

Freedom in the Coming Time of Madness

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Global Research, August 05, 2021

[Creators Syndicate](#)

Region: [USA](#)

Theme: [Police State & Civil Rights](#)

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Sadly, we are approaching a time in America during which our elected public officials will assault the liberties we have hired them to protect. Whatever the cause, the government will soon blame its failures to contain a virus on a small portion of the population and then impose restrictions on the inalienable rights of all of us.

We cannot permit this to happen again.

During the Civil War, when President Abraham Lincoln thought it expedient to silence those in the northern states who challenged his wartime decisions by incarcerating them in military prisons, he was rebuked afterward by a unanimous Supreme Court. The essence of the rebuke was that no matter the state of difficulties — whether war or pestilence — the Constitution protects our natural rights, and its provisions are to be upheld when they pinch as well as when they comfort, in good times and in bad.

Whether COVID-19 is coming back or not, our central planners have panicked. We do not have a free market in the U.S. in the delivery of health care; rather, we have thousands of pages of statutes, regulations and controls at the federal, state and local levels.

Those controls were revealed as manifestly deficient the last time around. The feds were so protective of their control of health care — an area of governance that the Supreme Court has ruled is nowhere delegated to them in the Constitution and, but for their power to tax those who defy them, is nonexistent — that they insisted that only the Centers for Disease Control and Prevention in Atlanta could be trusted to test for the virus.

It took weeks of begging by governors and mayors and health care professionals for the feds to relent. Of course, once they acknowledged that labs throughout the country were as competent as theirs, they realized that their incompetence had deprived all physicians as well as most private sector and state government-owned labs of the test kits themselves.

We all know how central economic planning diminishes freedom, produces scarcity and adds to the cost of products. Now we know that central micromanagement of health care kills people.

But these mayors and governors were not to be outdone by the feds in their totalitarian impulses. Many of them issued decrees that are as profoundly unconstitutional as Lincoln's efforts to silence dissent.

They ordered the closing of most businesses and nearly all retail establishments. They acted as if they, and not we, owned our faces. They shuttered religious institutions. It took a year for the courts to interfere partially with this madness.

The fulfillment of these totalitarian impulses put millions out of work, closed and destroyed thousands of businesses and impaired the fundamental rights of tens of millions — all in violation of numerous sections of the Constitution that the totalitarians swore to uphold.

And now they are threatening to do this again.

The Contracts Clause of the Constitution prohibits the states from interfering with lawful contracts, such as leases and employment agreements. The Due Process Clause of the 14th Amendment prohibits the states from interfering with life, liberty or property without a trial at which the state must prove fault. The Takings Clause of the Fifth Amendment requires just compensation when the state meaningfully interferes with an owner's chosen lawful use of his property.

Taken together, these clauses reveal significant protections of private property in the Constitution. Add to this the threat of punishment that accompanied these decrees and the fact that they were executive decrees, not legislation, and one can see the paramount rejection of basic democratic and constitutional principles in the minds and words and deeds of those who have perpetrated them.

Add to all this the protection in the First Amendment of the rights to worship and associate, and elsewhere the judicially recognized right to travel, and it is clear that these nanny state rules were profoundly unconstitutional, indisputably unlawful and utterly unworthy of respect or compliance.

Why is this happening again?

Throughout history, free people have been willing to accept the devil's bargain of trading liberty for safety when they are fearful. We supinely accept the shallow and hollow offers of government that somehow less liberty equals more safety. It doesn't. This is the government's dream — dominance without resistance.

This happened here with the Alien and Sedition Acts in the 1790s when the Federalists feared a second revolution and punished speech critical of them, during the Civil War when Lincoln feared dissent and Congress feared defeat and they locked up innocents, during World War I when President Woodrow Wilson punished the speech he hated and feared, and during the Great Depression when President Franklin D. Roosevelt feared economic calamity and seized property without compensation. And, after 9/11, fearing another attack, Congress secretly crafted the Patriot Act's circumvention of the Fourth Amendment and authorized the creation of the total surveillance state.

Of course, just one year ago, we free people were all in "lockdown" — a word used to describe confining prisoners to their cells.

This sordid history came about when the public was fearful of the unknown and trustful of

the government's bargain. But the liberty that was sacrificed for the safety that was promised is being taken away again.

Liberty is natural and personal. You can sacrifice yours, but you cannot sacrifice mine. Thus, personal liberty — the Declaration of Independence calls our rights inalienable, and the Ninth Amendment reflects freedom's nature as limitless — is insulated from totalitarian and even majoritarian interference.

Today, the fear of contagion again gives government cover for its assaults on freedom and poses a question the government does not want to answer: If liberty can be taken away in times of crisis, is it really liberty; or is it just a license, via a temporary government permission slip, subject to the whims of the politicians in power?

We cannot permit this to happen again.

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