

# The proportionality of the Victorian Government's response to COVID-19

Sanjeev Sabhlok, Ph.D. Economics (USC, Los Angeles)<sup>1</sup>

8 October 2020

*Common sense is the realised sense of proportion*

Mahatma Gandhi

I thank the Samuel Griffith Society for giving me this opportunity to elaborate upon my 16 September 2020 op-ed<sup>2</sup> in the *Australian Financial Review*.

As some of you may be aware, in that op-ed I outlined why, when directed on 9 September 2020 by the Victorian Department of Treasury and Finance (the “Treasury”) to remove my direct and indirect social media criticisms of Victoria’s pandemic policies and of the Police State that, in my view, it has become, I decided to not remove my criticisms but, instead, to resign my role in order to even more vigorously protest these policies.

During the 15 years I worked in the Treasury, I was not used to bad policies being implemented in Victoria. Economists like me help various departments design policies by identifying the nature of the problem (including associated risks) that they are trying to address, then recommending an option to the government that deals with the problem in a targeted manner – more like a surgeon’s scalpel rather than an axe: an option which also strikes the right balance between the competing objectives of the government. All policy is traditionally developed in Victoria consultatively and transparently, with a lot of community engagement. We have a thing called *Engage Victoria*<sup>3</sup>. We are a deliberative democracy.

I would not have bothered to resign if this was about some minor failure of public policy – of which there are many. But the pandemic policy failure is harming Victoria on an unprecedented scale. Keeping quiet would amount to conniving with Daniel Andrews’s approach.

In addition to the spate of interviews I gave (11 of them to be precise) in the weeks following my Fin Review op-ed, I took the opportunity offered to me by the Brisbane-based Connor Court Publishing house to write a book on this matter. I have only earlier today signed off on the final print proofs of a book entitled, *The Great Hysteria and The Broken State*<sup>4</sup>. It is around 29,000 words but only barely manages to scratch the surface of the myriad issues that this pandemic has brought to light. I am still learning.

My 20-minute talk today will be a summary of this paper which I have already released on my personal blog at 4 pm and which I hope the Samuel Griffith Society will consider publishing on their website, as well.

## **PANDEMICS CAN NEVER BE AN UNEXPECTED EMERGENCY**

Pandemics can be, and are, fully anticipated. It is possible to contemplate all pandemic scenarios and prepare for them in advance. We know this because Sweden has managed this pandemic without the slightest panic and without brutalising its people. The Swedes were provided with relevant information and they chose their preventative actions voluntarily. No police were used against them during the pandemic. The Swedes were offered reassurance, comfort, hope and faith that things will work out well. They are a decent people, a decent country.

---

<sup>1</sup> Till 10 September 2020 an economist at the Department of Treasury and Finance, Victoria: now an ordinary citizen of Australia, resident of the once great city of Melbourne. I seek readers’ forbearance for the many errors of expression, language and even substantive content that are sure to pepper this paper – given I have prepared it in less than two days. And please do not consider this paper to be any form of medical, health, legal or any other kind of advice. Readers must take relevant professional advice should they wish to act upon anything that I say in this paper.

<sup>2</sup> Sabhlok, Sanjeev, “Why I quit rather than be silenced”, *Australian Financial Review*, 16 September 2020.

<sup>3</sup> <https://www.afr.com/policy/economy/victoria-has-locked-itself-into-a-lockdown-blunder-20200916-p55w1z>

<sup>4</sup> <https://engage.vic.gov.au/>

<sup>5</sup> [https://www.connorcourtpublishing.com.au/The-Great-Hysteria-and-The-Broken-State--Sanjeev-Sabhlok\\_p\\_403.html](https://www.connorcourtpublishing.com.au/The-Great-Hysteria-and-The-Broken-State--Sanjeev-Sabhlok_p_403.html)

We, too, had our plans. Victoria's plan, called the *COVID-19 Pandemic plan for the Victorian Health Sector*<sup>5</sup> was published on 10 March 2020. It stated (correctly) that "COVID-19 is assessed as being of moderate clinical severity". But the plan did not limit itself only to a pandemic of moderate severity. It stated that "we are preparing so that we are ready to respond if a larger, or more severe outbreak occurs".

