

Joseph Drew

# Natural Law & Government

After the COVID-19 Revolution

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# Chapter 1

## Natural Law and Government, or, After the COVID Revolution?



*Leaders acknowledge that these new restrictions will change the way we live and expressed deep regret for those business owners and employees who will be impacted. The goal is to reduce the spread of the virus, to flatten the curve, and to save the lives of fellow Australians.*

Scott Morrison, Prime Minister of Australia,  
Media Statement, 22 March, 2020

*[They] will use their subjects as beasts, according to the violence of their own wills and inclinations, and other passions, as wholly carried away with the lust of power.*

Josephus Flavius in Whiston (1987, p. 156)

**Abstract** Government is both an essential ingredient to human flourishing, but also represents the greatest threat to human dignity. Thus, in order for people to become all that they might be it seems necessary to establish forms of government that promote its best attributes, but also restrain it from its worst inclinations. In this chapter I first set-out my motivation for writing this third and final part of my local government trilogy. Thereafter I provide a brief explanation of key natural law concepts and explain what it is that makes human dignity both unique and worthy of respect. Following this I survey some of the extant work directed at limiting the worst excesses of government (something which seems necessary to promote human flourishing). I conclude with an account of how I propose to convince you that local government, in particular, is critical to this aim.

**Keywords** COVID-19 · Coronavirus · Leviathan · Eudaimonia · Human flourishing · Reform · Pandemic · Natural law



The purpose of this book is to establish a robust philosophical foundation, that any reasonable person might be expected to assent to, and then use this as a guide to prescribe appropriate remits and practice for government. Over recent years it has become increasingly apparent to me that we have drifted away from a shared understanding of why we have government at all. It thus comes as no surprise to me that both the scholarly literature, as well as actual practice, has become directionless and often results in prescriptions contrary to the best interests of citizens. My thesis is that government is fundamentally a moral endeavour which ought to be directed at helping people to flourish and in the following pages I will set out my case for why this is so, and how it might be done.

Before I do so, however, it seems incumbent upon me to issue a few warnings. If you are easily offended then I suggest that you either need to prepare yourself to be offended, or alternatively close the pages right now. In similar vein, if you are unwilling to have your opinions contested then likewise close the book, or resign yourself to being outraged for the next dozen hours or so. Indeed if you believe that you are already flourishing then I suggest that you will quickly realise that you have been deluding yourself. If however, you recognise your (and my) sad plight, and dare to dream that things might be different, then I think that you and I will get along just fine.

Like my other sole-authored books (*Reforming Local Government*, and *Saving Local Government*), this tome has some uniting themes that will run throughout the entire work. First, this book will place a heavy emphasis on human flourishing (people perfecting themselves – see Chap. 2) and the natural law response to the constraints imposed on our potential by both government and ourselves. It might be noted that I draw on a broad range of natural law scholarly traditions – ranging from Aristotle, to Aquinas and Maimonides (which is rather unique in modern scholarship) – because I concur that we should ‘hear the truth from whoever says it’ (Maimonides, 1956, p. 153). Second, a common thread running the length of *Natural Law and Government* will be government and personal responses to coronavirus, also referred to as COVID-19. I guess I could have used any number of examples to demonstrate why we need to start implementing some of the theories and ideas that I set out in this book. However, I chose coronavirus because it is well-known by all of us and also a salient example of what happens when the institution of government, that we rely on to flourish, tips out of balance and unduly emphasises the common good at the expense of human dignity (see the next section for concise definitions of key natural law terms such as these).

People who have read my work or heard me speak will be well aware that I have been raging against Leviathan<sup>1</sup>-like government for many years. Indeed, the quote at the beginning of this chapter is something that I have employed many times to demonstrate that the fear of government turning into a monster that destroys human dignity (and hence flourishing) is almost as old as the idea of government itself. As

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<sup>1</sup>Leviathan was the sea monster mentioned in various books of the Judeo-Christian holy books, said to instil fear into the haughty and proud (Drew, 2020a). The term was introduced to economics, in a pejorative sense, by the great James Buchanan (1975).

a student of natural law philosophy I am well aware that concentrations of power and competence represent a significant danger to us all – dangers that we have sadly experienced many times in history (for example the national socialism of Hitler or the communist regimes of Stalin) but still fail to learn from. I often reflect on these events in history and shake my head in wonder at how people could have been so inert in the face of the obvious evil intentions of their leadership. However, I think that it is true that ‘despotism would arrive among them quietly bearing sweet promises to care for them in the intimate details of their lives, so long as they agree to live once more as serfs’ (Novak in his famous work *On Cultivating Liberty*, 1999, p. 50).

Now please don’t misinterpret what I am saying here. I am not claiming that we have already been made serfs, nor am I trying to suggest that evil of the magnitude of the twentieth century events I referred to has or is being inflicted on people. However, it is beyond doubt that COVID-19 responses have resulted in an erosion to both human dignity and liberty. Whether or not this was justified, and what the ultimate moral implications of coronavirus responses are likely to be is a matter for the conclusion of this book (and a case that I will build up during the course of the intervening chapters). For now I would just like us to agree that coronavirus responses do illustrate the tension between human dignity and the common good, and will be a universally known exemplar that we can employ to understand how my theories and arguments can be applied to the real world. Agreement at this level is all I need for now.

It should also be noted that I take coronavirus quite seriously. It is a potentially deadly disease that seems to be particularly dangerous to people who have the relevant identified co-morbidities ‘hypertension, diabetes, cardiovascular disease, or chronic lung disease’ (Jordan, 2020, p. 1), or who are frail, obese, or elderly. Those who know me will be aware that I am chronically ill from medical treatments arising from a catastrophic highway motorcycle accident 15 years ago, and I am thus one of the people who should be particularly concerned about the virus.

Indeed, as at the 15th June 2021, when I commenced this book, the World Health Organisation (WHO) was reporting that there had been 176 million cases of the coronavirus, 3.8 million deaths, and 2188 million people vaccinated against the disease. This is from a world population in the order of 7674 million people (WHO, 2021a, b). Moreover, huge disruption to the global economy has taken place (although one probably wouldn’t realise this from the dizzying levels of various leading stock indices), significant national debt has been incurred, and high levels of inflation are starting to emerge. In addition, the pandemic has raised and exacerbated international tensions (especially with China), and radically altered the otherwise likely outcomes of domestic politics (for example, Trump’s 2020 defeat, or the unexpected large wins by incumbent state politicians in Australia). Furthermore, it has caused people to abruptly change their behaviour – often by threat of legal enforcement – ‘stay at home orders’, wearing of masks, social distancing, loss of jobs and businesses and homes, change to where work is done, the inability to travel (even sometimes within one’s own nation)...the list goes on. Had either you or I predicted that the majority of people in democracies would have meekly complied with such measures back in, say, 2019 I think we would have been ridiculed (or

locked away in a padded cell). It is remarkable just how much people have been willing to give up for this virus response.

It might prove helpful to recount the key moments in the evolution of the public policy response to coronavirus for future generations of readers or people emerging from a hermitage. According to the WHO (2021) the Wuhan Municipal Health Commission reported a cluster of cases on the 31st of December, 2019. On the 5th of January, 2020 WHO published an outbreak alert and had established an emergency committee by the 23rd of the same month. On the 11th of March 2020 – it has to be said under extreme pressure by mainstream media – the WHO declared COVID-19 to be a pandemic. For most people of the world life has never been the same since, and many wonder if life will ever return to normal (*not* COVID normal) again.

Early on in the scheme of things I became seriously concerned about the absence of a diverse range of academic voices with respect to the coronavirus responses of government. To be sure we had select epidemiologists and economists relatively active, but it seems like philosophers, theologians, and public administration scholars were less active than might have been ideal. As a result no-one seemed to be raising some of the really important issues that needed to be aired – such as the moral implications of responses, the public administration efficacy of interventions, or the consequences of the precedents being set. This neglect was particularly surprising given that the whole justification for government in the first instance rests on the moral enterprise (see Chap. 3).

Spurred on to action by this apparent moral vacuum with respect to public policymaking I embarked on a letter writing campaign to various political figures, and also peak bodies that ought to have been more active (including religious organisations). I was roundly ignored. I then drafted an exceptionally good and novel academic paper (if I do say so myself) which I duly submitted to some of the top academic journals. One of the best public administration journals in the world rejected me and stated that they had made an editorial decision not to get involved in the coronavirus debate. Another prominent journal said that they were not comfortable considering academic work that ran contrary to important narratives. Another journal rejected me for daring to critique the work of the dominant public policy success ‘club’ who control the evaluation literature ruthlessly. Finally, an A-ranked journal reviewed the paper ultimately leading to its publication.

I tell this – somewhat embarrassing – story to illustrate what prominent parts of the academic community were doing during the early phases of the coronavirus public policy response. Academics ought to have been at the forefront of the important debates and been actively challenging consensus *assumptions*, especially when important moral and economic issues were at stake. Sadly, it seems that many of the academic community were largely missing in action at this time. Sure you might conclude that I am just giving vent to sour grapes – all academics understand that the peer reviewed system doesn’t always result in the publication of the best work in the best journals – however, it is notable that I had published in all of the journals I visited with this particular paper multiple times in the past. Moreover, the paper

did eventually find a home in an A-ranked outlet (so clearly it wasn't complete rubbish).

My argument in the paper that I refer to was that we needed to apply a moral lens to the evaluation of public policy (see Chap. 6). To summarise the state-of-play very briefly, popular extant policy success frameworks examine outcomes in terms of programmatic (facts and figures), political (subjective evaluations, blame games and heresthetic<sup>2</sup>), and process lenses (the journey to get from a mere idea to an implemented program – this last lens is controversial in some circles) (for a good review of this literature see Michael Howlett, 2012). This lens framework is useful for separating out the key ways of 'knowing' and thus reducing the potential for bias, disagreement and conflation. However, I held – and continue to hold – that it is completely deficient when it comes to ascertaining whether public policy has been consistent with the justification and source of government legitimacy – the flourishing of people (Drew, 2020a, 2021; Messner, 1952; Aristotle, 1992).

Here comes my first potentially offensive remarks: if we fail to use a moral lens then we end up having to conclude that public policies such as the murder of over seven million Jews, gypsies, homosexuals and political dissidents in the first half of the twentieth century was a great public policy success. In programmatic terms the Nazis managed to process huge numbers of people in a relatively short period. Politically, the program did not result in any decisive citizen backlash and the blame games (in particular) were very effectively executed. Moreover, most people agree that the processes were extraordinarily efficient. So, it seems that under extant frameworks we must conclude that this horrible incident in our history was a great policy success.

Only when we apply a moral lens to this blight on humanity do we acknowledge that it was, in fact, the biggest public policy failure in our history (and we have had many). Now I am not suggesting for a moment that we will come to a similar conclusion regarding coronavirus responses when subjected to a moral lens evaluation (see Chaps. 6 and 9). However, I do believe that unless we start thinking about public policy interventions through a moral lens that we risk ignoring important threats arising from what has, and is, being done.

As a student of natural law philosophy I am extremely concerned about the high rate of erosion to human dignity and wonder whether our quest for human flourishing has sustained lasting damage. As an economist I think that we are likely to collectively rue the actions of many governments and central banks in the future (I also think people have very short memories and will swallow any theory promising easy ways out of difficult economic plights). As a citizen I am appalled at the lack of proper debate or consideration given to rather monumental public policy interventions and the silencing of anyone who dared to defy the dominant narrative (I don't think any Australian will ever forget the disturbing image of police arresting a heavily pregnant lady for allegedly posting anti-lockdown material to her Facebook

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<sup>2</sup>Heresthetic is the art of political manipulation famously described by the late William H. Riker (1986).

page; BBC, 2020). As a father I am just very sad for my children who have had their freedom and perhaps their chances at future flourishing significantly and adversely impacted upon by our acts and omissions.

Thus, in one sense, this book is the beginning of an important conversation that we probably should have had back in March 2020.

## 1.1 A Short Introduction to Human Flourishing

All of my books thus far have featured an account of my farm and the goats that I run on it, in particular. It started as a bit of a joke with my boys (Samuel and Tom) who claimed that I would not be able to link two of my favourite topics – goats and local government – in my scholarly publications. It has since become a deeply entrenched part of my ‘brand’ and even international scholars now routinely ask after the health of my goats. Moreover, I have found that the behaviours and social interactions of my farm animals have provided much fodder (pun intended) to expound quite difficult theoretical concepts.

My goats are not free. I choose when they will be penned and fed, when they will be milked, and which paddock they will be allowed to graze in. Therefore, it follows that my goats are denied choice which would otherwise probably be orientated to the pursuit of all of their ultimate ends (of perfect ‘goatiness’). When my choices are for the good of the goats – such as when I rotate paddocks so that the grass can recover – then perhaps my restrictions to their freedom contribute to their flourishing (to be all that they can be). In these cases one might argue that this is a reasonable denial of liberty because it serves their ends in the fullness of time. However, when I choose to let the goats out later in the morning because I want to first drink my coffee<sup>3</sup> then clearly I have impacted on their capacity to choose and ‘be’ for no substantive good (in a moral sense and from their perspective). In these cases it would be hard to justify my actions were I to believe that goats deserve the same kind of moral consideration as do people.

In addition to these constraints that I have put in place, my goats struggle to flourish because they are also victims of their own bad habits (or vices). For example, Jonquil,<sup>4</sup> the queen of our herd, has a bad habit of neglecting her kids. For the first 7 years of her life she lived on a commercial dairy where it is common practice to take the kids from their dams (mothers) immediately and raise them separately (this allows the farmers to have predictable milk flows and can also disrupt the transmission of some diseases). As a consequence, Jonquil – against all natural instinct – is still firmly in the habit of wandering away from her kids, even

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<sup>3</sup>Or when it suits me to change my watch to reflect daylight savings – a concept alien to goats it seems.

<sup>4</sup>Sadly Jonquil – likely the most famous goat in the scholarly literature – died of old age before I finished this book. I do however, continue to keep her grandchildren and great grandchildren on my farm.

immediately after their birth. The result is that we end up having to do critical tasks that we would prefer the dam to perform and Jonquil misses out on forming the close mother and daughter bonds that other goats in the herd frequently demonstrate.

The goats also fail to flourish because they remain captive to their natural urges and ignorance. For example, my goats simply can't resist the temptation to eat every dandelion flower in sight (dandelions are goat candy) when they get let into a fresh paddock. Moreover, it seems that they are entirely ignorant of the various stages associated with plant reproduction. If the goats could redress their ignorance and resist their natural urges then they would leave some of the dandelions to set seed and ultimately end up much more satisfied. But alas my goats seem incapable of reason. Moreover, I suspect that even if one of my goats did suddenly become enlightened that the overall quantity of dandelions wouldn't increase anyhow – in all likelihood the others would just take advantage of the enlightened one's prudence and eat an extra portion. Thus, it also seems that to truly flourish my goats would need to recognise and co-ordinate for the common good.

