

Protecting the rule of law when it's needed most

The Constitution in the Time of COVID-19

The novel coronavirus pandemic has presented radical and difficult questions for civil libertarians. While extraordinary times may require extraordinary measures, Cato scholars have continued to urge policymakers to justify those impositions, while pushing for specifics on when and under what circumstances the measures will be lifted.

In a March 27 *Cato at Liberty* post, Matthew Feeney, director of Cato's Project on Emerging Technologies, asks, "How Should Civil Libertarians Respond to Pandemics?" He offers an important reminder that "tragedies, panics, and crises have a tendency to result in bad policy" and that "even when emergency measures are effective they can sometimes stick around longer than necessary."

Feeney notes that proposals for intrusive, technology-based surveillance measures to track infected persons are unlikely to be effective, despite moves to impose new expansions of cellphone tracking and warrantless surveillance. And importantly, public officials should try to define the conditions under which lockdown orders and restrictions on freedom of movement will be lifted, even if a set end date cannot yet be ascertained.

In a March 21 commentary, "COVID-19: Let's Never Again Take Our Consumption Freedoms for Granted," Ryan Bourne, R. Evan Scharf Chair for the Public Understanding of Economics at Cato, points out



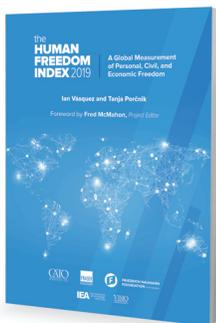
how the current crisis underscores how precious our everyday economic liberty is.

Observing the punishing shutdown of his own neighborhood's restaurant district, Bourne was reminded how our essential economic freedom "also includes the freedom to choose what and where to eat, drink, watch, or play, at your own convenience. In countries such as the modern U.S., we take those freedoms for granted. But we shouldn't. They are a remarkable inheritance that we should cherish." While such measures may be necessary for the immediate emergency, the costs of the loss of those freedoms are real, and they must be restored as soon as possible.

While the crisis has proved trying for some constitutional rights, one silver lining may be the vindication of federalism and

state-by-state governance. With state governors in the spotlight on the front lines, and a dysfunctional federal response, the ability of states to respond to their unique circumstances has proved invaluable. That was the theme touched on by senior fellow Walter Olson in a March 20 op-ed in the *Wall Street Journal*, "Federalism and the Coronavirus Lockdown."

This decentralization ensures that governors are in the driver's seat for lockdowns and closure orders in their states. For this reason, the duration and other details of these measures have not been set—and cannot be rescinded—by the federal government. This has also enabled needed changes to be made more nimbly when rushed initial orders proved flawed or unsuitable in unforeseen ways. ■



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