April to say 'no person may leave *or be outside of* the place where they are living without reasonable excuse'. Visiting a 'a burial ground or garden of remembrance, to pay respects to a member of the person's household, a family member or friend' was added to the list of reasonable excuses, as was obtaining or depositing money from banks, building societies, ATMs, etc.

In the first weeks of lockdown, British newspapers were filled with photos of over-zealous police officers hassling people on park benches, sunbathing or walking in the countryside. In a few cases, the police appear to have gone beyond the law, but it is clear from the regulations that the number of permissible activities is very limited and the police have considerable latitude.

In response to public concern and confusion, the Crown Prosecution Service subsequently issued guidelines. Although these do not supersede the legislation, they suggest that people will not be prosecuted for taking a breather on a bench in the middle of a long walk or driving a short distance to take exercise.

Ending the restrictions

The restrictions on freedom introduced in March 2020 would be beyond the pale in normal times. Some of them are arguably excessive even as a response to COVID-19. If a fraction of the regulations are kept in place after the current crisis has passed it would be a serious blow to civil liberties. It is therefore crucial that they are removed, in full, as soon as the objective has been met.

It should be remembered that the sole justification given by Boris Johnson for the lockdown when he announced it on television on 23 March was to prevent NHS services being overwhelmed by COVID-19 patients. There was no suggestion that the lockdown should remain in place until the virus was stamped out entirely, nor until other countries had eradicated it, nor until a vaccine has become available.

There is a danger of these goalposts being moved. Among the five tests that the government now says need to be met before the lockdown can be lifted is for the government to be 'confident that any adjustments to the current measures will not risk a second peak of infections that overwhelm the NHS' (Conservatives 2020). While this statement is open to interpretation, it could imply that a second wave must be ruled out before the lockdown can be ended. Most epidemiologists believe that a second wave of some magnitude is inevitable without a vaccine developed and distributed.

The Coronavirus Act contains a sunset clause that will make the measures expire after two years. As Amnesty International and Big Brother Watch have both said, this seems an excessively long period of time, but a further clause requires the measures to be reviewed, debated and voted on in Parliament every six months. The Health Protection regulations must be reviewed every 21 days, with the first review carried out on 16 April 2020.

The ban on public gatherings effectively criminalises protests and demonstrations. This makes it all the more important that politicians and the media maintain pressure on the government to repeal the Coronavirus Act at the earliest reasonable opportunity.

Learning the wrong lessons

F. A. Hayek's motivation for writing *The Road to Serfdom* (1944) was his fear that measures needed to conduct World War II would be retained in peacetime. The state took control of large parts of the economy during the war and Hayek's book was a rebuttal to those who saw the success of the war effort as proof that central planning is superior to the free market.

It would be easy to exaggerate the parallels with our current situation. Many people believed in central economic planning long before the war began, whereas nobody (I presume) yearned for a lockdown. A more realistic concern is that prolonged exposure to draconian regulations will normalise illiberalism and that isolated benefits from the current restrictions will be used to promote illiberal policies in the future.

It is an ill wind that blows no good. Surprising benefits can emerge from the darkest times. Studies have found declines in traffic fatalities and alcohol consumption during recessions (Margerison-Zilko 2016) whereas economic growth is associated with less physical activity and higher rates of obesity (Ruhm 2000). Rationing during World War II helped many people on low incomes consume more calcium and protein than they had before (Foster and Lunn 2007: 212). Cuba's economic crisis of 1991-95 saw the prevalence of diabetes and coronary heart disease decline as the population lost an average of 5.5 kilograms in weight (Franco et al. 2013). Even the Black Death had a positive impact in so far as the sharp decline in population led to higher wages for those who survived.

Of course, recessions are also associated with chronic morbidity, psychological distress, homelessness and suicide. Those who are worst affected are more prone to alcohol abuse (Margerison-Zilko et al. 2016). Children who lived through World War II had higher rates of diabetes and heart disease as adults and were more likely to be depressed (Kesternich et al. 2014). The physical and psychological impacts of war are overwhelmingly negative for combatants and civilians alike (Murthy and Lakshminarayana 2006).

Whatever benefits inadvertently emerge from natural and manmade crises tend to be comfortably outweighed by the damage to life, health and wellbeing, but a positive narrative can be constructed if the facts are carefully selected. There are occasionally calls to reintroduce coercive policies such as National Service and rationing, long after they have outlived their original function, in the hope of recapturing the magic that supposedly accompanied them.

It is too early to know which positives will be taken from the current pandemic, but there are several likely candidates. By shutting down a large part of the economy, the lockdown has led to a sharp fall in greenhouse gas emissions and air pollution. Nitrogen dioxide levels fell by up to 60 per cent in some parts of Britain (Khoo 2020) and carbon dioxide emissions will fall by eight per cent globally this year, according to the International Energy Agency (2020).

In the UK, crime fell by 28 per cent in the four weeks up to 12 April (compared with the same period in 2019). There was a 37 per cent drop in allegations of burglary and rape, a 27 per cent drop in reports of serious assaults and robbery, and a 34 per cent decline in vehicle crime (National Police Chiefs' Council 2020).

South Africa's five-week lockdown has been combined with a ban on the sale of alcohol, tobacco and e-cigarettes. Like other countries, it has seen a fall in crime but Bheki Cele, the Minister of Police, attributes this mainly to the decline in alcohol consumption and has expressed a desire to maintain prohibition when normality resumes.

It should not be surprising that a population put under house arrest experiences fewer burglaries, nor that freezing economic activity leads to less pollution, nor that banning the sale of alcohol leads to less alcohol being consumed. None of this makes the case for restricting personal and economic freedom stronger. People who are not free cannot make bad choices. But nor can they make good choices. That it has taken the shutdown of much of the world's economy to achieve a mere five per cent decline in carbon dioxide emissions only serves to illustrate the enormous sacrifices that will have to be made to achieve 'Net Zero'.

The lockdown has shown us, in an extreme way, the value of liberties we normally take for granted. As soon as the worst of the current crisis is over, freedom should be fully restored.

Conclusion

Extraordinary circumstances have led to extraordinary restrictions on freedom. Any benefits that have emerged as a side effect have been far exceeded by the costs to the economy and to civil liberties. None of the emergency legislation should be retained when normality resumes. Civil society and the media should maintain pressure on the government to repeal the Coronavirus Act and its associated regulations, in full, as soon as the original objectives have been achieved.

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