People differ to goats in some important ways. The most important difference is that people are capable of transcending their animal urges and immediate desires in order to achieve higher and peculiarly human ends (there, I have now also offended all of the people who put animals on the same moral plane as humans). Only humans are capable of abstracting and making complex long-term plans to reach states of perfections that are contrary to their animal natures. Moreover, humans alone reflect on their choices (Messner, 1952). Otherwise stated, only humans can hope to come close (albeit a pale reflection) to the 'uncaused cause' long postulated by philosophers to be a key characteristic of the divine<sup>5</sup> (George, 2008, p. 177).

Human dignity therefore differs significantly to goat dignity (were such a thing defined). In natural law thought human dignity is given to be the right of people to pursue their existential ends without undue interference (Messner, 1952). That is, humans have the capacity to 'be' much more than their animal selves, transcend their current existence, and thus reach higher states of flourishing. Because of this potential most natural law philosophers believe that humans ought to be free to choose and become all that they can be without *undue* hindrance. Certainly for cases where the choice of a person will result in detriment to their self, or unreasonably impact on the ends of others, then there may be a case for interference. However, the presumption must always be had that those who seek to interfere should first prove that they have a right to reach into the lives of others (Finnis, 2013). Moreover, to realise our existential ends we (not others) must act on our choices – it is in choosing and doing that we constitute ourselves (Rhonheimer, 2000) and by striving that we become fulfilled. For instance, I don't think my goats would care if they knew I had a large hand in them achieving the pinnacle of goat existence, but I know for certain that my children would.

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<sup>5</sup>Indeed, this is what it means in the Holy scriptures of the great monotheistic faiths when it is asserted that people were made in the image of G-d – this is not a statement of physical similarity with the Divine, but rather an assertion of our potential for perfecting our natures.

In a number of other ways people are similar to goats. For instance, we all have habits and natural urges that we must resist in order to choose other actions more suited to our ultimate ends. Bad habits can easily become our second natures and deflect us from surpassing our animal natures and realising the highest human ends. A person who does not redress bad habits cannot realise their ultimate ends in the same way that Jonquil cannot achieve perfect goatiness. In similar vein, we are all captives to our ignorance (however, unlike my goats we can observe, reason, google, or read our way to knowledge and ultimately wisdom). Moreover, people are also fundamentally social creatures that need the co-operation of others to truly flourish (although in most instances my goats have little chance of receiving the co-operation of the herd that they might need) and this is where our ability to articulate the common good becomes particularly determinative.

The common good is often defined as the help accruing to others as a result of our co-operation which is more than the mere sum of parts (Drew, 2021). When we co-ordinate our actions we can all end up far better off. Moreover, by striving together for a common goal we produce collaborative goods as a side-product (Hittinger, 2003) – friendship, filial bonds, and a sense of community (this is why I am always careful to note that the common good exceeds the sum of individual contributions). The potential for collaborative goods thus establishes both practical limits to the outsourcing mentality of economists (and some governments) and also explains why living in a family or community differs so much from merely co-existing in relative geographic proximity to others.

In sum, people can only expect to truly flourish when their dignity is cultivated which often requires the co-operation of others. Moreover, to co-operate and co-ordinate requires institutions of government, but these very same institutions introduce significant risks to human dignity. The question of how to mitigate the risks of Leviathan-like government is thus a very important matter and in the next section I outline three of the most promising approaches articulated to date.

## 1.2 Some Extant Responses to the Threat of Leviathan

Government exists to foster and protect the common good, which is essential to human flourishing. However, government also presents a clear and present danger to human dignity (which is also critical to human flourishing). Since ancient times people have sought to discover means by which the Leviathan-like threat of government might be constrained. For instance, religious prophets often tried to impose divine constraints on errant monarchs (Whiston, 1987). In more recent times sophisticated secular constraints have been proposed and in this section I briefly survey three of the most influential proposals.

Perhaps the best-known thesis to constrain government is the exit and voice dichotomy proposed by Albert O. Hirschman (1970). Essentially Hirschman (1970) argues that there are only two options open to anyone presented with an objectional state of affairs – the person can either try to encourage the other party to change



(voice), or leave (exit). The most straight-forward pathway to voice in a democracy is the ballot box which is an anonymous and low-cost option of signalling one's displeasure (Drew, 2019). However, voting is infrequent, sometimes based on incomplete information, and often confounded by a bundle of issues. The alternative to voting is to try to influence for a change of behaviour through more direct means, perhaps collectively. However, this is a much more public proposition that requires contacts, time, and skill to achieve success – things that most of us tend to lack. Moreover, persuading others to change behaviour implicitly means that we must first convince them that they have previously erred and I believe that this is a rather formidable task (after all, I am always right, aren't you?).

If one doesn't think that the political path is a viable option then Hirschman (1970) cleverly proposed that an adaption of economic signalling might represent a better way forward. Exit is clean cut and decisive (it definitely should relieve a person of a particular objectionable situation). However, it comes with high pecuniary cost (associated with moving home), and presumes that there are better competitors in the 'government marketplace'. Moreover, Hirschman (1970) believes that either the loss of revenue or the loss of members arising from exit will encourage errant management to mend their ways. However, I think that many objectionable governments may well breathe a sigh of relief when the kind of person who is likely to exit does in fact leave (see Drew, 2020b). Indeed, this category of person – referred to as the 'alert' – is in fact also the most likely to directly voice.

The 'alert' are the well-educated, well-connected, and well-resourced citizens. They make up a small but important part of most communities (especially if one is interested in the potential for an errant government to recuperate). It is the threat that the 'alert' might leave that is believed by Hirschman (1970) to make their voice more powerful and this may provide some measure of protection for the 'inert' (the anti-thesis of the alert). Indeed, this hope that the alert might incidentally help the inert explains why it is important to strengthen the propensity to be loyal to a community (and thus retain a critical mass of alert persons) – something that Hirschman points out can be achieved by introducing measures that amplify the power of both voice and exit.

Like most brilliant work, Hirschman's (1970) exit, voice and loyalty thesis seems rather obvious and sensible (but we should always be mindful that no-one else had formulated this idea before his genius did so). However, there remain a few particularly formidable problems with respect to its efficacy for restraining Leviathan. First, the high cost incumbent on those who seek change (both in a pecuniary and social sense) means that few will indeed be able to do anything to redress disagreeable government and thus many will find it difficult to flourish. Second, in an exclusively land-based taxation system – such as is practised in most local governments – exit actually does little to reduce revenue and thus there are few reasons to think that executives would respond positively to the threat (this problem of muted threat has implications also for the effectiveness of voice). Third – and perhaps most importantly – if the alert do indeed leave it may well leave the poorly resourced and 'inert' essentially helpless (and perhaps even hopeless).



It is fair to say that the great James Buchanan had a much less favourable view of government than Hirschman and this might explain why he proposed a much broader set of measures over the course of his lengthy scholarship. Essentially he viewed governments as revenue maximising coercive monopolies. Moreover, Buchanan (1975) took a very dim view of politicians who he thought could be assigned to one of just three categories (all of which are likely to lead to higher spending): ideologues (who believe government ought to solve social problems), power trippers (who crave power and acclaim), and profiteers (who seek kickbacks and favours for their associates).<sup>6</sup> Back in 1975 this might have been an overly dismal view of things however, as I will outline in succeeding chapters, the lack of moral competency in our political leaders of today probably means that Buchanan's (1975) characterisation is now not so much of a stretch. In addition to his negative view of the political class, Buchanan also notes that most bureaucrats have an incentive to grow revenue as part of their empire building strategy. Thus, it seems that leadership in government is mostly occupied by a variety of people who all hold an expansionary bent.

To combat this revenue maximising bias of government, and thus support human dignity, Buchanan favoured the provision of government services at a highly decentralised and pluralised level. Otherwise stated he supported the provision of most public goods and services by relatively small local governments and his only floor on size seems to have been (an over-estimation of) the importance of economies of scale.<sup>7</sup> The thinking behind his prescription is that lots of relatively small, decentralised governments make exit a less costly affair,<sup>8</sup> promote yardstick competition, and also create democratic laboratories favourable to innovation.

Buchanan is thus firmly convinced of the potential for competition to enhance outcomes for resident consumers which is entirely consistent with the belief system of most of his economic brethren. However, despite this faith he also proposed a number of fiscal constitution constraints designed to make it harder for the revenue-maximisers. These limitations include balanced budget legislation (which requires that legislators at least match expenditure with sufficient revenue), debt brakes and ceilings (which means that legislators would need to get permission from either the Parliament or the people prior to exceeding certain thresholds of debt), and taxation limitations (whereby increases in taxation above a certain threshold require approval of Regulators or citizens). Taken together these kinds of measures might be expected

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<sup>6</sup>Moreover, I would add the categories of protectionist (people motivate to stand for government only in order to preserve current favourable treatment) and augmenters (those who run for local government (in particular) only to augment their incomes) as two important archetypes that should also be considered (see, Drew, 2020a).

<sup>7</sup>Economies of scale occur when average total costs decrease as output increases. It should be noted that many government functions are not amenable to economies and moreover that the size of the savings tend to be relatively insignificant when compared to other important objectives (see Drew 2020a and also Chap. 6).

<sup>8</sup>One might be able to move to an adjoining local government area without also changing jobs, schools and the like.

to provide hapless citizens with some protection from Leviathan. However, many decades of evidence and experience tends to show that clever politicians will come up with a myriad of ways to stick to the letter of the law, but soundly defeat its intention (Drew, 2020b).

Unfortunately, even Buchanan's broad competition and legislative restraints aren't a panacea for Leviathan-like government. First of all competition doesn't protect immobile factors such as taxable land. Second, for the threat of exit (which largely underpins competition) to be taken seriously we need to include some distortionary taxes in the revenue mix so that defection actually has an effect on what the revenue-maximisers most prize. Third, competition would clearly have less motivating potential for poorer governments, than for rich and this is a problem if we wish all to have a chance to flourish. Fourth, Buchanan doesn't seem to be able to contemplate the significant changes to democracy that would be required to vigorously enforce his fiscal constitutions (see Drew, 2020b). Fifth, he seems to assume that citizens have sufficient knowledge and interest in government to drive better performance.

A large part of the problem with both of the aforementioned theses is that they neglect the fact that government is fundamentally a moral enterprise. As I have noted repeatedly, the whole source of legitimacy for government is the common good, the entire reason for why the common good is important is human dignity, and a balance of both is necessary for people to flourish. Thus, putatively value-free scholarship – no matter how brilliant – will always struggle to articulate an ideal framework for government.

Johannes Messner (1952) could never be described as value-free. His seminal work – *Social Ethics* – is still regarded as an authoritative text in Catholic Social Teaching and also for most natural law scholars. The hefty tome commences with an account of natural law and humans, progresses to the family and lesser<sup>9</sup> associations, then the political sphere, and finally economics. It is, in fact, a comprehensive account of how natural law might be implemented in the 'modern world'.

*Social Ethics* doesn't just pay heed to values but is indeed orientated entirely towards a moral system focussed on teleology (that is, according to the purpose that a thing has). Messner (1952) follows Aquinas (2018), who had in turn based his thinking on the work of Aristotle, and the perfection he has in mind is a specifically Catholic one – to realise, as much as possible, the potential of *imago Dei*.<sup>10</sup> Not surprisingly, for a Catholic theologian, he views the Catholic church as supreme arbiter and authority on both spiritual and social matters.

Thus, in accordance with various papal encyclicals (see, for example, Pius XI, 1931) Messner (1952) emphasises the ontology of plural social forms and the

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<sup>9</sup>The use of the term 'lesser associations' in natural law thought refers to their size, not their moral status or importance. Indeed the smaller associations are the most prized by natural law philosophers.

<sup>10</sup>The *imago Dei* doctrine is derived from Genesis 1: 26. It is a statement about our potential for divine-like natures (to also be unmoved movers), not a claim that G-d is corporeal as some misconceive.

primacy of the family. Moreover, he frets over the intrusion of government into the lives of its people and the dependency on a secular authority that this ultimately gives rise to. Indeed, he states clearly that he sees much to worry about with respect to the paternal conception of the state. Furthermore, an important aspect of Messner's (1952) work is his emphasis on both moral and vocational education as facilitated by non-government providers (especially the family) – see Chaps. 2 and 8.

Messner's (1952) masterful work has been described as a 'sane, realistic approach to controversial and complex problems' (Johnston, 1966, p. 555). However, it is also clear that it is burdened by a few problems especially with respect to its applicability to the matter of Leviathan. First, the sheer breadth of the work inevitably leads Messner into fields that are clearly outside of his speciality (such as economics and public policy which are my speciality) which means that not all of his conclusions would receive the assent of experts. Second, Messner's (1952) work is unashamedly Catholic in orientation which means that it is very unlikely to receive the assent of sufficient numbers of people and hence be actually implemented. Third, and somewhat remarkably given Messner's exposure to the rise of National Socialism, he has an incredibly optimistic view of what might be achieved through social forces – something that later scholars such as Riker (1986) would have given short shrift to.

In many ways *Natural Law and Government* is my response to the aforementioned deficiencies I perceive in the extant works. The idea of this book is to set out a blueprint for how government could be redesigned so that it promotes the common good without unnecessarily intruding on human dignity. Otherwise stated, this book is an instruction manual for helping people to flourish – it will hopefully serve as a bridge between natural law philosophers and public administration scholars who can clearly learn a lot from one another.

In similar vein to Buchanan (1975) I believe that decentralised provision of most government services (excluding obvious national goods such as defence, macro-economic stabilisation and the like – see Chap. 5) by relatively small and homogeneous local governments might be expected to provide people with maximum opportunity to assert both exit and voice. However, I feel that some important changes to political and fiscal constitutions will be required to reduce threshold costs and thus also empower the inert (see the next section). In addition, and in common with Messner (1952) I also hold the view that government is fundamentally a moral enterprise, but I take care to present the natural law case in a way that doesn't require my readers to subscribe to a particular religious outlook (or any religion for that matter). In sum, *Natural Law and Government* should convince my readers that significant change must take place in order for people to achieve their perfections: in the next section I provide some broad brush strokes regarding how I shall make my case.

### 1.3 How I Will Convince You That Reforms to Government Are Essential for Human Flourishing

In the next chapter I set out more comprehensively what human flourishing is, and how it relates to government. In particular I spend some time explaining the importance of practical reason (having good reasons for acting) as well as the logic that can be applied to discern same (practical syllogism). I also present virtue as our second nature (and hence a worthy object of both law and education) in addition to making a survey of the ultimate good.

Thereafter, in Chap. 3, I set forth my case for moral government responsive to a natural law conception of human flourishing. I pay particular attention to the instrumentality of government, the duties of those who govern, the principle of double effect, and the principle of subsidiarity which contribute in important ways to striking an appropriate balance between human dignity and the common good.

In Chap. 4 I present an important political institution change which I believe is necessary to ensure that fiscal constitutions are observed, that voice and exit be heard, and also in order for the inert to be energised. In addition, I note the importance of education for the operation of a moral system of government.

