

Unblocking the Exit

“The sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number is self-protection”

John Stuart Mill, 1909¹

For weeks each of us have been stuck inside whittling away the hours in work, zoom meetings or various new hobbies (mine is classic literature). Nobody has protested against this consensual house arrest. Each of us, with small elements of grumbling, has signed up to a curtailment of liberty under the auspices of protection from Covid-19. Taking Mill’s quote as my guide, I ask one simple question: how do we know when “self-protection” has become sinister?

The unique feature about this crisis is that while the virus is prevalent, we all need protecting from each other. It is Schrodinger’s cat; nobody knows whether another has it unless they make contact and get the illness. By consenting to inference in a way a populace has never done before we have sacrificed freedom for safety. It is doubtful that any of us signed up to be in a permanent state of quasi-quarantine. Each strategic move has come with a 30-minute briefing and left a litany of questions in its wake. In this situation, liberty is dependent on information, of a highly technical kind, being interpreted by specialists. The greater the perceived emergency, the stronger mandate for the Government to enforce draconian measures.

Professor King argues that the procedures are currently lawful and proportionate². I would contend that legality is wholly dependent on having specific timeframes that guarantee a return to our pre-virus liberties. The enactment of the Coronavirus Act 2020 was pushed through with virtually no scrutiny. A review every six months³ speaks nothing of content. The danger is that the longer this goes on, the more we will adjust to our “new normal”. Once we accept things as they are when some normalcy resumes, we may not realise that things have not quite shifted back to their original position. Maybe we can still hold people with mental health issues indefinitely⁴ or maybe the police continue to look at our GPS phone data⁵. In other words, protection can quickly become an excuse to eviscerate civil liberties without appropriate limits.

The reopening of virtual Parliament is essential to easing the constitutional pressures. Parliament is the first instrument of accountability; it can unravel the aptly named

¹ *On Liberty*, 1st edn, Auckland: The Floating Press.

² King, J. (2020) ‘The Lockdown is Lawful Part 1’ (*UK Constitutional Law Association Blog*, 1 April 2020) <<https://ukconstitutionallaw.org/2020/04/01/jeff-king-the-lockdown-is-lawful/>> accessed 18 April 2020; King, J. (2020) ‘The Lockdown is Lawful Part 2’ (*UK Constitutional Law Association Blog*, 2 April 2020) <<https://ukconstitutionallaw.org/2020/04/02/jeff-king-the-lockdown-is-lawful-part-ii/>> accessed 18 April 2020.

³ Coronavirus Act 2020 c7, s98.

⁴ *Ibid*, Sch 3 s5 (s3(1) denotes this can be done by any mental health professional. They do not need to know the patient)

⁵ Knowles, T. ‘Phone Tracking to Curb Spread is Ruled Legal,’ *The Times*, 28 March 2020 <<https://www.thetimes.co.uk/article/coronavirus-authorities-can-use-mobile-phone-tracking-0khmg0rmp>> accessed 18 April 2020.

'omnishambles'⁶ that seems to have befallen the exit strategy (who remembers herd immunity). The self-protection can only last as long as there is something to be protected from. Covid-19, unlike war, is invisible. It makes social institutions vulnerable to misinformation. Likewise, a full release of reports and data modelling in relation to our exit strategy will allow for scrutiny and enable actions such as judicial review. There has been no coherency or elaboration⁷ meaning our most stringent safeguards are missing or unable to effectively function. Intrusion must not be limitless, or we risk undermining the goodwill that has purveyed the crisis thus far.

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⁶ Jacobs, S. 'Britain has traded individual liberty for a terrifying state omnishambles,' *The Telegraph*, 2 April 2020 <<https://www.telegraph.co.uk/politics/2020/04/02/britain-has-traded-individual-liberty-terrifying-state-omnishambles/>> accessed 18 April 2020.

⁷ Sky News, 'Coronavirus: Stop treating public 'like children' and reveal exit strategy, say senior MPs,' 18 April 2020 <<https://news.sky.com/story/coronavirus-stop-treating-public-like-children-and-reveal-exit-strategy-say-senior-mps-11975154>> accessed 18 April 2020.