## **LOCKDOWNS FAIL THE DEFINITION OF QUARANTINE**

A gentleman has Tweeted about lockdowns that these are: "Unnecessary, unwanted, disproportionate, tyrannical, scaremongering. Not justified in any way by the data"<sup>6</sup>. That is a good a summary. Lockdowns also violate a wide range of laws, including international covenants.

**Lockdowns are not a quarantine.** This is big discovery I made only yesterday while starting to read the 14 September 2020 judgement of Judge William Stickman who struck down the lockdown orders of the Governor of Pennsylvania. Basically, we quarantine sick people but lock down prisoners.

The *Pennsylvania Disease Prevention and Control Law of 1955* defines quarantine in this manner:

**Quarantine.** The limitation of freedom of movement of persons or animals who have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent effective contact with those not so exposed. Quarantine may be complete, or, as defined below, it may be modified, or it may consist merely of surveillance or segregation.

I assume a similar definition applies to Victoria. Judge William Stickman then unpacked the meaning of this:

A quarantine requires, as a threshold matter, that the person subject to the "limitation of freedom of movement" be "exposed to a communicable disease." Moreover, critically, the duration of a quarantine is statutorily limited to "a period of time equal to the longest usual incubation period of the disease".

The [Pennsylvania] lockdown plainly exceeded that period. Indeed, Defendants' witnesses, particularly Ms. Boateng, conceded upon examination that the **lockdown cannot be considered a quarantine.**<sup>7</sup> (emphasis mine.)

Lockdowns are unambiguously a form of mass imprisonment.

## **LOCKDOWNS BREACH VICTORIA'S PUBLIC HEALTH LAW**

Back to the question of proportionality, which I have been asked to address.

I will now try to demonstrate that the pandemic policies being implemented in Victoria are not risk-based, targeted, proportionate or transparent – as required by Victoria's *Public Health and Wellbeing Act 2008*.

### **1. Not risk-based, focused instead on low-risk groups**

Section 5 of Victoria's *Public Health and Wellbeing Act 2008* states that public health measures must be based on evidence ("decisions should be **based on evidence available** in the circumstances that is relevant and reliable"). (emphasis mine.)

#### ***Distribution of the risk***

Victoria's 10 March 2020 pandemic plan took a risk-based approach and "focused on protecting vulnerable Victorians".

It was widely known from mid-February 2020 that the risk of dying from COVID-19 is skewed towards the elderly, especially those – amongst them – whose immune system is compromised by other illness. Therefore, Victoria's pandemic plan stated that "older Victorians and people with chronic diseases are known to be at greater risk of COVID-19 infection". And said that it would "ramp up risk reduction activity [for] at-risk groups".

Spot on – I would support this approach fully.

---

<sup>5</sup> <https://www2.health.vic.gov.au/about/publications/researchandreports/covid-19-pandemic-plan-for-vic>

<sup>6</sup> <https://twitter.com/rynnster/status/1308372305479958528>

<sup>7</sup> <https://www.sabhlोकcity.com/2020/10/the-full-text-of-the-judgement-striking-down-the-pennsylvania-lockdowns/>

But the moment things started heating up, Daniel Andrews abandoned our laws and our approved pandemic plan and implemented untargeted, society-wide lockdowns which violate the basic principles of risk management. For the past six months Mr. Andrews has focused on the *low-risk* population of Victoria instead of on the *high-risk* groups.

### ***Magnitude of the risk***

No one knew the magnitude of the risk posed by the novel coronavirus in February 2020 but by mid-April 2020, anyone with rudimentary arithmetic skills would have found that the pandemic was tracking far below initial estimates.

For example, initial models (such as those based on the work of Neil Ferguson from the Imperial College) had suggested that Sweden would experience over 95,000 deaths from COVID-19 without lockdowns, with a bulk of these deaths occurring in April 2020. To date, 5,892 have died in Sweden. And, as Sweden's State Epidemiologist Anders Tegnell regretfully admits, many, if not most of these deaths could have been averted had Sweden deployed more resources into its aged-care homes in the early days of the pandemic.

One year after the virus mutated from an unknown mammal to humans (it started in October 2019 in Wuhan), we can say (anyone can check for themselves) that this novel coronavirus pandemic is likely to be at least 50 if not a hundred times less lethal overall, globally, than the Spanish flu was.

For example, the world's population today is 7.594 billion of which approximately one million have died to date from COVID-19. That means 1 person has died out of 7594, or 0.13 out of every 1000. In other words, **999.87 people out of every 1000 have so far escaped death from COVID-19.**

In fact, after one year, this pandemic has not yet reached the lethality (globally) of the 1969 Hong Kong flu which would have killed 2.1 million people this year, or the 1957 Asian flu which would kill 4.6 million people this year.