Chapter 5 investigates the appropriate structure, size and remit of government. Here my focus is on moral capacity and accountability. I present evidence to show that economies of scale are generally not a sensible variable for setting a floor on size and also explain simple measures that can be implemented to mitigate the perceived limitation of size.

In the last chapter of Part I, I outline a model for evaluating public policy. I explain why a moral lens is both imperative and determinative. In addition, I describe why it is important to use a robust epistemology when judging public policy success.

Part II of *Natural Law and Government* focusses on the application of natural law to the main activities of government.

Chapter 7 examines the vexed matter of paying for government – especially taxation. I start with propositions articulated by Aquinas with respect to where the tax should be incident. I then show how the tax base for local government might be broadened to strengthen both voice and exit and hence make local government more responsive to the people's desire to flourish. I also explain how a tax on demerit goods can be part of the measures employed to encourage virtue and hence a good society.

In Chap. 8 I return to my first love – education. As a former school teacher and current professor I am well aware of the transformative potential of education to improve lives. Moreover, it seems that education also has an important role to play in forming and sustaining moral government orientated towards human flourishing. This education imperative was acknowledged by the ancient philosophers also and in this chapter I explain why it must be so.

Chapter 9 is my conclusion to *Natural Law and Government*. By the time that my readers get to this chapter I imagine that they will have a good sense of my

(moral) evaluation of the COVID-19 responses. In this concluding chapter I show how a natural law orientated response would have differed significantly to the response made by most countries. I also state plainly our duty as citizens to ensure that we do better next time, and how I personally propose to play my part.

## 1.4 The Hope

*Natural Law and Government* is the third and final instalment of my local government trilogy. It presents my most innovative and comprehensive account of the potential for local government.

My hope is that the book will stimulate debate and open people's eyes regarding how many of our governments have transformed into Leviathans which rob us of our potential to flourish.

I also hope that *Natural Law and Government* might ultimately find its way into the hands of some key decision-makers and influencers who also happen to be morally competent and benevolent (I know this is a huge ask, but I live in hope).

The book is dedicated to my children – Thomas and Samuel – who have a particularly keen understanding of the purpose of life and the potential of each person. Within these pages I hope that you will learn that your father 'did his bit' to prevent the rampage of Leviathan.

To my readers I say this: if you are anything like me you are both tired and concerned with the rhetoric about 'building back better'. What you, your children and friends need is to 'build back for human flourishing'. I know it doesn't have the same jazzy alliteration but if the coronavirus has taught us anything it must be that each of us have a duty to strive to perfect ourselves. This can only be achieved if we regain the balance between human dignity and the common good and also put into place measures to ensure that the Leviathan is never allowed to rampage again.

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# Chapter 2

## Human Flourishing



*NSW Police said officers were called out to a Woolworths in Chullora, near Bankstown, after an argument broke out between two women in an aisle over toilet paper. It said two women went to Bankstown Police Station about 8:00pm and were then issued court attendance notices for affray (ABC, 2020).*

*For some virtues are directed to curb passions: thus immoderate concupiscence is restrained by temperance, and immoderate fear by fortitude (Aquinas, [1273] (2018), p. 2413).*

**Abstract** The foundation for understanding how government can assist people to flourish is to know what the good ends of life are. After this has been established then one must discover the dispositions and practices necessary to transition from our current state of affairs to the preferred outcome. In this chapter I explore how human nature is at the heart of our individual and collective behaviour. I also explain the tools at our command to change behaviours in constructive ways. Moreover, I do so in a way that is largely independent of cultural traditions and religious convictions and thus can receive the assent of most people. The keen understanding of human flourishing that readers will derive from this chapter is the first step in discerning the role that government ought to perform in our life – which is, of course, the subject of the remainder of this book.

**Keywords** COVID-19 · Coronavirus · Human flourishing · Eudaimonia · Human dignity · Human nature · Good ends · Good life · Practical reason · Virtue

If I had to select just one word to describe the reactions of people and government to coronavirus, then this word would be ‘fear’. From early 2020 onwards most of the world was gripped by this emotion. Indeed, fear was particularly heightened in western nations long divorced from nature and death (death is largely now

institutionalised and impersonal) and also highly penetrated by mainstream and social media which played an important role in stoking up people's fears.

Fear is a powerful emotion that generally acts as a precursor to immediate action. However, in the case of COVID-19 most of us were specifically requested (or ordered) to take no action – to lock ourselves away and wait for others to act (to make a vaccine, save our job, purchase ventilators, or resuscitate the economy....). This prescription was at odds with our natures and likely served to exacerbate the distress that many people were feeling.

Fear (and most emotions) are not only part of our human natures but also the overriding and dominant force of animal nature. Otherwise stated the fear that many people felt in response to the unfolding coronavirus drama was largely consistent with our animal selves, rather than the higher and peculiarly human self (Maimonides, 1956). Indeed, fear is the same emotion that my farm animals show when they are confronted with something new or disagreeable – for example when my donkey, Judah, receives the attention of my brave farrier, Vic. When Judah is tied up for hoof trimming, she responds to anticipatory fear and the loss of control by immediately lashing out with very powerful kicks, often breaking ropes and anyone who might be unfortunate enough to get in her way. Of course, this behaviour is entirely irrational and only serves to draw out the procedure (which doesn't actually cause pain anyhow) thereby keeping her longer from her desired state. But alas Judah won't listen to reason on this matter and insists on behaving in a rather asinine way (pun intended). Moreover, she never learns from the experience, nor does she seem to be ashamed of her uncivilised behaviour – indeed, when the stimulus for fear (Vic) is removed and I untie her, she calmly trots out into the paddock as if nothing had ever happened.

The two ladies who form the focus of the quote at the beginning of this chapter had clearly given into fear and, as a result, behaved in a manner similar to Judah: fighting over toilet paper was completely irrational and only served to keep the women from their desired state (they ended up in the police station instead of sitting at home admiring their toilet paper). However, unlike my donkey, I imagine both women came to regret their uncivilised behaviour afterwards and also felt the burn of shame. At least I hope that regret and shame followed on from this event, because reflecting and learning from our experiences is an essential aspect of being human and doing better next time.<sup>1</sup>

The main point of my story is that people are capable of being something better than animals – we need not react immediately to stimuli in ways that don't necessarily contribute to our ends. Instead, we can perform peculiarly human acts – such as reasoning and choosing to ignore our natural urges. When we do so we fully become human and achieve the excellence unique to our kind. Otherwise stated, when we resist our animal self and instead embrace reason we attain a measure of human flourishing.

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<sup>1</sup> Hopefully they realised that if everyone were to share and take only what was required then there need not be any shortage at all (and hence no reason to hoard). Perhaps they also learned that violence was less productive than negotiation and that the fear of the law is good reason to curb the excesses of the passions.



Because people are social animals human flourishing ultimately requires co-operation from others (a fact it seems that was lost on our toilet paper combatants). As I outlined in Chap. 1 co-operation gives rise to the common good which is indispensable for us if we wish to become all that we might be. An important institution for cultivating the common good is government, however for us to design government that fulfils this remit it seems that we must first come to some sort of agreement about the potential of people – this is the focus of the present chapter. In the next section. I spend some more time investigating the unique human nature that gives rise to the natural law. I also mark out other important concepts that we will rely upon in our journey to attain human flourishing and government. Following this I explore the criteria for ultimate human good and also set out some of the prerequisites and lesser goods. Thereafter I take a closer look at practical reason – a concept that not only sets natural law apart from other philosophies but also sets humans apart from the lower forms. I then spend some time investigating virtue which is best described as our second natures. This chapter concludes with some brief remarks about how our better conception of human flourishing naturally leads us to a quest for more moral government.

## 2.1 Human Nature and Other Key Natural Law Concepts

‘When anything acquires its proper excellence, we call it perfect’ (Aristotle, 1998, p. 1689). Thus, when striking the keyboard to write this book produces the desired letters on this page I call the keyboard perfect because it has fulfilled what is proper to its nature. If, however, the keyboard frequently jammed or put down random symbols, then I would call it defective because it failed to do that for the sake of which it was created. Moreover, I think that it is certainly the case that most of us would choose to purchase the perfect keyboard rather than the defective one which tells us something important about preferences and judgement. Indeed, when anything performs according to its nature we generally consider it to be an ideal thing to have.

When living things act in a way that is proper to their nature we assign similar judgements. Thus, if I had a goat that twinned every year and produced three litres of milk a day for ten months I would call it perfect. Notably, I would not refer to it as defective if it performed some act that I disapproved of – such as head-butting another goat – if this act was consistent with the nature of the thing. Moreover, I would be prepared to recognise that most goats do indeed fall short of perfect and instead occupy a position on a continuum – first time milkers might produce relatively poorly but suggest great potential whilst even goats in the prime of their life (about five years old) might be a little less than perfect.

Similarly, humans that act according to their proper excellence would be considered perfect. As we noted from the motivating quote few people, if anyone (including the combatants themselves) would ordinarily consider animal reactions to emotions as being the excellence of humans. No-one grows up wanting to be a

person who merely reacts to every stimulus in an animalistic way. Moreover, when we act in this kind of fashion most, if not all of us, feel a sense of shame because we intrinsically know that we have fallen far short of the excellence of humans. Indeed, we know the proper excellence of humans in a practical way mostly as a result of reflecting on our own experiences (although the wise also reflect on the conduct of admirable people from either contemporary times or the past; Maimonides, 1975).

When we perform acts that contribute fully to our ultimate ends we might consider this to be consistent with our best nature. The precise characteristics of our ultimate ends is the topic for the next section so I will not inquire into it closely just now. However, it is clear that when we transcend mere animal emotions and reactions and instead act according to reason that we achieve something that is uniquely human. No other animal passes up a temptation because reason directed them to pursue some other, presumably better, purpose fully realised at some time in the future.<sup>2</sup> This ability to reason and resist natural urges is unique to humans and hints strongly at the excellence that we might ultimately achieve.

Like all animals we pursue what we think is good and shun what we think is evil. This is the first self-evident precept of natural law (Aquinas, 2018). However, as we have already noted, humans are capable of some unique orientations towards the good – such as abstracting, choosing, planning and reflecting. When we do apply reason in these ways in order to pursue the good then we express our human dignity. Human dignity is the right of people to pursue their existential ends without undue interference (Drew, 2021). Here I use the word ‘existential’ in a purposeful and specific way – I mean, like Messner (1965), to convey that we choose to be all that we can be with reference to our current existence. Moreover, our choices not only change our external environment, but also (mainly as a result of reflection) constitute our self (George, 2001). Indeed, reflecting on our choices and experiences has an important impact on our future choice possibility frontier. Thus, it has long been recognised that frequent failures to express our excellences can all but extinguish human dignity (Novak, 1999).

Abstracting, choosing, planning, and reflecting are what marks us out as human. This means that we can never use another human person as merely a means to an end because doing so denies *their* dignity<sup>3</sup> (their right to be free to choose without undue interference because of their unique human capacities) which unavoidably

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<sup>2</sup>For example every day I fast for twenty hours as it allows me to emulate my heroes (Maimonides and Aristotle), makes my brain sharper, and improves my health. To achieve this end I must walk past my wife and children every morning as they tuck into breakfast – I must resist the temptation to give in to the animal self in order to achieve something that I may not realise for many years (in the case of health goals). I know that no animal on my farm could ever do such a thing no matter how much I tried to reason with them (indeed I have tried to point out to Judah that she is rather fat and she ought to eat less and exercise more, to no avail).

<sup>3</sup>This definition means that the profoundly physically handicapped are every bit as human as the able bodied (Messner, 1952). Moreover, even the intellectually handicapped are as human as intellectual giants under a natural law conception of the person – they are on a different rung of the human ladder, but it is undoubtedly the same ladder. For this reason, most natural law philosophers extend full rights to the unborn foetus, disabled, and even those in a comatose state – unless we can

undermines our *own* dignity. Otherwise stated we can't sensibly claim that we have rights to freely choose because of our human capacity for choice and reflection (in particular), whilst simultaneously denying these rights to others with the same essential human capacities (notwithstanding the fact that their capacities might be less fully expressed).

The reciprocity of human dignity, when combined with the human capacity to communicate and co-ordinate for good ends gives rise to the uniquely human common good. The common good is the help accruing to people as a result of their co-operation which is more than the mere sum of parts (see Chap. 1). Humans uniquely can<sup>4</sup> communicate clearly with a view to purposefully co-ordinate actions in pursuit of sophisticated and oft-times deferred goods. Notably our participation in the common good need not rely on altruism – by co-ordinating our efforts we generally receive more than we contribute and thus individually have good reasons for co-operating (either the good is amplified by the co-operation of others – for instance when we all use good hand hygiene – or we receive ‘side-effects’ such as the collaborative goods associated with camaraderie and solidarity). Moreover, because the common good allows us to achieve more than we might through our own efforts the objects of the good are not static – as each person and the community at large achieves more in a constitutive sense the potential of each person and the community increases thereby pushing out the possibility frontier to make visible new objects of co-operation.

It is important here to note that when we speak of goods we are thinking of goods in a moral sense (as they relate to ultimate ends that we will examine in the next section), not mere goods (as in ‘things’, which is where the public value ‘priests’ fundamentally err – see Chap. 3). Moreover, the common good can only be accurately assessed by looking at the person (specifically their dignity) in relation to the rest of society (else we can easily fall into flawed thinking characteristic of utilitarians).

As I have previously said the common good is the main justification and source of legitimacy for government (see the next chapter). It thus ought to be the major reason for public policy intervention, laws and community education. Furthermore, the common good is also the thing that unites a group of people to form a true community, and this potential is amplified when government takes on a facilitator role as I recommend in Chap. 3.

Another important aspect of natural law philosophy is universalism. Just like the concept of the common good, the injunction that good reasoning ought to be universally applied (for all people who are the same in relevant respects) derives from the need to extend reciprocity to others capable of abstraction, choice, planning and reflection. Otherwise stated, if a public policy or law is reasonable for some, then it

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prove that the person is incapable of choice and/or reflection then we must respect their human dignity.

<sup>4</sup>I say that we *can* do these things, but the truth is that we often *don't*. Unfortunately, instead we sometimes find ourselves disagreeing about what the good might be or perhaps are let down by people who fail to apply reason and insist on acting in unhelpful ways.

must be reasonable for all – unless certain people differ in a way that is relevant to the object of the policy. For example, if it is good for a travel ban to exist for some Australians because they might contract and spread COVID, then it must also be good for politicians, elite sportspeople, and businesspeople unless there are indeed valid reasons for thinking that these people are somehow less susceptible or less able to shed the virus. Refusing to exercise universality when relevant differences do not exist creates different classes of human dignity which is, of course, the start of a very slippery slope<sup>5</sup> as the Germans graphically demonstrated eighty-odd years ago.

