

Press Article

Commentary on constitutional issues arising from the Coronavirus pandemic.

State of Emergency

On 16th March 2020 His Excellency Sir Richard Gozney, Lieutenant Governor, signed a Proclamation whereby a State of Emergency was declared in the Isle of Man. Such Proclamation was in relation to the Coronavirus pandemic and such official State of Emergency has been renewed and extended until 15th June 2020.

However, it rapidly became apparent that there was another, parallel, state of emergency. A series of Regulations were hastily passed by the Manx Parliament, Tynwald, which had the combined effect of restricting personal freedom to an extraordinary extent perhaps never experienced before, not even during the Second World War. For example, it became a criminal offence to undertake two outdoor walks a day or to continue to run a pub or to socialise at a brother's home. This quickly generated feelings of anxiety and panic in many inhabitants, both young and old, significantly affecting their mental welfare as offices, schools and businesses closed and busy streets fell eerily silent. It was a surreal experience whereby everyday activities suddenly became crimes overnight and a climate of fear seemingly descended on the population.

The first Prohibitions on Movement Regulations, passed by Tynwald on 31st March 2020, contained a power of arrest by the Police and punishment by the Court by a fine of up to £10,000.00 or 3 month's custody. Significantly, in this regard the Isle of Man became the odd one out in comparison to the UK. Whereas other jurisdictions enforced breach of similar Regulations by way of Fixed Penalty Notices (on the spot fines) the Isle of Man Regulations did not initially provide for this.

As a consequence the IOM Constabulary commenced what appeared to some as the wholesale arrest of individuals for breach of Regulations and the Court began to sentence such offenders to jail. A total of 96 arrests including 15 juveniles were made in a little over 2 months. 26 adults and 1 juvenile were subsequently given custodial sentences for breaching the Regulations, the adults typically being jailed for 1 month. The Prison was faced with a sudden influx of prisoners and all new detainees arriving at the gaol were initially held on an Isolation Wing. The Minister for Home Affairs has recently confirmed in

Tynwald that it is true that for a certain period of time the Prison put in place a so called "red" regime whereby all new arrivals were denied any showers, outdoor exercise or phone calls to friends and family for up to 2 weeks. In effect such new prisoners, both male and female, were locked in their cells 24/7 with the door only opened once a day briefly for a delivery of food and medication. Whether or not such treatment of detainees on the Isolation Wing at the Prison amounted to inhuman or degrading treatment contrary to the European Convention on Human Rights may well be a matter to be decided in appropriate forums at a future day of reckoning.

On the one hand, there are many taxpayers who have commended Parliamentarians for responsibly passing requisite legislation, applauded the Police for being vigilant and proactive, praised the Magistrates for sending out a necessarily strong and consistent sentencing message demonstrating the vital constitutional role played by a non-politicized judiciary and congratulated the penal institution on coping valiantly with an extremely challenging health situation. To this group the actions of officialdom are lauded as an impressive success.

On the other hand, there are decent local men and women who have been deeply troubled that draconian legislation was passed with negligible public consultation; frustrated that it has been necessary to resort to formal Freedom of Information requests when public bodies refuse to voluntarily disclose matters of obvious public importance; angry that once good neighbours and friends were swiftly turned by bureaucrats into snoopers and snitchers; genuinely appalled and ashamed by the alleged brutal conditions endured by a number of inmates, some unconvicted, on the Isolation Wing at our Prison in Jurby; concerned that the Police have acted in a disproportionate and unduly heavy handed manner particularly with regard to the controversial arrest of 15 children; perturbed that the Constabulary in effect requisitioned the TT Grandstand Tower to spy on unsuspecting pedestrians and motorists using Glencrutchery Road and somewhat sceptical that recent handwritten letters from the Police to the Island's elderly amount to nothing more than a belated public relations exercise. To this group the powers that be have been seen in their true colours.

Equally, whereas there are those who are seemingly quite willing to live in a state of permanent lockdown, happily abrogating all personal independence and responsibility and comforted by the thought that Big Brother and Nanny State are outside crusading to keep everyone safe, there are also many right-minded folk who have found the recent brief taste of totalitarianism almost unbearable. Not just a physical lockdown but a simultaneous lockdown on personal autonomy.

Because what this government has in effect asked its citizens to do is not just stay at home but to pause ordinary processes of reasoning and intellectual discourse. To blithely agree with the received scientific wisdom, to meekly accept without a trace of dissent the advice given out at daily ministerial media briefings and to tune into Manx Radio and listen attentively as the Police Twitter feed is unquestioningly regurgitated. Basically to stay at home and suspend disbelief.

It is these dark and sinister forces of oppression and conformity which disturb many libertarians. What they ask for is to be treated as mature adults not as nodding donkeys. To be trusted to reasonably make up their own minds on the available evidence. After all, isn't this what juries do in court?

In the topsy turvy world of authoritarian politics what apparently counts is not what natural freedoms the State has been justified in taking away from its citizens but what freedoms the authorities believe its well behaved residents can be permitted to have back.

There have been suggestions in some quarters that there should be a Select Committee or even a Public Inquiry established to examine the reaction of this Administration to the Coronavirus pandemic. That will be a political decision. But what is crystal clear is that the principles of democratic accountability, careful scrutiny of legislation, open transparency and proper public consultation have never been more relevant. Equally, never has it been more important to have a robust political opposition, a quizzical and unshackled press and an independent Manx Bar. Without these appropriate bulwarks, checks and safeguards much of our cherished way of life is in peril.

However, there is something much more profound at stake than mere Regulations. As the severity of the Coronavirus health crisis recedes it is likely that the official State of Emergency will soon end. But the other, parallel, state of emergency will continue. This is the existential threat to individual integrity; the real danger to our personal liberty, expression and well-being. Essentially who we are and aspire to be as human beings.

So the clarion call goes out to see through fake news and Establishment propaganda, to fearlessly call out injustices, to shine a light on murky vested interests and abuse of powers and not to turn a deaf ear to the cries of prisoners or a blind eye to the suffering of the disadvantaged.

For just as the battle against Covid-19 has been described, rightly or wrongly, by one microbiologist as a war against an invisible, mysterious and lethal enemy, so the same can equally be said about the spiritual battle against the swirling forces of authoritarianism.

We must resist and fight against this menace to our most fundamental personal liberties, so that we can always be, as we sing in our dear *Ellan Vannin* nation, "as free as thy sweet mountain air".

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