But Victoria's policies do not take account of these reduced estimates of the lethality of the virus. There is hysteria in the air.

## **2. Not proportionate**

Section 9 of Victoria's *Public Health and Wellbeing Act 2008* states: "decisions made and actions taken in the administration of this Act should be **proportionate** to the public health risk sought to be prevented, minimised or controlled; and should not be made or taken in an arbitrary manner".

The 10 March 2020 Victorian pandemic plan included this most important principle of all – of proportionality: to "ensure a **proportionate** and equitable response". It wanted things to be "flexible and proportionate" and to "reduce [not eliminate] the morbidity and mortality associated with COVID-19". It thus spoke only about flattening of the curve, not about the extreme suppression bordering on elimination that we have been seeing in Victoria – which is specifically forbidden by Australia's biosecurity laws.

Our pandemic plan did not say that Victoria would be converted into a city-wide prison for a moderate pandemic (that too with a ring of steel) while everyone waits at home for a vaccine to get invented, tested, approved, mass-produced and punched into every Victorian.

In other words, the 10 March 2020 Victorian plan was a well-balanced response to what was always going to be a difficult problem.

Had Daniel Andrews followed Victoria's laws and our published pandemic plan, he would have imposed stronger care levels and even necessary restrictions for aged-care homes and advised those over 60 to work from home where possible and to take strong preventative actions, but provided broader, generic guidance about hand hygiene and social distancing for the rest of us.

But Daniel Andrews decided that he knows best. All the scientists, lawyers and economists who surely advised during the preparation of Victoria's 10 March 2020 pandemic plan were, in his view, ignorant fools.

His disproportionate, untargeted actions have led to hundreds of avoidable deaths in aged-care homes that were not a priority for him. At the same time, Andrews locked down and thereby directly harmed the approximately 99.9% of us who had little to no risk from the virus.

He also put out scary advertisements to terrorise us<sup>8</sup>, which led to many of us (who needed urgent medical care during this period for the myriads of other afflictions to which our human condition is subject) being too scared to access much-needed medical assistance or to get their heart checked or a cancer test conducted.

In addition, there has been a shocking increase in self-harm by children and now reports are starting to emerge that some of us are starting to take our own lives. The *Herald Sun*'s Facebook page reported on 7 October 2020 that: "A shocking rise in the number of Victorian males taking their own lives during the COVID pandemic has been revealed, and one Melbourne doctor fears it could be 'just the tip of the iceberg'"<sup>9</sup>. It is hard to know what to say to those who are feeling distressed by these lockdowns. Please bear with me, is all I can say. We will get there. We must resist any sense of loss of agency. We are in control.

Untargeted lockdowns have not just caused a severe economic downturn in Victoria but have had, and are having, a catastrophic health impact on the entire generation that is living through these lockdowns.

For six months I have not been able to play tennis or visit the gym. And once the masks policy was imposed, I dramatically cut down my outdoor walks since my face sweats up, my glasses fog and I can't breathe in a mask when climbing uphill in the park. I am 60. I am certain there will be a reckoning for me soon: our body is not designed to remain stationary for six months.

### 3. Not transparent

Section 8 of Victoria's *Public Health and Wellbeing Act 2008* requires that full information be provided to the people who must allow be allowed to participate in the policy process: "Members of the public should be given access to reliable information in appropriate forms to facilitate a good understanding of public health issues" as well as "opportunities to participate in policy and program development".

But the concept of deliberative democracy has been cast aside during the pandemic. There is nothing more obscure than Victoria's pandemic policies. The Andrews Government has operated like a Star Chamber with no disclosure about the logic and reasons for any policy including the lockdowns or the mandatory masks outdoors.

Ultimately, like I have written in my book:

I am not one of those crazy "libertarians". I would have been willing to accept all loss of freedoms, even permanent solitary confinement, if government had proven to me, after thorough analysis and scientific proofs, that there is no better way to save our species from extinction. But Daniel Andrews is never going to do that. His only justification for his policies is his personal hunch.