To decide what is indeed reasonable given specific circumstances we need to use the defining feature of natural law philosophy – practical reason. Practical reason is generally defined as having good reasons for acting (Finnis, 2013). The exercise of practical reason is the thing that sets us apart from animals and thus an excellence of humans. In the section that follows the next I will spend considerable time examining practical reason and its chief tool, the practical syllogism. For now it is simply enough for us to be aware of its importance – especially with respect to the justification for any public intervention (because the common good often requires people to alter their reasoned behaviour in the pursuit of ends we must provide good reasons for why they should do so or else undermine their human dignity).

The last key concept that I need to survey before I immerse us in the details of human flourishing is teleology. Teleology can be defined as a belief that it is in the nature of things to have a purpose. More specifically people adopting a teleological view of the world are focussed on ‘purpose’ as ultimate ends. For instance, the teleological purpose of government is to foster the common good, not issue laws or collect taxes (these latter activities are means, but not ends). In similar vein people have ultimate ends also and a rational person who acknowledges these ends will choose and plan to act in a way that allows them to realise these ultimate goods. The characteristics and identification of the ultimate ends of humanity is the object of the next section of this chapter.

## 2.2 What Is Human Flourishing?

We have already established, through the function argument,<sup>6</sup> that the highest good is likely to involve the things that humans uniquely perform – abstracting, choosing, planning, and reflecting. What we haven’t done yet is to establish the qualities that make ends good and worthy of pursuit; nor have we precisely articulated what these

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<sup>5</sup>I am aware that many perceive the slippery slope logic to be a lazy argument. However, I am also aware that the act of categorising human dignity invariably does lead to bad outcomes. Categorisation is a pre-requisite to facilitating the treatment of different people differently which can’t help but result in constraints with respect to opportunities to plan, choose, abstract and reflect.

<sup>6</sup>The function argument has its roots in Aristotelianism (1998) and I explicated on this in the last section with respect to keyboards, goats, and people.

ends are. This, of course, is a critical thing to do because when we understand what the good ends are we will then find ourselves in a position to orientate our own actions towards human flourishing and also properly understand the role that government ought to play in helping us to do so.<sup>7</sup>

For something to be considered a perfectly good end, worthy of human choice and yielding of flourishing, it must be a final cause.<sup>8</sup> That is, it cannot be merely a means for attaining a different end (although, of course, it might also fulfil this function) but be generally recognised as something that is worthy of pursuit for its own sake.<sup>9</sup> In addition, it is also clear that a perfectly good end should be self-sufficient – it should not stand in need of anything else because if this was the case then clearly it could not be considered perfect or excellent. It is also the case that the things which we label ‘good’ require effort to attain. One does not derive a sense of fulfilment or pride in something that is done for us, or to us (this is the error of both the socialist and the coddling parent). For example, no reasonable person would feel good about receiving full marks on an assignment if they knew that the marks were only reflective of a bribe paid or a ghost-writer. Moreover, it also seems that effort is required for us to think of something as real – for instance, one might dream of being a scholarly success and a merchant in truth, but if one wakes to find that one has no significant knowledge and hasn’t written a single scholarly word then one would hardly think that they had achieved something good. Related to this is the idea that perfectly good ends ought to be internalised and ultimately constitutive of ourselves. We expect that the things we strive for will become part of us in some way and change who we are – indeed, many people indirectly refer to good ends in defining themselves (ie. I am a farmer, or I am a professor). Finally, to be worthy of our pursuit a perfectly good end should have some kind of permanence about it – clearly permanence here refers to a continuum, but equally clear is the fact that immediate and transitory gratification ultimately leaves people feeling far from good about a thing and often precipitates wants (which undermine any notions of self-sufficiency).

As I noted earlier, the capacity to abstract, choose, plan and reflect in peculiarly human ways means that we are each deserving of dignity. However, it is also clear that because of things such as the length of our experiences as well as good and ill fortune that we all find ourselves on different rungs of the human ladder. This reality suggests that there is no single good end and moreover that people will achieve their

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<sup>7</sup>Those of my readers who are well read in philosophy will quickly recognise the influence of Aristotle (especially as it relates to the qualities of a good end; 1998, 2011), Maimonides (particularly evident in the hierarchy of ends that I enumerate; 1956) and Aquinas (notably with respect to separating out the pursuit of truth from attainment of true opinions, 2018). Like all contemplation of truth my efforts rest on the shoulders of giants which is a reflection of the finite nature of human life as well as the advantages conferred through co-operation (in this case, an intertemporal and impersonal co-operative effort).

<sup>8</sup>In the etymology of Aristotle, 1901 – see Chap. 6.

<sup>9</sup>Thus working as an employee is generally not considered an end, because we do so for other reasons which might instead constitute ends (for example, to earn money to buy possessions).

potential perfections of ends to varying degrees. Indeed, as recognised by the philosophers of old, there is a hierarchy of good ends to which one can direct one's choices and achieve differing measures of human flourishing (Maimonides, 1956). Moreover, our experience of life confirms that these various ends are not only worthy of pursuit for themselves but often facilitate the pursuit of other higher ends (Maimonides, 1956; Aquinas, 2018).

The end that fully satisfies the least number of qualities of 'good' is also the thing that seems to attract the highest number of pursuers – possessions. For many people the pursuit of possessions can occupy an entire lifetime and take on the nature of a final end. However, possessions are rarely self-sufficient (they generally require care and maintenance), and not something that becomes part of our self (no matter how much I love my donkey she will always remain external to me). In addition, possessions need not necessarily be preceded by effort (for instance when good fortune or inheritance bestows gifts on us). Moreover, possessions tend to be less permanent than any of the other ends that we will canvas. Indeed, this is a particularly salient feature of possessions – we can quickly be relieved of them due to both our own choices and the choices of others (a point sadly made to all the people who lost businesses and houses as a result of the coronavirus public policy responses).

The end of health is much less likely to be abruptly disrupted by isolated choices made by us or others<sup>10</sup> and thus has a little more permanence associated with it. Unlike possessions, our health always requires sustained effort and is always internalised. Thus, it is clear that the perfection of health satisfies more of the qualities of a good end, which justifies its higher ranking. Curiously, unlike the case for possessions, many people hardly pay their health any heed until it is diminished or comes under direct threat. This was particularly evident in the early phases of the spread of COVID when people suddenly started practising good hygiene and exercising – which are both reasonable and beneficial things to do at any time.

The perfection of virtue is also something that ought always to be practised. Moreover, it is an end that need not stand in want of any other thing (one can be destitute and on one's death bed and still practice excellence in virtue). As we will see in later sections virtue is a habit of sorts that requires reflection and repetition to master. It is something that becomes part of our very being and permanent at least for the span of our lives. We admire people past and present who are virtuous and pursue this end, not necessarily to receive anything in return, but for the elevation of our self. Indeed, many religious practices are orientated towards inculcating virtue for the elevation of the soul and I think most of us would agree that the demise of religion in western societies, in particular, has been accompanied by an erosion to virtue. This is particularly problematic because virtue is fundamental to productive co-operation and hence the good society necessary to facilitate a good life. Virtue is our second nature (it is also the first of the perfections that are unique to humans)

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<sup>10</sup>Health tends to be the result of frequent and consistent choices – such as the commitment to eat well and exercise – although it is true that sometimes a single bad choice can have catastrophic consequences (such as when the lady who ran over my motorcycle and I chose to succumb to her impatience in entering the highway).

and takes on particular importance at times when we are confronted by emotional triggers or need to take immediate action. For example, virtuous people would not have fought over toilet paper, nor given into fear at the emergence of the coronavirus.

The contemplation of earthly truth<sup>11</sup> is a perfection that also satisfies all of the qualities of a good end. It ranks above virtue for three main reasons. First, contemplation of truth is likely to emerge early (from birth itself and perhaps before), whereas virtue is modelled on observation and instruction that is generally perceived much later in infancy – as a result it can be considered to have more permanence. Second, contemplation does not rely on anything external, such as example or instruction, although it is likely to be promoted by these things. Third, unlike health, possessions, and virtue which all can't possibly exist beyond this life, there is both strong medical and philosophical grounds to at least be open to thinking that contemplation of a kind might persist after life (Moody, 1975, 2013; Plato, 1987). However, notwithstanding the potential for contemplation of truth after life (and also deriving continued benefits of earthly contemplation), there is no reason to think that the objectives and methods of contemplation will be permanent. For example, new facts, senses, logic devices and circumstances might come to bear on the person both in this life and a potential afterlife. This need not mean that previous modes and objects of contemplation were defective – it might have been perfect in every way given the context at a particular moment in time – but it certainly could suggest a break in continuity suggestive of impermanence and even lead to different understandings of some truths (especially metaphysical truths<sup>12</sup>).

For this reason I advocate for a higher perfection being the holding of true opinions – not merely contemplating truth as an exercise in a particular context, but instead arriving at truth that is resistant to challenge by new facts, arguments, senses, logic devices or circumstances. That is, true opinions must be eternal truths. Otherwise stated, whilst the act of contemplating truth may itself be a final end and sufficient in this life there remains a separate perfection which is the knowledge of eternal, unchanging truth (especially on metaphysical matters). This is the highest perfection that any person could hope to attain and a thing which not only fully satisfies all of the qualities of a good end, but is also consistent with the Aristotelian function argument. Man alone considers metaphysical matters and can hope to attain truth, although sadly few of us are likely to fully realise this perfection in the short span of our lives (Maimonides, 1956). I know this sounds like a religious matter – and the highest levels of attainment in this perfection would properly be regarded as religious contemplation – but it does not require anyone to practise organised religion. Rather truth seeking is an intimate quest motivated by

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<sup>11</sup>The contemplation of truth is similar to the natural law precept to use one's mind and will to pursue truth (Aquinas, 2018). Where I differ to Aquinas is in my understanding of original sin – unlike the Catholics I do not believe that people are defective from birth, nor do I believe that we can only perfect ourselves through grace, as a sublime beatitude. People can and do contemplate truth and reach varying degrees of attainment (Maimonides, 1956).

<sup>12</sup>As seems to have been the case for religious sages of high philosophical sophistication such as Aquinas and Akiva following apparent near-death experiences (Holtz, 2017; Chesterton, 1933).



metaphysical questions that have persisted since the dawn of time. These fundamentally natural human questions can potentially lead to the attainment of true opinions.

Now that we understand the five hierarchical good ends of human life we can easily perceive how our choices can lead to the attainment of human flourishing at different degrees and with different permanency. This should be clear to all and elaboration seems superfluous. However, the task remains to grasp the relationship between government and the various ends and this is largely the matter for the rest of this tome. For now though I will note that the perfections of both possessions and health require a certain minimum degree of co-operation which is often best facilitated by government such as through the establishment of a legal infrastructure to support markets, efforts to make demerit goods less attractive, and also the provision of public goods and merit goods respectively.<sup>13</sup> Virtue may also be aided by government (particularly with respect to the drafting of laws to curb the excesses of immoral behaviour and hence reduce exposure to bad examples) but is probably most effectively introduced by the lesser associations including notably the family and religious institutions. Similarly, there is a role for government to play with respect to guiding educational activities and providing educational infrastructure, but this too is subsidiary in nature to the family and lesser associations (religious and educational institutions). Only when it comes to the attainment of true opinions (regarding metaphysical matters) does government have no unique role to play and indeed no business for playing in the first place.

To better understand when government has a role it is important to use practical reason and this is the topic to which I now turn my attention.

### 2.3 Practical Reason and the Practical Syllogism

To live a life that results in human flourishing requires one to live according to reason. It presumes that people possess both free choice and the capacity to reflect on their own natures from within (Rhonheimer, 2000). In theoretical reason – upon which we have been occupied until now – the objective is to understand the teleological ends of humans. In practical reason, we are orientated by these ends to take specific actions in particular contexts (that is, practical reason is directive, rather than merely suggestive or absolutely imperative).

In its simplest terms practical reason is the giving of good reasons for action (Finnis, 1998). It is thus a fundamentally practical task.

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<sup>13</sup> Merit goods are things such as reading library books which are widely held to hold some intrinsic virtue that can be internalised by the person. Public goods are items that are both non-rival and non-excludable in consumption such as street lighting. Demerit goods are things for which consumption may result in an erosion of virtue or promotion of vice (such as pornography). Private goods are the legitimate object of the market and are both rival in nature and excludable (see Drew, 2021).



The ancient philosophers believed that it was reasonable for all people to order their lives according to the ends of the perfections, even if a given person happened to be mistaken about the goodness of such ends (see, for example, Aristotle, 1998). To do otherwise would result in a directionless existence and human hopelessness (rather than flourishing). If we apply the logic device of *kal vahomer*<sup>14</sup> then it becomes clear that it is even more important to use practical reason when it comes to public policy because policy is invariably directed at changing people's choice or restricting their actions (and hence affects human dignity). Otherwise stated, if we should have good reasons for acting in our own lives, how much more so should we give good reasons for acting in the lives of many people?

'It is insofar as he uses his reason that man rises to the full dignity of his humanity' (Bokser on Maimonides, 1947, p. 545). Thus, in using practical reason one transforms the uniquely human ability to reason to a concrete act reflective of choice and free will. These choices then form the experiential basis for reflection which in turn helps us to better understand our natures and ends. Otherwise stated, acting on the directive of practical reason ultimately helps to constitute our self. When we do so in a collective way – especially when reasoning with respect to government action – then we constitute a collective self, otherwise referred to as a community.

The practical syllogism is a key tool for deciding on action in a particular context and is constructed from three terms:

1. Major term: the end sought. This end ought to be orientated towards the perfections but not necessarily specified by the person in the absence of progressive interrogation<sup>15</sup> (Flannery, 2009).
2. Middle term: the means proposed to achieve the end.
3. Conclusion: The action directed by reason.

The conclusion, of course, can only be true if both earlier premises are true. Moreover, it should be noted that the practical syllogism can be defeated if further considerations defeat the means. A potential criticism of this formula is that one might assent to the logic but feel disinclined to act on the conclusion. However, a criticism of this kind neglects the importance of the first precept (that good *is* to be pursued – not merely contemplated). I am not claiming that the practical syllogism is a perfect tool, but it certainly is a useful one for both people and governments, if it is used with a constructive mindset.

Notably, good reasons for acting are often conspicuously absent from public policy debates and this was certainly the case with respect to the coronavirus response. Indeed, the absence of a coherent *logos* in the coronavirus rhetoric is the

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<sup>14</sup>Kal vahomer is the rhetorical trope for which Akiva was renowned and put in its simplest terms suggests that what is good or right in small matters must be at least as good and right in more weightier matters (Holtz, 2017).