We the People are not stupid. We understand that Nature is not always our friend. From time to time, it springs unpleasant surprises. We understand that there can be unavoidable deaths from a natural cause (an Act of Nature). But we cannot – must not, and will not – tolerate, condone, or cope with public health directives that end up killing *even one additional person* (which then becomes an Act of Man: a murder, homicide, manslaughter or whatever – but definitely not a *health* measure, which is the only thing that public "health" – yes, health – directives are authorised to ensure).

There is blood – a *lot* of it – on the hands of our political leaders and policymakers.

### **WORKPLACES CLOSED DURING THE LOCKDOWNS MAY BE ELIGIBLE FOR COMPENSATION**

Victoria's 10 March 2020 pandemic plan did have a strategy of workplace closures, when necessary. But any concerns one might have had about this strategy would have been alleviated because the plan also required the principles of risk and proportionality to be followed. As well, the *Public Health and Wellbeing Act 2008* imposes stern restrictions on the powers of the Chief Health Officer to close down workplaces. Any closures under Victoria's original pandemic plan would therefore have been extremely rare and well-targeted, not indiscriminate.

---

<sup>8</sup> Polls in different countries have shown that the average person now thinks this virus has taken a hundred times more lives than it actually has. Dr. Eamonn Mathieson has spoken about this terror being experienced by patients in Melbourne.

<sup>9</sup> <https://www.facebook.com/heraldsun/posts/10158146172518171>

I believe that the pandemic orders of the Daniel Andrews Government to close down workplaces indiscriminately might breach the relevant provisions of the Act. In my view, these workplaces may therefore be able to sue the State Government for compensation under Section 204 – “A person who suffers loss as a result of a decision by the Chief Health Officer to give an authorisation to an authorised officer under this Division may apply to the Secretary for compensation if the person considers that there were insufficient grounds for the giving of that authorisation”.

Let me emphasise again here that being an economist, I’m a layman on legal matters and anyone wishing to act on my opinions should seek professional legal and/or other relevant advice.

**Police brutalities:** I also believe that Victorians who have been beaten or otherwise brutalised by the Andrews Government through its police force might potentially have grounds to seek compensation.

**Fines:** And I believe (once again please do *not* act unless you take legal advice – **I continue to follow the mask mandate and urge everyone to do so**) that any fines issued to Victorians for not wearing a mask in outdoor settings may be liable to be declared arbitrary by the judiciary under the Act.

For instance, I have compiled scientific literature which suggests that while an N95 mask may well work in high-risk health/aged-care/hospital environments, other kinds of masks do not provide anywhere near similar protection – and I have not yet located any scientific paper that confirms that masks are preventative in outdoor settings.

As one of the proofs *against* the outdoor masks mandate, I note that our current Chief Health Officer, Brett Sutton had published a paper of 2001<sup>10</sup> in which he stated that “non-scrub operating theatre staff” may not need to wear masks in operating theatres. To me, that *prima facie* suggests that if masks don’t even help in operation theatres, then they probably do not provide any preventative value in outdoor settings.

The evidence for discontinuing the use of surgical face masks [by anaesthetists in operating theatres] would appear to be stronger than the evidence available to support their continued use. The use of surgical face masks by non-scrub operating theatre staff cannot be scientifically justified. There is little evidence to suggest that the wearing of surgical face masks by staff in the operating theatre decreases postoperative wound infections. Published evidence indicates that postoperative wound infection rates are not significantly different in unmasked versus masked theatre staff. However, there is evidence indicating a significant reduction in postoperative wound infection rates when theatre staff are unmasked. Currently there is no evidence that removing masks presents any additional hazard.

Nevertheless, since science does progress a bit in 19 years, I’d be happy to accept the outdoor masks mandate if Mr Sutton can provide me with all his proofs – being also aware that the novel coronavirus is around 50-200 nanometres in diameter.

## **LOCKDOWNS FAIL ALL COST-BENEFIT TESTS**

A May 2020 study had estimated that lockdowns “[w]ill destroy at least seven times more years of human life” than they save – “likely more than 90 times greater”<sup>11</sup>. Later, a number of fuller cost-benefit analyses of pandemic policies have been conducted. All of them, to the best of my knowledge, show a dramatically greater cost to society than benefits.

But there are two fundamental and intractable problems with taking a cost-benefit approach to the lockdown policy.

***Frist, there is no scientifically known benefit from lockdowns.*** As far as I am aware, there is no published paper in science prior to 2020, and no epidemiology textbook, that advocates lockdowns. At least one paper considered and ruled out lockdowns<sup>12</sup>. The WHO’s October 2019 guidelines<sup>13</sup> on policies

---

<sup>10</sup>

[https://www.researchgate.net/publication/297419293\\_Do\\_anaesthetists\\_need\\_to\\_wear\\_surgical\\_masks\\_in\\_the\\_operating\\_theatre\\_reply](https://www.researchgate.net/publication/297419293_Do_anaesthetists_need_to_wear_surgical_masks_in_the_operating_theatre_reply)

<sup>11</sup> <https://summit.news/2020/05/26/study-lockdown-will-destroy-at-least-seven-times-more-years-of-human-life-than-it-saves/>

<sup>12</sup> Inglesby, Thomas V., et. al., “Disease Mitigation Measures in the Control of Pandemic Influenza”, *Biosecurity and Bioterrorism*. Volume 4, Number 4, 2006. <http://www.upmc-biosecurity.org/website/resources/publications/2006/2006-09-15-diseasemitigationcontrolpandemicflu.html>

for flu-like pandemics state that contact tracing and quarantine of exposed individuals is “not recommended in any circumstances”. That makes sense since lockdowns are not therapeutic. They do not kill a flu-like virus and cannot forever stop its spread – at best, they can slow it down.

Expectedly, even during this pandemic, lockdowns have failed to save lives. A recent cross-country study shows that “full lockdowns, border closures, and high rate of COVID-19 testing were not associated with reduced number of critical cases or overall mortality”<sup>14</sup>. Sweden, which did not have any lockdown, has seen fewer deaths per million today from COVID-19 (despite its initial insufficient focus on aged-care homes) than at least 10 other countries which had imposed harsh lockdowns.

So, we can’t really conduct a proper cost-benefit test of something that does not provide *any* benefit *whatsoever* in the longer term.

**Second, the “costs” in this case are, in common parlance, a crime.** Let me explain.

In normal public health policy, we may impose a financial cost on the business community (say, shutting down a restaurant which has cockroaches) in order to *save* some lives that would have been otherwise lost due to what economists call “market failure”. But lockdowns don’t save lives due to market failure – they actually kill unspecified persons X, Y and Z (e.g. a young person who may commit suicide) in order to save the lives from COVID-19 of other unspecified persons A, B, and C.

The implications of coercive lockdowns are therefore best compared and considered like we would think about a Trolley Problem, and not a Benthamite comparison of utilities.

After all, how exactly can we compare the “total” happiness generated (“the greatest good of the greatest number”) by a government policy option that ends up killing thousands, possibly millions across the world? (I have enumerated some of these colossal harms in my book but that list is very preliminary: information is just starting to flow in from across the world.)

Can we even try to value the “benefit” to society from a crime committed in the name of public health?

I believe that we might well be able to conduct a CBA as a first test of the lockdown policy but even if any cost-benefit analysis (CBA) proves that lockdowns are “justified” (no CBA does that), they are **fundamentally immoral**. We need an associated Crimes Register along with each such CBA that lists the number of people the government is willing to kill or reduce their number of years of life.

Further, since science rejects lockdowns outright as a preventative or therapeutic intervention, lockdowns can at best be considered to be a **human science experiment** – and, therefore, the Nuremberg Code applies. Lockdown human experiments can never qualify for ethics approval in any university. They are most likely a crime against humanity – or some such thing.

## FROM THE FRYING PAN INTO THE FIRE

Before I took citizenship of Australia in 2005, I was a citizen of India – of a nation that has largely adopted the common law tradition of England (which ruled India for 89 years after taking over East India Company’s assets through the *Government of India Act of 1858*).

In addition to common law protections, India subsequently also incorporated elements of the Bill of Rights from the US Constitution (called Fundamental Rights in India) in its 26 January 1950 Constitution that was drafted by a team led by B.R. Ambedkar.

B.R. Ambedkar was India’s Samuel Griffith. He was educated at a level that is hard to even imagine – with three Masters degrees in Economics, two of them from Columbia University and one from the London School of Economics. And he had a doctorate in economics from the University of London and was also a lawyer, being called to the Bar at Gray’s inn.

He became India’s first Law Minister but had to fight bitterly with socialist Nehru who was bent upon sabotaging India’s constitutional protections at each step. India’s tragedy is that neither common law nor its Constitution could successfully protect the liberty or property rights of the citizens. Nehru’s daughter,

---

<sup>13</sup> World Health Organisation, “Non-pharmaceutical public health measures for mitigating the risk and impact of epidemic and pandemic influenza”, October 2019. <https://bit.ly/3mPsmg0>.