<sup>15</sup>We might ask someone why they have decided to do a certain thing and not receive an answer directly relating to a perfection. However, if we ask more questions relating to early answers then we should ultimately approach a perfection. For example, why do I write this book? Because it is my job. Why do I do this job? Because it allows me to contemplate earthly truth.

source of much of the problems that various governments are now grappling with in respect to compliance. Invalid premises<sup>16</sup> not only gave rise to ridiculous directives (such as bans on playing golf or fishing alone) but also aroused suspicion about the governments' real intent and hence provided fertile ground for conspiracy theorists (who, it must be said, have been proved right by recent history in a remarkably high number of incidences). Moreover, the continued use of premises long after circumstances had made them redundant<sup>17</sup> sowed resentment and provided fertile grounds for disgruntled citizens to justify non-compliance.

The careful use of practical reason and subsequent sharing of these good reasons for acting might have been expected to result in better public policy outcomes (specifically a change in people's choices such that the common good was significantly enhanced). However, it might also have been profitable to understand people's second natures, and this is the matter to which I now turn my attention.

## 2.4 Virtue – Our Second Nature

Virtue is the habitual orientation of a person to the urgings of reason (Rhonheimer, 2000; vice, of course is the habitual capitulation to animal appetites and passions). It prescribes that people should act in a way that exhibits neither deficiency nor excess of human character traits (more on this later) and does not aim at some sort of strict arithmetic mean as is commonly misapprehended. Indeed, virtuous acts are both specific to context and broad in conception – what I mean here is that the virtuous person needs to act in response to the specific circumstances faced, but with a disposition consistent with the directive of reason.

Virtue has both an intellectual side as well as the better recognised moral facet. Intellectual virtue refers to a disposition to grasp a principle (understanding), accept principles (knowing), and glimpse the connection between principles and reality as a unitary whole (philosophising) (see Chap. 8). Principles are the 'cause' or 'why' of something. Prudence (the practical intellectual virtue with moral ramifications centred on resisting impulse in order to seek counsel and/or weigh up all options and command the best path forward) is the important practical intellectual virtue that provides the link to the moral virtues that complete the cardinal suite. The remaining cardinal virtues, in order of importance, are: (i) justice (giving to each person their rightful due by elevating their human dignity), (ii) fortitude (remaining steadfast in the face of hardship or obstacle), and (iii) temperance (self-mastery with respect to striking a balance in appetites and passions). Most people would agree

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<sup>16</sup>In the following practical syllogism the middle term is clearly invalid: it would be good to stop the spread of the coronaviruses and thus protect the health of the vulnerable, people going outside spread the coronavirus, therefore people must be prevented from going outside.

<sup>17</sup>In the following practical syllogism the middle term became redundant: it would be good to have sufficient ventilators to assist afflicted people to regain their health, we need time to purchase or manufacture sufficient numbers of ventilators, therefore we must restrict the freedom of people.

that these four virtues are generally admirable, and few would argue that their contraries should be pursued – one would hardly advocate for treating people as animals, giving in to every passion, being cowardly or recklessly impulsive. In addition to these well-known virtues one might well add: (i) humility (which implicitly recognises the reciprocity inherent to claims of human dignity<sup>18</sup>), (ii) contentment (the lack of which is the source of most unhappiness and strife), as well as other desirable traits (especially those specific to culture<sup>19</sup> or time).

People are not born with virtue even though some people seem to have gentle or inquisitive dispositions by nature. Rather virtue is principally instilled in childhood through training and appropriate example, as well as the counselling of the wise. This primary moral education is then either reinforced or eroded by societal practice. Moreover, at some point in early adolescence the person must reflect on virtue and consider whether it is worthy of assent in order that the trait becomes more than a mere learned behaviour (see Chap. 8).

Through repetition combined with conscientious reflection these intellectual and moral habits have the potential to become our second natures, perhaps even our better selves. Moreover, when the stage of integration is reached it confers significant advantages with respect to efficiency and outcomes. On an individual level the virtuous person is relieved of the burden of stopping and explicitly applying practical reason prior to the execution of each little decision. Habitual orientations to reason also predispose people to right action and hence saves them time on reflection and grief with respect to shame. On a collective level virtuous behaviour means that interactions between people are more predictable which saves time and effort that would otherwise need to be invested to explore and mitigate against potential adverse outcomes. Indeed, widespread virtue enhances the possibility frontier of both social and economic life. Social interactions can be conducted more safely thus encouraging higher frequency (and hence more of the benefits of co-operation). In similar vein, a shared understanding regarding basic economic rights and rules for transactions mean that people are more likely to participate in trade which confers the benefits of comparative advantage.

However, not everyone is fortunate enough to have the childhood instruction, examples and counsel that leads to virtuous behaviour. Moreover, some through the habitual neglect to reason and frequent capitulation to animal pleasures may be resistant to wise counsel. These vice-ridden people clearly have a significant impact on the social dividend. Thus, to mitigate vice related ‘deadweight loss’ it has long been held that governments ought to ‘correct the bad man, whose desire is for pleasure, with pain like a beast of burden’ (Aristotle, 1998). That is, law should be used to apply the force concentrated in government in a way designed to curb the vices

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<sup>18</sup>I acknowledge that Aquinas lists this as merely a potential part of temperance.

<sup>19</sup>For example, in the Jewish tradition many of these cardinal virtues are expressed in the teaching ascribed to Ben Zoma: Who is the wise man (he who seeks the counsel of others - prudence)? Who is the powerful man (he who controls himself- temperance)? Who is the rich man (he who is content with his lot - contentment)? Who is the honourable man (he who honours others; humility and justice)? (Maimonides, 1994)

most deleterious to society. This is not about rehabilitation, or even retribution, but is instead focussed on eliminating the most grievous vices – especially those injurious to others (Aquinas, 2018). Punishing bad behaviours also ensures that those on a path to virtue are not exposed to bad examples and strong temptations. Thus, the ancient philosophers prescribed that certain vices – such as assault, murder, theft, and false witness – that most people ought to be able to overcome should be opposed with harsh penalties imposed by the impersonal force of the law. However, it is important to eschew law-making relating to relatively minor matters or in relation to passions and appetites beyond the control of the majority because doing so is likely to cause resentment or disdain for the power of the state and ultimately proves counter-productive (a fact clearly lost on those who made laws preventing fishing and golfing by oneself; George, 1993).

For those who haven't turned entirely bad, and are still able to be won over by reason, correction might be profitably provided by a physician of the soul – a moral doctor if you like (Maimonides, 1975). To correct a cure for those who do not habitually orientate themselves to the urgings of reason, the ancient philosophers recommended that undesirable traits be opposed with the extreme contrary until such time as the appetite and passions returned to normal. Once the animal urges have been conquered and the bad habit (vice) broken the person might then be instructed towards a more appropriate equilibrium. For instance, a person who does not possess temperance but is instead miserly to themselves would be prescribed repeated acts of liberality until such time as the habit was broken and the disposition for unreasonable self-denial conquered (Maimonides, 1975). After this time the person would be in a receptive mood to be counselled and set on a path to temperance. With repeated acts of temperance and continued reflection the person would eventually integrate the virtue over time.<sup>20</sup> Notably, the comprehensive teaching of virtue is not a function of the law but rather the task of the family, lesser associations and physicians (see also Chap. 8).

As I noted previously it is the dictate of reason to do in our collective lives that which is considered good in our personal life (*kal vahomer*). It makes no sense to live privately virtuous lives but collectively wallow in vice – indeed it is hard to imagine how such a dissonance might persist and it seems inevitable that individual people would eventually succumb to animal appetites and passions in such a society.

Government should therefore be conducted with neither deficiency nor excess and in a way that can receive the assent of people capable of reason. As a society we ought to be reflecting on our choices and experiences and using this to constitute a better community. Doing so not only creates the good society more conducive to people living virtuous lives but should also result in greater efficiency and better outcomes. Thus, rather than approaching public policy challenges with irrational fear, we might have been far better served to have acted with fortitude and in a manner consistent with reason.

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<sup>20</sup> Indeed, Maimonides (1975, p. 172) notes that 'virtuous men would not let a disposition of their souls remain in the mean but would incline a little toward the excess or defect as a precaution'.

## 2.5 Concluding Remarks

I commenced this chapter with an assertion that it would be necessary for us to agree on the ends of people before we could possibly hope to agree on the remit and functioning of government. Thus, during the course of this chapter we embarked on a quest to identify the hierarchy of legitimate ends for people, and also explored how both practical reason and virtue are conducive to the attainment of these ends. In doing so, it has become clear that to reach our perfections we often require the co-operation of others, mediated by government.

In the next chapter I focus on what it means to do ‘moral government’. Specifically, I will look at why it is reasonable to claim, as I do, that government is fundamentally a moral endeavour. Otherwise stated, why should government have a moral foundation and what does it mean for a government to act in a moral way? I suspect that you may be surprised to find, during the course of the next chapter, that democracy is not entirely helpful for a system of government determined to respect human dignity in its pursuit of the common good. I am tempted to say more at this juncture but doing so would undoubtedly spoil the surprise. Thus, I will simply end things here and urge you to either turn the page or buy the next chapter if you don’t yet own the entire book.

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# Chapter 3

## Moral Government



*The simple message is please do not leave your home unless you have to...had we not gone into lockdown a few weeks ago, the 110 number today would have undoubtedly have been thousands and thousands...so we've been extremely successful in limiting the spread to what we have today...but we need to work harder (Premier Berejiklian in Zaczek, 2021).*

*If ...a rulership aims, not at the common good of the multitude, but at the private good of the ruler, it will be an unjust and perverted rulership (Aquinas, 1949).*

**Abstract** Tension will inevitably arise between human dignity and the common good. Furthermore, how this tension is resolved will have significant implications for human flourishing. As ultimate protector of the common good, government may sometimes be inclined to transgress onto human dignity. However, doing so threatens the legitimacy of the institution of government itself. In this chapter I make the case for moral government and also explore in greater detail how a search for the common good ought to shape the conduct of government. Following this, I lay out the basic principles that need to be observed for a government to be regarded as moral and cast some doubt on whether majoritarian democracy can always deliver outcomes consistent with this aim.

**Keywords** COVID-19 · Moral government · Common good · Practical reason · Public virtue · Principle of subsidiarity · Principle of double effect

The quote from the Premier of New South Wales, Australia at the beginning of the chapter *prima facie* looks reasonable but it was anything but a request and, to many minds, anything but reasonable. From Saturday 26 June 2021, people in the Greater Sydney, Blue Mountains, Central Coast and Wollongong areas were ordered into indefinite lock-down (home detention) and only allowed to leave their homes for

certain reasons. Over the ensuing weeks the legal reasons for leaving one's home became fewer and fewer with police, dog squads, and even helicopters deployed to stop people from browsing in shops, and attending workplaces deemed non-essential (Hunter, 2021). Indeed, in the most draconian decree, essential workers from the Fairfield local government area were compelled to get tested every 3 days (Malone, 2021). One thousand dollar on-the-spot fines were issued to individuals breaking the home detention order or not wearing face masks and five thousand dollar fines issued to businesses. Moreover, these health directives were enforced brutally by the police – for instance few of us can forget the image of an elderly chap having his head rammed into the side of a police van for refusing to wear a mask (7News, 2021).

At the time of writing – 22nd July, 2021 – there were 7044 confirmed cases of coronavirus, 1348 active cases and 61 lives lost since COVID-19 was first detected in the state of 8.166 million people (NSW Government, 2021). To put this into perspective (something sadly lacking in the coronavirus debate) deaths due to influenza in the state during 2019 numbered 1186 (ABS, 2019) and even these numbers were dwarfed by mortalities arising from cancer (16,704) and circulatory system disease (14,658).

In the early stages of COVID-19, lockdowns were justified according to an asserted need to flatten the rate of infection and hence ensure sufficient capacity in hospitals (especially with respect to ventilators). Most people accepted this line of argument and complied with directives. However, 16 months later the rhetoric in Australia seems to have turned to virus elimination and a fixation on having 80% of the population vaccinated.

Lockdowns may have had a beneficial effect with respect to transmission levels and perhaps allowed for more medical resources to be applied to the relatively small proportion of infected people who required hospitalisation. However, it certainly came at a high cost to human dignity especially with respect to the first three of the perfections expounded in Chap. 2 – for example, many business owners lost everything they had, others had elective surgeries<sup>1</sup> delayed, and social interaction was eliminated or heavily constrained at best. Moreover, the impacts were unevenly felt – those who benefited most were the elderly on welfare (not only was their health protected by the sacrifice of others but in Australia most elderly received stimulus payments of \$AUD1,000), and those who paid the most were small and medium business owners and private sector workers (especially in hospitality) who often lost everything. In addition, many young people in casual work or study were particularly adversely affected. Indeed, some of the ultimate losers from COVID-19 probably haven't even been born yet (the future taxpayers who will need to service the debts accrued as a result of public policies meant to address the coronavirus).

Despite the damage done to human flourishing politicians quickly realised that the harsher the measures imposed, the more popular they became. For example, in Western Australia where snap lockdowns were called over just a single case, the

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<sup>1</sup>A good friend of mine had crucial triple heart bypass surgery – a procedure most would not consider to be elective – delayed for 6 months.



state government was returned in a landslide victory (winning 53 of the 59 seats; WA Gov, 2021). Sadly results like this motivated a perverse political race to see who could inflict the most damage to human dignity – and it seemed that actual lives lost was no longer the focus of coronavirus public policy interventions.

The reasons for the electoral success arising from human dignity denial are surprisingly straightforward. Quite simply the number of people who believed that they benefitted from draconian measures far exceeded the number of people who realised they had lost and who also had a political voice.<sup>2</sup> As the great William Riker (1982) dryly observed, politics really is the dismal science – winners take all and the losers are compelled to pay for and abide by political decisions that they may have found repugnant.

From a political perspective (but not a moral one) it is hard to blame politicians for capitalising on the vagaries of the democratic system nested into a strong welfare state. However, the experience ought to prompt some serious questions regarding the compatibility of democracy with human dignity. In this chapter I will explore this and other questions with respect to a natural law perspective on moral government. In the next section I investigate the reason for why we ought to expect moral government. Thereafter, I explicate on the common good and the duty of those who govern with respect to this element critical to human flourishing (in the Appendix I compare and contrast the common good to the better-known public value concept). Following this I outline some principles of moral government including virtue, the principle of subsidiarity (often terribly misrepresented in the scholarly literature), and the principle of double effect. Each of these principles can be used to guide moral public policy making in an uncertain world. I conclude with some remarks regarding the incongruity between democracy and human dignity.

### 3.1 Government as a Moral Enterprise

History has sadly shown that when governments fail to act in a morally acceptable way then catastrophic consequences result, especially with respect to human dignity. For instance, Augustine in chronicling the demise of Rome notes that prior to its sacking the kings were only interested in the docility, not the morality, of their subjects and were occupied solely with facilitating pleasures rather than *eudaimon* (Augustine, 2004). In more recent times, we have seen terrible evils perpetrated in Germany after certain people were categorised as less than human and thus putatively not worthy of dignity (Lifton, 1986). Morality clearly does matter when it comes to government.

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<sup>2</sup>Beneficiaries included pensioners, welfare recipients, public servants, medical professionals and politicians. Losers included small and medium sized business owners, young people (including those under voting age), and taxpayers (many of whom still don't realise that they will ultimately pay for the stimulus so freely handed out either in the form of higher taxes or higher inflation).