<sup>14</sup> Chaudhry, Rabail et. al., “A country level analysis measuring the impact of government actions, country preparedness and socioeconomic factors on COVID-19 mortality and related health outcomes”, *EClinical Medicine*, 21 July 2020. Short URL: <https://bit.ly/3j2gMf7>.

Indira Gandhi, inserted a clause in 1976 into the Preamble of India's Constitution to assert that India is a "socialist republic" – and so it remains.

Being a self-declared socialist nation, no one can possibly expect any human rights protections in India. Total capriciousness and corruption at the highest levels of the Indian government is the norm.

When I was a teenager, I lived through Indira Gandhi's draconian 1975-1977 Emergency which only became possible because Ambedkar had allowed to slip through a highly problematic power in the Indian Constitution – of peacetime emergency. This reminds me that the Weimar Republic's Constitution was once considered by many to be an ideal constitution but it the same fatal flaw: the power to declare a peacetime emergency. We all know what happened when Hitler exercised that power. Peacetime emergency power will *always* be misused.

In January 2001, I resigned from my Indian senior civil service job (to which a very small group is recruited each year from perhaps the world's biggest competitive examination for such a role). I then migrated to Australia, impressed by its laidback but sensible governance system. I was fortunate to find a role in two Victorian government organisations, first the Victorian WorkCover Authority in 2001 and then the Treasury in 2005.

I had not resigned my Indian role to seek a better life for myself – for the creature comforts available to senior Indian civil servants cannot be matched by any other comparable role in the world. I had resigned to attempt a reform of India's corrupt, socialist governance system, an attempt to get back the original rights that Ambedkar had assured the Indians. After enormous work over nearly two decades, I finally succeeded in helping to establish India's only genuinely liberal political party today – the Swarna Bharat Party<sup>15</sup>.

Thus, after the time I spent in my day job at the Treasury, my mind has been focused entirely on India. Until now, that is – when Australia has forced itself rudely into my attention.

I have been shocked over the past few months to find that I now have to fight for my own basic human rights in Australia.

Police brutalities and chronic failures of governance are the norm in India but even in India I did not experience the kinds of extended restrictions on movement and the curfews we have experienced.

It feels in my case like have gone from a frying pan into the fire.

## **COMMON LAW NATIONS DEPEND ON THE GOOD JUDGEMENT OF THEIR INSTITUTIONS**

As the example of India shows, neither common law nor constitutions can protect liberty when a whimsical, malicious or capricious government is determined to extinguish it.

Although Daniel Andrews has withdrawn the curfew due to enormous public pressure, he has previously defended the curfew, arguing that it is "not about human rights. It is about human life". That was a specious argument. It cannot be one or the other. Life and liberty are of one piece. Moreover, lockdowns, by taking many other lives and reducing the lifespan of millions, do take lives, as well.

History offers us no assurance of the sustained progress of liberty. Hayek observed that "[t]here has never been a time when liberal ideals were fully realized, and when liberalism did not look forward to further improvement of institutions". But he probably never imagined that the course of human liberty could be reversed so sharply and so quickly.

As a Western nation with a common law tradition, we in Australia rely on well-functioning institutions to defend our liberties. As Timothy Jones has noted:

Australia and Britain have remarkably few constitutional guarantees of fundamental rights. This is not to say, of course, that the two countries are without any such protections. The *Magna Carta* of 1215 ("that great confirmatory instrument ... which is

---

<sup>15</sup> As Overseas Citizen of India (OCI), I retain permanent residency rights in India and can be an honorary member of this political party although the law does not permit OCIs to contest elections. <https://timesofindia.indiatimes.com/blogs/toi-edit-page/for-a-liberal-india-the-country-now-has-its-first-liberal-party-the-swarna-bharat-party/>

the ground work of all our Constitutions”) and the Bill of Rights of 1689 (“the product of an alliance between parliamentarians and common lawyers”) remain, but they have a limited field of operation and are inadequate as modern statements of fundamental rights.<sup>13</sup> And as subsequent discussion will demonstrate, the Australian Constitution does have something to say on the subject. It is nevertheless the case that the Anglo-Australian tradition has been to place faith in the common law, supplemented by legislation in specific areas, together with responsible and representative Parliamentary government, as the best means by which fundamental rights can be protected. As Sir Ninian Stephen has noted: “The ‘founding fathers’ of our Constitution took it for granted that individual rights were secure under the common law.”<sup>16</sup>

Till the moment the lockdowns were imposed I would have rejected, outright, anyone’s claim that the rights of the people of Australia are any less than the rights that people may have in other parts of the world, like in Sweden or in the USA. We might well be a common law driven nation, but we have an ancestry that goes back to the *Magna Carta* and the right to *habeas corpus*.