However, we need not rely entirely on the stark lessons of history to know that government ought to be a moral endeavour – we can instead use our reason. There are at least four good arguments for why government needs to be considered an exercise in morality.

First, government is people acting in the mass (in an Aristotelian sense). Leaders are drawn from the moral ecology and elected following at least some implicit moral deliberation. Thus, the leadership of government is constituted by a moral exercise: moreover, the decisions that they ultimately make will be shaped by virtues or vices, tempered perhaps only by the fear that people might show their displeasure at subsequent polls should they become morally aggrieved. Of course the moral judgements of leaders and their citizens are often based on mistaken premises and hence flawed – but this does not change the fact that the exercise is an inherently moral one.

Second, and related to our first, no human interactions occur in a moral vacuum – they are largely shaped by virtues or vice which, as we saw in Chap. 2, are the important ingredients of social intercourse. In times past people were inclined to act with reference to duties guided by virtue, and it seems that shared religious convictions may have played a large part in ensuring that people gave consideration to the interests of others. Sadly, in more recent times it would be fair to say that egoism and vice have progressively inserted themselves into the political process and increasingly people’s conceptions of right and wrong now tend to be largely guided by self-interest. No doubt many people would claim to be operating according to utilitarian principles – which is much more palatable than declaring one’s true adherence to egoism – but, whilst popular as a justification, this is also by no means unproblematic. It is probably true that utilitarianism (the greatest good for the greatest number) sits more comfortably alongside ideals of democracy. However, utilitarianism need show no respect for human dignity and can easily result in truly perverse and evil outcomes<sup>3</sup> (most people purport to be fine with this – until they happen to be in the camp of the least number). Irrespective of the ethical justification actually employed, there can be no doubt that social interactions – including interactions essential to government – are indeed moral affairs.

Third, practical reason is informed by both good ends and specific context, and is orientated towards action. Because each person is likely to be either on a different rung of the human flourishing ladder, or faced with different circumstances, then it follows that members of a group can feel directed to actions that would have them proceed in very different directions. Most of the time this need not be a problem, but sometimes diametrically opposed directives for acting could put people into conflict. In these instances, intervention might well be called for in order to prevent

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<sup>3</sup>It is so easy to defeat utilitarian arguments that few of us can be bothered to do so. However, our silence can often facilitate the perpetuation of acts and perspectives that are completely at odds with widely held views on virtue (and justice in particular). For this reason alone, it is important to state clearly that act-utilitarianism can be shown to be self-defeating (when a person is handicapped because it is known that they are an act-utilitarian) and also inconsistent with critical social devices such as truth-telling and promise-keeping.

the group from falling apart – in Aquinas’s (1949) terms a body cannot stay a whole if the limbs are moving off in widely divergent directions. To avoid the metaphorical body being torn apart it may therefore sometimes be necessary to co-ordinate the acts of its members. To do so successfully would require the giving of good reasons such that people could be sufficiently convinced that some level of co-ordination might be preferable to acting as if one need not consider others at all. When government does set out good reasons for why people should alter their actions then it is fundamentally engaged in a moral exercise.

The fourth reason for why government ought to be considered an essentially moral enterprise is, for my mind at least, the most compelling argument. It is based on Aristotle’s function thesis which we first met in Chap. 2. Government is not an ontological state – it has clearly been developed as a tool in response to a human need to foster and defend the common good (the help accruing to people in pursuit of their existential ends, arising as a result of co-operation). Put simply, people sometimes need to co-operate in order to flourish and ‘the political community exists consequently for the sake of the common good in which it finds its full justification and significance and the source of its inherent legitimacy’ (Paul, 1965, paragraph 74). It would be utter madness to develop a tool for fostering the common good and then not use it in accordance with its functional design. Indeed, in Aristotelian terms a government which is not conducted as a moral enterprise must be considered to be profoundly defective.

Thus, for government to be judged excellent it seems that it must be deliberately orientated towards the common good (as well as respect human dignity). In the next section I will define this common good more precisely and also explain what it ought to look like in practice.

### 3.2 Function of Government: The Common Good

The common good is the help accruing to people as a result of their co-operation, which is more than the mere sum of contributions (Messner, 1952; Hittinger, 2003; see also Chap. 1). The common good recognises that humans are social animals that need the co-operation of others in order to perfect themselves. Indeed, humans are rather uniquely dependent on others from the time of their birth<sup>4</sup> and thus the drivers for the common good seem to be integral to our natures. Moreover, humans also seem to derive far more benefit from intangible collaborative goods (such as friendship, solidarity, and camaraderie) than do other animals and this is one important reason why the benefits from acting for the common good exceed the mere sum of

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<sup>4</sup>For a significant period at the beginning of life people are critically dependent on others for survival, with respect to movement, shelter and food. This stands in stark contrast to my goat kids who can walk within minutes, run within days and are starting solids within weeks. Even chicks hatched on my farm can move to a heat source and take advantage of food and water without needing assistance.

contributions made by individual people. Indeed, potential collaborative goods also act to set a limit on the outsourcing mentality of governments and society as well as cast light on the incongruity of government myopically pursuing efficiency<sup>5</sup> (Drew et al., 2018).

Not only do we hold in common our need for co-operation and the potential for collaborative side-products, but people also share a capacity to abstract, choose, plan, and reflect. Moreover, because humans have an ability to clearly communicate with respect to quite complex ideas this provides us with a firm foundation on which to build the common good. Indeed, because of both the written word and memory, people are capable of repeated acts of co-operation that need not be solely motivated by altruistic feelings – reason and record both allow people to understand that ultimately co-operation yields benefits that far exceed the small sacrifices called for.

We also share in common an innate desire to pursue good things and shun evil. This first self-evident principle of natural law is the active ingredient that ought to push us from merely considering the potential good of co-operation to actually realising it. Indeed, we all desire a good life and to achieve this end most of us readily grasp that it is helpful to live in a good society. Notably, here we are talking of good things in a moral sense (as oriented towards the good ends explicated in Chap. 2) not mere goods (as in things). Sadly, many people fail to understand that many things are only good in as much as they are instrumental to achieving our teleological ends and this probably accounts for both the large number of miserable rich people I have known as well as insatiable consumerism which distracts so many from pursuing what is truly worthwhile.

It is important to note that the products of the common good must be internalised in the person, not merely done to people. Humans have a unique sense of what it means to be fulfilled – having things done for us and to us always pales in comparison to being part of the striving ourselves to reach a given goal. This is what people who argue for higher levels of ‘dignifying’ welfare fundamentally misconceive – having things done for one, or to one, is not human dignity enhancing at all. Indeed, it is the complete opposite which explains the abject failure of the welfare system to dignify people.

Moreover, it is in the act of striving together in pursuit of a given goal that we transform people from merely geographically proximate individuals to communities. To understand this properly it is useful to compare the bonds and benefits of flatmates to families – both may live in a single dwelling, but it is the family alone that can be relied upon to make extraordinary sacrifices to help one another. This willingness to sacrifice that we see in families has its origin in repeated acts of striving together for common goals (the benefits and sacrifices are made plain over repeated acts of co-operation and the shadow of the future looms large (Axelrod, 1980)). Similarly people who repeatedly strive together in pursuit of common goals

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<sup>5</sup>The purpose of government is to help people achieve their *bona fide* needs that can't be satisfied by lesser associations (see my discussion of Subsidiarity in the next section). When we focus instead on the unit price of production we confuse the aims of providing public and merit goods with the goals of the private market and in doing so undermine the legitimacy of government itself.

will come to know and trust one another, as well as care for each other and thus become true communities. Moreover, the common good is a dynamic construct: thus as each person is helped to achieve their particular existential ends the capacity and visibility of the greater community that they constitute is expanded so that new common pursuits present as legitimate and viable ends for co-operation. This is what we refer to as social progress.

The task of all involved in government is to seek out the common good, especially as it relates to the complementarities between individual people's interests (this natural law perspective differs significantly to the public value paradigm currently in vogue which sadly works to the detriment of many people (especially the 'compulsory donor' taxpayer) – see Appendix). The starting points are to know people, the *bona fide* needs of people, and also understand where these might be best served by co-operation. Notably the natural law gives precedence to *bona fide* need, not wants (not only is this consistent with the natural order of things – you would never see an animal attending to mere wants before needs such as food, shelter and safety – but it is also often critical to a moral defence of the acts of government<sup>6</sup>).

Thus, to know the common good requires us to know the people who make up our communities and this is a particularly important role for elected representatives. Notably, what I propose here contrasts starkly to how things are generally done in western democracies – with the emphasis being on the influence of powerful people, lobby groups and squeaky wheels. That is, the elected representatives oughtn't be the passive recipients of requests for indulgence of the well-connected – instead the natural law prescribes that they should be actively engaged in canvassing the silent minority and powerless, who otherwise would have their participation in government constrained to the mere act of voting every few years.

If we fail to actively engage the people in a government area then we are likely to deny them justice (which you will recall from Chap. 2 is giving each person their rightful due and thus elevating their dignity). Unless we know people, they merely become sources of resources (votes and tax revenues) and their needs are neglected (unless it happens to coincide with the interests of the powerful or the self-interest of politicians in campaign mode). Indeed, unless we interact with the silent majority and truly get to know them we are really deluding ourselves regarding terms such as 'public service' (it would, instead, merely be a service to the influential) or 'democracy' (the putative rule by the people – see Chap. 4).

When we do indeed engage with the people for whom we seek licence to govern then knowledge of human nature ought to lead us to also carefully inquire of them what *they* propose to do to contribute to the meeting of any perceived need and how

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<sup>6</sup>To facilitate government action requires sacrifice (most notably, but not constrained to, taxation). The things that people sacrifice (time, money and the like) would otherwise be put to use to pursue wants (and even perhaps needs). It would be difficult to justify denying people their wants in order to merely provide wants for others – certainly with respect to human dignity. However, it is much easier to argue that wants might be put aside so that others can satisfy needs (one could, for example, invoke the virtue of charity; Aquinas, 2018).

*they* believe that justice ought to be had with respect to consumption. Sadly, it is human nature to free-ride and ignore our responsibility to others when it suits ourselves. Therefore, it is important to always link talk of needs to the reciprocal moral responsibility to contribute at least partially to meeting one's own needs (doing so ensures that the exercise doesn't descend into something akin to a Santa wish list – people need to understand that they have a responsibility to others both with respect to production and consumption). Frequent failure to observe these principles is a large part of the explanation for spiralling public debt, as well as an increasing lack of willingness to innovate and 'have a go' that are sadly becoming a feature of western democracies.

After those who lead government have come to truly know the *bona fide* needs as well as the natures of the people they seek to serve, then they will be in a position to act. In other work (Drew, 2021) I have carefully laid out, in some detail, how the execution of common good endeavours ought to be made (so here I will be much more brief). First, government needs to set out its will along with the criteria by which it proposes that an intervention might be judged a success. Second, the materials required should be surveyed and the capacity of various people and lesser associations to contribute to the project must be explored. Third, the form of the project should be specified – for example, need it be permanent (rarely appropriate) or reviewed at regular intervals; ought it be public or restricted access; and what contribution ought users make (and how will this be morally justified)? Finally, thought should be turned to how individual people, lesser associations, the market, and other tiers of government should be co-ordinated to actively bring about the goal identified.

Notably, a common good approach to provision of government goods and services starts with a presumption that the legitimate role of government is often limited to directing, stimulating and promoting a project. Otherwise stated, a natural law approach to government focusses on *facilitation* rather than provision. It replaces the concept of paternal government with a statement of the legitimate function for which government was developed (the protection and cultivation of the common good).

Indeed, as I intimated earlier, the role of government in creating the good society that we all need to flourish shouldn't be merely limited to facilitating things or services. Instead, there is an important and largely unexamined role for government in co-ordinating the individual interests of people such that all might benefit (Messner, 1952). To be precise, government could be playing a more proactive role in promoting what economists refer to as Coasian solutions to the problem of externalities.

Externalities may be either positive or negative and refer to the case where people either do not bear the entire cost of their economic behaviour or generate benefits in excess of what they internalise, respectively. A classic example of a negative externality is a developer who builds a noxious factory or high density dwellings near a residential community – in this case the developer wins everything and the residents are the ones that bear the entire costs of pollution or loss of amenity. An example of a positive externality is the keeping of bees within five kilometres or so (the foraging range for bees) of an almond orchard – the beekeeper receives nothing

from the orchardist for providing an important pollination service. Otherwise stated, externalities – whether positive or negative – result in sub-optimal outcomes for all involved.

The great Ronald Coase argued that private bargaining could be an efficacious way to ensure that externalities were internalised and as a consequence encourage people to make more efficient decisions. For instance, the developer could internalise some of the negative externalities by paying surrounding residents sufficient money to compensate for the loss of amenity. Similarly, the orchardist might pay the beekeeper for the ‘free’ pollination services and perhaps thus encourage them to keep more hives which might result in even better cropping. In sum, Coasian solutions seek to turn win-loss dichotomies into win-win arrangements.

The big problems with private bargaining are that it: (i) requires willing parties (sometimes especially difficult to organise where costs or benefits are spread among many or distant parties), (ii) may not be feasible because transaction costs (bargaining costs and legal fees) are high, and (iii) requires that bargains can be enforced. As a result, what generally happens is that people either suffer externalities in silence, rely on social sanctions and law for some measure of protection, or form charitable lesser associations to deal with the problems created by others (such as environmental associations). However, in all these instances the win-lose dichotomy remains (notwithstanding that winners and losers may change places as a result of their influence on regulators) and people suffer or are encouraged to make sub-optimal economic decisions.

Clearly governments orientated towards the common good could play a much more active and important negotiator role with respect to externalities (rather than ignoring problems or resorting to regulation). Government is in a unique position to bring together diverse or distant parties, mediate bargaining to ensure that it is carried out in good faith (especially where government has monopoly over granting rights for development and the like), and make certain that agreements are enforced. Moreover, government is often ideally positioned to know about problems and opportunities because of their knowledge of the distribution of people and businesses.<sup>7</sup> Obviously transaction costs won’t be eliminated entirely, but when done as part of an existing approval or licensing process it certainly ought to be far less burdensome.

Indeed, government as broker to private party negotiations would represent an instantiation of the common good: people co-operating to achieve their ends in a way that results in nett gains to economic welfare. It seems that the only obstacles to changing win-lose situations into co-operative win-win scenarios is for people to understand that the purpose of government is to serve the common good and demand that it performs the function accordingly.

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<sup>7</sup>In all likelihood our beekeeper and orchardist may have little knowledge of their important relationship. Government could thus stimulate economic growth simply by getting parties together which would probably be far more effective and less expensive than most economic development programs (for an example of ineffective programs see Drew, 2020).