And yet we are imprisoned at home and no one is seemingly bothered.

Our institutions that were supposed to protect us have failed.

### **WE HAVE TO ORGANISE**

It is time for ordinary people like me to step out from our desk jobs where we spend our life immersed in books and papers, into the real world to fight for our basic rights.

Two days ago, I started a little group that I call Liberate Victoria that is starting to identify ways to proceed on this journey. I invite you to join in this discussion. We may need a platform to undertake coordinated legal action and public education. Any such platform must, in my view, be entirely apolitical, a single-issue platform.

We may also need to change our laws to ensure that this kind of an episode does not occur again. In my book I have outlined some of my current thinking on this matter – that includes a prohibition on peacetime emergency powers in Australia, as well as numerous other legal and institutional changes.

Mr Andrews seems hell-bent on continuing these restrictions upon the 99% of us who will never be even remotely harmed by this virus until he finds his fabled vaccine. On 4 July 2020 he spoke about a new “covid normal” for Victoria:

At that point we will not be returning to normal because there will be no vaccine in the weeks ahead, some argue even in the months ahead. It is a long way off. And unless and until that vaccine is developed, and then *administered to every single Victorian*, we will have to live with and embrace a COVID normal. (emphasis mine.)

Do we really want this?

I want to note below this last part of Judge William Stickman 14 September 2020 judgement for the principles it states apply (or should) not just to Pennsylvanians but to us in Victoria:

The Court closes this Opinion as it began, by recognizing that Defendants’ actions at issue here were undertaken with the good intention of addressing a public health emergency.

But even in an emergency, the authority of government is not unfettered. The liberties protected by the Constitution are not fair-weather freedoms—in place when times are good but able to be cast aside in times of trouble.

There is no question that this Country has faced, and will face, emergencies of every sort.

But the solution to a national crisis can never be permitted to supersede the commitment to individual liberty that stands as the foundation of the American experiment.

---

<sup>16</sup> Jones, Timothy H., “Legal Protection for Fundamental Rights and Freedoms: European Lessons for Australia?”, *Federal Law Review*, Vol 22, Issue 1, 1994. [URL: <http://classic.austlii.edu.au/au/journals/FedLawRw/1994/3.pdf>]



The Constitution cannot accept the concept of a “new normal” where the basic liberties of the people can be subordinated to open-ended emergency mitigation measures.

Rather, the Constitution sets certain lines that may not be crossed, even in an emergency. Actions taken by Defendants crossed those lines. It is the duty of the Court to declare those actions unconstitutional.

Thus, consistent with the reasons set forth above, the Court will enter judgment in favor of Plaintiffs.

I believe that although Australia’s Constitution did not specifically give us a Bill of Rights, the rights and freedoms of Australians and Victorians are no less protected in our common law tradition than the rights of the Americans – whose young nation is merely an offshoot of the Glorious Revolution and John Locke’s treatises on Civil Government. The Westminster system of government with its liberties rooted in the *Magna Carta* **must** hold.

#### **WHAT SHOULD DANIEL ANDREWS DO RIGHT NOW?**

There are a number of things I’d want the Andrews Government to do, but the most urgent is that he must revert to Victoria’s original risk-and proportionality-based pandemic plan and strictly follow Victoria’s laws.

This will inevitably mean that the barbaric human experiment called “lockdowns”, along with any associated unnecessary restrictions, must be immediately lifted and all borders opened up.

I want to emphasise that these recommendations (which I discuss in more detail in my book) are not a plea to “let it rip”. Instead, public health guidance and recommendations should be issued for voluntary compliance. The government should put 80% of its pandemic resources on protecting the elderly. Private industry should be guided to adopt a risk-based approach. And highly targeted quarantines of a short, medically approved duration should be used to keep hospitalisations within ICU capacity.