### 3.3 Principles of Moral Government

Thus, it is clear that we need government to perform its functions in order for people to flourish. However, doing so sets up a tension between the common good and human dignity. Clearly, we must limit incursions into human dignity in order to ensure that the objective of both – the flourishing of people – is ultimately achievable. To do so, I argue that government must operate according to moral principles that I will explicate henceforth.

The starting point for this exercise is to recognise that the principles of morality that apply to individuals ought also apply to government for ‘the life which is best for men, both separately, as individuals, and in the mass, as states, is the life which has virtue sufficiently supported by material resources to facilitate participation in the actions that virtue calls for’ (Aristotle, 1992). Otherwise stated, because government is essentially people in mass, it suggests that what we think to be excellent in individual people ought also to be thought the basis for excellence in government.

However, there will be some differences in how these ideas are applied as a result of the fact that government is merely an instrument with ends ordered to helping people to flourish. Moreover, because government is constituted by many people on different rungs of the human ladder this introduces much complexity and significant uncertainty with respect to outcomes. In the following material I first review practical reason and virtue as it relates to government, before setting forth natural law principles developed specifically to: (i) deal with the tension between the common good and human dignity, and (ii) deal with uncertainty.

#### 3.3.1 *Practical Reason and Government*

Readers will recall from Chap. 2 that practical reason is an exercise that yields directives for action, specific to context and orientated towards ultimate ends. Because of the sheer numbers affected by government action context is significantly complicated and this both introduces uncertainty to public policy and underlines the importance of having active (rather than passive) political representatives engaged in the tasks of getting to know people. Uncertainty in public policy can be dealt with by employing the principle of double effect (detailed below) although it also is suggestive of the benefits that might be derived from more decentralised and smaller government (see Chap. 5). The ends of government also differ to those of particular persons and it will be clear by now that these ought ultimately to lead (upon interrogative inquiry) to the common good.

Because government often requires people to alter their course of action it is important that public policy be based on good reasons for acting. Moreover, if the reasons for acting are truly good, and we also respect the dignity of citizens, then it follows that we should expect public statements of practical reason in many instances (certainly for major or disruptive interventions). Indeed, it would seem



useful to set out reasons according to the practical syllogism (a major term which is an end orientated clearly to the common good, the middle term which is a means for achieving the end, and a conclusion which is the direction to act) to ensure that the message and logic is clear to everyone.

Thus, in one sense political leaders not only need to be people who understand human ends, and be willing to discover the needs of others, but they also need to be masters of practical reasoning. Moreover, everyone involved in leading and ‘doing’ government ought to understand and practice virtue, for the reasons that I will now set out.

### 3.3.2 *Virtue and Government*

Virtue is the habitual orientation to act according to reason that is notable for neither showing a deficiency nor excess in action. Thus, the practice of virtue makes people’s actions more predictable, and in a government setting this is crucial to both the smooth operation of markets and good decision-making by citizens. Public virtue differs a little to what we reviewed in Chap. 2 and is best set forth as the excellences endorsed by the community, that need not necessarily be practiced by all in the community (Eschenbach, 2020). Clearly it will be reflective of a large portion of the citizenry, but it does not rely on universalism for legitimacy which is an important point given the distribution of people on the human ladder. Moreover, when government acts according to the adopted virtues this has a constitutive effect on the state itself and when people act according to the adopted virtues then they act qua members of the community. Thus, virtue practiced at the level of government, and reflected in the citizenry, is an important way in which national identity can be formed and loyalty demonstrated – both of which are far from certain things in modern life where people tend to be members of a large number of communities each of which compete for loyalty (Dahl, 1990).

Two important aspects of virtue are that it is not born and its mastery is contingent on experiential reflection. Because virtue is something that is acquired it is clearly important that those who seek to lead either in a political or administrative capacity ought to be the most virtuous of citizens. This is why I strenuously disagree with media commentators and politicians who claim that leaders’ personal lives should not be inquired into<sup>8</sup> – if people who put themselves up for public positions cannot display virtue in their private lives then why should we have confidence that they will do so in their public lives? In the complex and uncertain world of public policy it is essential that citizens can expect that those making important decisions

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<sup>8</sup>For example, this was a prominent claim of the incumbent federal Australian government and some media when the Deputy Prime Minister deserted his wife and children to set up home with his former chief of staff. This act was neither prudent, temperate, nor just and one has to wonder how citizens can have confidence that better virtue will be shown with respect to serious matters such as trade, national security, and bio-security.

are in the habit of acting according to reason, rather than their appetites and passions. The importance of reflection to the perfection of virtue also has particular implications for the practice of government – clearly when we reflect on our own experiences we do so in a state of full information. Similarly when we reflect on the outcomes of collective action we ought to have full information – this suggests that all major policies must be mandated for evaluation (see Chap. 6), that inquiries must be public and truly independent, and that people should provide evidence under oath. Anything else will only allow us to glimpse a fraction of the experience and as a result will fail to contribute in a significant way to the perfection of public virtue.

As I have already noted, habitual orientation to reason confers a certain sense of predictability to government action which is prized by markets and desperately needed by citizens (especially with respect to decision making over a long-term horizon, such as when planning for retirement). It allows people and their associations to anticipate how public policy might be implemented in response to new challenges and hence reduces both miscalculations and deleterious impacts. I remember many years ago being surprised by an Egyptian friend who told me that he preferred the dictatorship of Mubarak to democracy, despite the fact that he loved the idea of liberty. To his mind a dictatorship offered stability – he didn't like a lot of the laws and policies, but at least he knew what they were and could plan accordingly. His comments certainly ring true of democracies conducted in a virtue vacuum – policies change significantly from political term to political term and it becomes quite impossible to make long term plans and predict how government might react to new circumstances (the game instead becomes one of predicting who will be in government or in a position to influence government). Virtuous government might therefore be expected to be particularly important to democracies and result in less unintended (or intended) damage to human dignity as well as being less likely to elicit civil disobedience, political tumult, or protest. Moreover, in a global sense, governments which practice virtue are more likely to prove to be better partners for trade and co-ordinated actions to mitigate global problems (such as COVID-19), as well as less likely to precipitate political or military conflict.

The cardinal virtues are prime candidates for public virtues – justice (giving each their due and elevating human dignity) is especially important given the potential for government to become Leviathan (see Chap. 1); prudence (resisting impulse to instead weigh up evidence and consult where appropriate<sup>9</sup>) is clearly needed to avoid knee jerk reactions and expensive mistakes; fortitude (remaining steadfast even in the face of obstacles) helps to ensure that policy does not merely become the whim of media and opinion polls; and temperance (self-mastery with respect to passions and appetites) is important to avoid descent into vice which not only sets a bad

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<sup>9</sup>It is *not* appropriate to engage commercial consulting firms purely as an exercise in blame games, nor when the said consulting firms do not have a record of appropriate expertise. Moreover, any engagement of commercial consultants should take place on the understanding that a public evaluation of the accuracy of their work will take place post-implementation. Doing so would provide the public with assurance that the experts engaged were indeed competent, and also encourage consultants to be more prudent in their assumptions (see Drew, 2021).

example for the citizenry but also can make life incredibly difficult for individual people.

Indeed, as I observed in Chap. 1, since the dawn of civilisation people have rightly feared the rise of Leviathan-like government steeped in vice. When this occurs there is no hope of effective treatment (recall the prescriptions for contrary extremes to correct vices in individual people) because to do so would cause too much damage to human dignity. Instead, we must rely on constitutional law to protect people from the most grievous of vices (in analogous vein to how civil law suppresses vices), along with mechanisms to dismiss vice ridden government. Indeed, the latter is one reason why I do not believe that western democracies can be expected to reliably act in a fashion consistent with the natural law without the addition of new political institutions (see Chap. 4).

When government acts only for its own benefit and totally eschews the common good then it has become a tyranny (Aquinas, 1949). This is an even more dangerous situation for people and explains why even canonised saints prescribed extreme measures – including tyrannicide – for these instances (Aquinas (2018) defends tyrannicide in the *Commentary to the Sentences* and establishes firm qualifications for same in the *Summa Theologica*). Notably, Aquinas (2018) maintained that action against tyrants should be taken by the principal people of the community as a group and not by any one person and this explains why in Chap. 4 I propose that such powers should be conferred onto a representative mini-public. It is also important to ensure that power and competence is never concentrated and it thus becomes necessary to understand the dictates of the natural law principle of subsidiarity, the matter to which I now turn my attention.

### 3.3.3 *The Principle of Subsidiarity and Government*

The principle of subsidiarity has its origin in the catholic social teaching of the natural law tradition. It starts by positing an ontology of plural social forms necessary for humans to flourish. In particular, it pays great respect to the family and also confers dignity onto lesser associations (such as religious bodies, clubs, political parties, community groups and unions). It does so, in part, to combat the drift to concentrations of power and competence that are a feature of modern society focussed on ‘efficiencies’ and ‘outcomes’ rather than ‘right’ and ‘means’. Such concentrations put human dignity at grave risk because it is the nature of things that people will be tempted to misuse power for ideological purposes or personal gain. Indeed, the first use of the neologism occurred in 1931 at a time when the world was about to plunge into its darkest hour as a result of the rise of competing communist and fascist ideologies that both unduly preferenced the common good over human dignity.

A plurality of social forms is also important to preserve the diversity of *munera* (loosely translated to gifts) that each unique person and lesser association contribute to the common good. In addition, smaller associations are preferred because they

are much more transparent and accountable, and are also better positioned to quickly respond to need (Drew, 2020). One has only to compare the care of the family for an infant to that of childcare centres and the like to understand the truth of these claims. No employee charged with the care of a dozen or so infants will ever rival the care and responsiveness of a competent parent who acts out of love, rather than for monetary reward (yes I know, I have offended again but if you reflect on some of the sad cases that appear routinely in the media and your own experiences I am sure you will acknowledge that I speak the truth). If this were not the case, then reason would dictate that we place our children in the exclusive care of the state like the Spartans did. Moreover, it is notable that attacks on the family are always at the vanguard of every oppressive regime or socialist endeavour, likely for the reason that they are incredibly more successful at delivering their unique *munera* and hence present serious competition to those who seek to control and exercise power.

To preserve the balance between human dignity and the common good the principle prescribes both a negative and positive obligation on greater societies. First, there is an absolute prohibition on subsuming the functions of people or people in association. Indeed, Pius XI (1931, paragraph 80) made this point forcibly and fearlessly when he asserted that ‘just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organisations can do’. This is strong language indeed with a clear moral judgement – what is being said here is that subsumption is akin to communal theft and the reason for this is that it takes from people and associations the *munera* that is their due. Moreover, it makes people even more dependent on greater associations and is thus an assault on human dignity.

The positive obligation prescribes that ‘all societies of a superior order must adopt attitudes of help (*subsidium*<sup>10</sup>) – therefore of support, promotion, development – with respect to lower order[s]’ (Pontifical Council for Justice and Peace, 2004, paragraphs 185–186). That is, greater associations are morally bound to provide help in response to *bona fide* need. This prescription is reflective of the natural law conception of government as the supreme guardian and protector of the common good – if it neglects to support lesser associations, and they can no longer bring forth their *munera* in response to irreducible ends, then government has failed to perform its function (and in an Aristotelian sense becomes defective).

To ensure that *subsidium* doesn’t foster dignity destroying dependency it is stipulated that all help must be provided within specific constraints. First, *subsidium* is to be provided for *bona fide* need only, not mere wants – for doing otherwise saps people and associations of their vitality and creative energies (Messner, 1952). Doing so also places unreasonable demands on compulsory donors (taxpayers).

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<sup>10</sup>The etymology of the word is very instructive. It is believed to be derived from the term used by Roman legion commanders to describe the practice of holding units in reserve that would only be deployed when there was a real risk that battle lines might be broken, and then removed as quickly as possible so that it might be available for future crises (Drew & Miyazaki, 2020).

Second, *subsidium* must be delivered in a way designed to make it superfluous as quickly as possible and should come with clearly communicated redundancy. The object here is to combat human nature which sadly inclines us all to take the easy way out and rely on others instead of our own efforts. When people know from the outset that the help they receive will definitely be withdrawn in response to certain triggers then they will be more likely to remain fully engaged in pursuit of their own ends.

### 3.3.4 *The Principle of Double Effect and Government*

The principle of double effect is derived from Article 7 of the *Summa Theologica* wherein Aquinas (2018) considers the situations that might make it morally permissible to kill.<sup>11</sup> In Question 64 Aquinas (2018) considers the scenario whereby a person kills in self defense. His ruling is that provided the intent was good,<sup>12</sup> that proportionate force was used, and the bad side-effect was merely foreseeable, then the person remains blameless because ‘nothing hinders one act from having two effects, only one of which is intended, while the other beside the intention’ (Aquinas, 2018, Question 64). Otherwise stated, Aquinas (2018) recognises that we live in an uncertain world and that even noble intents can sometimes result in bad outcomes.

The need to deal with uncertainty of this kind in the real world has resulted in the principle being adopted into common law systems and regularly appealed to by philosophers, especially with respect to medical ethics (such as the administration of lethal doses of opiates to terminally ill patients, see Drew & Grant, 2018). Unfortunately, when one gets lawyers and philosophers involved, simple concepts quickly become very complicated, as these people who are trained to argue apply themselves with relish to debating all manner of improbable contingencies. In particular, the concepts of intent, proportionality, and foreseeability have all come under sustained attack. It is thus very important to carefully craft a definition which is robust and the best that I have come across is an amalgam of the work of Boyle (1980), Masek (2010), as well as Marquis (1991):

It is morally permissible to undertake an action when one foresees that the undertaking may bring about at least one state of affairs, such that, if this state of affairs were intrinsic to the action undertaken, the action would be rendered impermissible, if and only if (i) the ‘bad’ state of affairs is not intended but brought about as a [foreseeable but not certain], side-effect (and that all efforts have been made to mitigate the undesired side-effect) and (ii) there is a proportionally grave reason for undertaking the action (Drew et al., 2017, p. 4).

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<sup>11</sup> In this article Aquinas (2018) finds that it is morally licit to kill animals for sustenance (a function argument), that it is unlawful to commit suicide (because this is an unnatural act peculiar to humans), and that it is ‘praiseworthy’ to kill grave sinners (such as murderers) in order to ‘safeguard the common good’.

<sup>12</sup> Self-preservation, which readers will recall is one of the Thomistic good ends

This definition seeks to deal with the most imposing problem relating to the application of the principle (truly knowing a person's intent) by stipulating that all efforts must be made to mitigate foreseeable side effects. The reasoning behind this stipulation is that people are hardly likely to seek to mitigate bad side-effects if these were truly part of their intention. Moreover, the amount of effort put into doing so is probably indicative of one's care for human dignity. The definition also clearly articulates that side-effects must be merely probable, not definite. Unless this distinction is made people would effectively be given licence to act contrary to the first precept of natural law (to do good and shun evil) and also be provided with an excuse to sometimes act contrary to virtue. In addition, the definition makes clear that there must be proportionally grave reasons for even considering an act that could result in bad outcomes – that is, taking every measure to prevent bad side-effects alone is not sufficient, we shouldn't even contemplate bad unless doing nothing would present substantial risk to human dignity or the common good.

The principle of double effect thus has a lot to offer those who seek to cultivate the common good through governing. It directs people in power to stop and think about contingencies, assess probabilities, and take adequate measures to mitigate foreseeable bad side-effects (which is an example of prudence). Given the huge literature on policy failure, this can only be a good thing.

Notably, conventional welfare economics uses the (immoral) Hicks-Kador<sup>13</sup> test to justify doing evil to a few in order to achieve some putative greater good. The thinking behind this rule is that unless economists have a ready excuse for their dignity damaging recommendations then new welfare enhancing policy will never be implemented. By way of contrast the natural law principle of double effect fearlessly asserts that it is wrong to ever do evil, or use people as a means to an end, no matter how laudable one might feel the results could be (I can only assume the Hicks-Kaldor disciples have never been on the losing end of their test). This might mean that some putatively<sup>14</sup> welfare enhancing public policy doesn't proceed, but justice demands no less.

### 3.4 Concluding Remarks

I commenced this chapter with an assertion that the tension between human dignity and the common good must be resolved satisfactorily for people to flourish. Moreover, I have shown that the use of practical reason, public virtue and the two catholic social teaching principles are indeed critical to the preservation of human dignity.

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<sup>13</sup>This is the economists 'get out of jail free' card. The test states that if the winners could *theoretically* compensate the losers then the policy should proceed apace. However, compensation is only theoretical not actual which sets it in stark contrast to both the Coasian solutions that I approve of and human dignity which I consider not-negotiable.

<sup>14</sup>In view of the large gap between the rosy pictures painted of policy innovations and what actually occurs, inaction is probably a good thing most of the time anyhow.

Clearly locking healthy people in indefinite home detention is not consistent with human dignity and it also seems that the WHO don't feel that widespread lockdowns are consistent with practical reason.<sup>15</sup> Moreover, the panic and constant flurry of new decrees probably suggests that public virtue was largely missing from our policy responses to the coronavirus (especially with respect to prudence, and justice). In addition many lesser associations have been destroyed – businesses and families particularly – suggesting a reckless neglect of the tenets of subsidiarity. Indeed, the statistics make one wonder whether the evil that governments have tried to avoid was ever sufficiently grave (with respect to the principle of double effect), and the fallout certainly demonstrates that efforts to mitigate the side-effects were far from adequate.

It thus seems, in this case at least, that our democratic institutions have fundamentally failed to observe the important principles required for us to safeguard human dignity. This should not be particularly surprising given that democracy is a numbers game and act-utilitarianism alone is also a numbers game (the public policy response to the coronavirus seems to have been founded on a utilitarian argument that supposed that more people would be saved as a result of the measures, than lost). Moreover, one can't help but feel that there is something very wrong with a system of government where draconian policies can drive so many people to self-harm (Scott & Dalzell, 2021). Thus, in the next chapter I propose a change to political institutions that ought to ensure that similar damage is not inflicted in the future.

## **Appendix: The Rise and Risk of the Public Value Paradigm**

A new and very influential paradigm for public administration has emerged in recent years largely based on the work of Mark Moore (1995, 2007) with respect to public value. It has been warmly greeted by public servants, in particular, who probably see it as a pathway out of the former dominant paradigm (New Public Management) which focussed on replicating the free market, and conducting government through targets and terror (to borrow a phrase from Bevan and Hood (2006)). The public value paradigm elevates public servants from mere neutral functionaries to innovators and interventionists who have a decisive impact on formulating and translating politically mediated collections of preferences. It has thus proved both inspiring and liberating for public leaders wishing to make an end to old bureaucratic ways.

However, public value itself is both an elusive and ambiguous concept. Moore (2007) asserts that we all recognise public value when we see it, but also appeals to the need for performance monitoring to demonstrate what it is that we are all meant to know. Rhodes and Wanna (2007, p. 408), on the other hand, insightfully note that

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<sup>15</sup> 'These measures [lockdowns] can have a profound negative impact on individuals, communities, and societies by bringing social and economic life to a near stop...such measures disproportionately affect disadvantaged groups...WHO is hopeful that countries will use targeted interventions where and when needed' (WHO, 2020).



it ‘is all things to all people’ and I agree that this probably explains the high numbers of adherents to the public value cult.

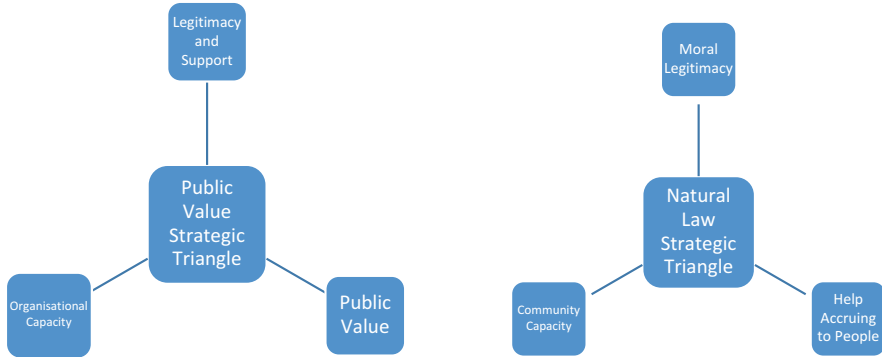
The public value priests would have public executives engaged in a ‘conscientious, publicly accountable, effort to search for public value’ (Moore, 1995, p. 3015). That is, in a public value paradigm, senior management are ‘explorers commissioned by society to search for public value....willing to openly state their views about what is valuable, and to subject those views both to political commentary and operational tests of effectiveness’ (Moore, 1995, p. 299). Some fear that this view of public servants undermines the political process (Rhodes & Wanna, 2007) and puts the senior manager in a role akin to a corporate executive dealing with shareholders (O’Flynn, 2007). I also think that the public value paradigm comes with significant risks to society.

Having public servants cast in the mould of explorers searching for value makes government a far more active and changeable thing. Doing so threatens to deprive lesser associations of the existential space they need to bring forth their *munera*, and threatens to deprive Moores’ (1995) obligatees (what I refer to as the compulsory donor taxpayer – see Chap. 7) of the fruits of their labours which they rightly feel to be their own. The paradigm casts government up as the provider and problem solver, rather than the facilitator and (often) the problem. It relies heavily on ill-defined ‘virtues’ of responsibility and commitment and ignores the cardinal virtues and attendant predictability that they bring which is essential to both markets and people. Public value invests significant power in senior bureaucrats and only asks in return that they improve organisations to create valueless (morally ambiguous and ‘negotiable’) value.

Of course, natural law predates public value by thousands of years and stands in stark contrast to its younger and vaguer contender. It clearly defines the role of government – to cultivate the common good within the constraints of respecting human dignity – and focus on the flourishing of people, rather than mere organisations. It fearlessly asserts that both ‘good’ and ‘evil’ exist and that the former is to always be pursued over mere value. It respects the dignity of lesser associations and compulsory donors and thus preserves the liberty that lies behind the creative energies of people that have always been at the heart of human progress. Indeed, natural law only sets government up as a mere instrument that can *sometimes* be used to facilitate and co-ordinate lesser associations. Moreover, it expects people – particularly those charged with governing – to always act according to carefully defined virtues and practical reason in order to help bring about human flourishing. It also asserts that power must never be concentrated because human nature is sometimes badly flawed.

One way of contrasting the two paradigms is to think about how Moore’s (2007) famous strategic triangle would have to be changed to make it compatible with the natural law. In Fig. 3.1 I present both for comparative purposes. I think this makes it clear where the core difference lies – public value is focussed on the organisation and the natural law is concentrated on people. As a unique person (just like you) I





**Fig. 3.1** Public value v natural law strategic triangles

know where I think the emphasis must be put, and I guess that if you have read this far then you almost certainly agree.<sup>16</sup>

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<sup>16</sup>Indeed, the coronavirus response was a prime example of senior public servants ‘aggressive[ly]’ pursuing their judgements, ‘exagerat[ing]’ ‘repressing particular voices’ and not waiting for political authorisation as Moore (1995, p. 302) has encouraged. I think that the unnecessarily devastating effect on people’s lives from this abandonment of traditional public service values is a very strong indictment of the paradigm.

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## Chapter 4

# Sortition: A Partial Defence of Human Dignity



*Australia has deployed hundreds of soldiers to Sydney to help enforce a Covid lockdown...the [five week] lockdown bars people from leaving their home except for essential exercise, shopping, caregiving and other reasons...the Australian Lawyers Alliance, a civil rights group, called the deployment a “concerning use” of the army in a liberal democracy (BBC, 2021a).*

*If, finally, the bad government is carried on by the multitude, it is called a democracy (Aquinas, 1949)*

**Abstract** Power will always seek to extend itself and this inevitably comes at the expense of human dignity. People can't flourish when they are denied choice and are prevented from using practical reason and exercising virtue. In this chapter I examine an important change to political institutions that might be expected to provide a partial defence of human dignity. I start by laying out the well-known flaws in majoritarian democracy. I then explore the ancient device of sortition. Following this, I set out some of the practicalities of establishing a sortition house to constrain Leviathan-like government. Thereafter I spend a little time describing how sortition would fit into a suite of measures designed to protect dignity. I conclude with my thoughts regarding how the size and shape of government must also change for dignity to be protected and people to flourish.

**Keywords** COVID-19 · Sortition · Human dignity

On Saturday the 24th July, 2021 there were large protests in Sydney and other capital cities across the world. Depending on who one asks – and their particular incentives for answering – somewhere between a few thousand and 40,000 attended in Sydney alone. This was despite little notice as well as strongly worded threats from government leaders and police (BBC, 2021b).

Notably, the media largely demonised the protestors and seemed to be caught wrong-footed (along with the police and political leaders) by the large numbers and *pathos* of the crowds. I suspect that the reason why politicians, police, and media didn't understand the desperation of citizens boils down to the fundamental lesson of economics – people respond to incentives. The media, police, and politicians were still receiving paycheques every fortnight, were still able to leave their houses each day, and were often moving about for their work (sometimes without wearing face masks and the like).

By way of contrast, millions of people had been forced to stay in their homes for weeks on end, had lost their jobs, had lost the opportunity to do the things that make life enjoyable (such as meeting with friends, worshipping, travelling, being entertained), lost relationships, lost businesses, lost homes, and suffered great anxiety over their financial futures. Government support for those who lost everything ranged from \$AUD500 to 700, which was at best just 41% of Australian average weekly earnings (Services Australia, 2021; Australian Bureau of Statistics, 2021). Moreover, there was no clear end in sight to the misery that many were living with.

It is thus abundantly clear that we were not 'in this together', at all.<sup>1</sup>

Some painted the protests as anti-covid rallies. However, the truth is that people gathered for a variety of reasons: some demonstrated against mask wearing, some against mandatory vaccination (which had only been mooted at the time, not declared as policy), others against COVID passports, yet others against discrimination (certain demographics in Sydney were targeted with additional restrictions), some people against police brutality (obviously in response to some sickening televised images of people being beaten for not wearing masks and the like), and others were just plain angry.

Indeed, the most apt description of the protests must be that they were (pro) human dignity rallies.

People seemed to be struggling to understand why such large incursions had been made into human dignity for COVID-19 when relatively few had died. At the time of the protests Australian authorities claimed that the country had suffered 32,594 cases, and 916 deaths (suggesting a death-rate of around 2.8%) (BBC, 2021b). However, many people realised that the apparent death rate was somewhat overstated given that many cases were never detected (a fact born out by sewerage fragment results and common sense<sup>2</sup>), and also that outbreaks in aged care centres accounted for the far majority of fatalities (Australian Government Department of Health, 2021). Moreover, the death toll from COVID paled in comparison to the standard influenza season that claimed 4124 lives<sup>3</sup> in 2019 (ABS, 2019).

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<sup>1</sup> Indeed, academics were also another prominent group who suffered far less under lockdowns – this probably explains the deafening silence from most scholars.

<sup>2</sup> Many people don't get tested because COVID-19 is often without symptoms. In addition, many other people refuse to get tested for fear that their liberty will be taken or according to conscientious objection.

<sup>3</sup> The ABS category is 'influenza and pneumonia'.

Verily, many people at the protests were expressing ‘a sense of disillusionment with the political process that is said to fail to involve citizens in decisions affecting their own lives in a meaningful way’ (Batory & Svensson, 2019, p. 228). Indeed, the last federal election in Australia occurred in May 2019, well before most people had ever heard the words ‘COVID-19’, and at a time when voters couldn’t conceive of a situation whereby citizens would be locked in their homes for months on end in response to public policy. Thus, to some it seemed that the government did not have a mandate for its actions. Moreover, many people realise that democracy never delivers what everyone wants and that in a party duopoly with preferential voting it is often the case that those who govern only do so with the consent of a minority. For example, in the May 2019 elections just 34.9% of Australians cast a first preference vote for the ruling coalition – which means over 65% of eligible citizens didn’t want the government<sup>4</sup> that was now setting the coronavirus policy either through acts or omissions (Australian Electoral Commission, 2019).

Thus, the coronavirus has, in some sense, exposed the inadequacy of Western majoritarian democracy: governments who rule often do so against the wishes of many and without a mandate for their acts. In this chapter I explore how human dignity – especially the dignity of those who lose in the political contest – can be protected from power that naturally strives to extend itself (Messner, 1952). To make this case, I first spend some time detailing more of the manifest ways that people are regularly deprived of binding voice in democracy. Following this I present the ancient device of sortition and argue for its use as a bi-cameral political institution. Thereafter, I examine some of the practical questions of sortition such as how to select representatives and how to conduct the business of the House of Review. I then sketch out in a little more detail the other innovations that would need to be made to protect human dignity and thus promote flourishing (with reference to extant theory discussed in Chap. 1). I conclude this chapter with my thoughts about how the decision to protect human dignity and adopt sortition must inevitably lead to other decisions around the size and scope of government.

## 4.1 The Failings of Western Majoritarian Democracy

Democracy literally means that the people (*demos*) rule (*kratos*). In modern times, and despite the potential for e-democracy, western democracy is almost universally thought of as representative majoritarian democracy. In representative democracy people elect others to represent their interests and both these elections and the subsequent votes by representatives on legislation are considered legitimate as long as

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<sup>4</sup>Some of the policy, of course, was in the hands of the New South Wales state government which was elected in March 2019 with a much healthier *minority* of 41.6% of citizen support (NSW Electoral Commission, 2019)

they receive majority support<sup>5</sup> by the relevant persons (citizens for representatives, and parliamentarians for legislation respectively).

For many decades the manifest weakness of this system of majoritarian democracy has been recognised by the leading scholars such as Riker (1982), and Buchanan (1975). Moreover, the problems are legion, so I will focus on just the most perplexing.

The first set of problems relate to both the lack and quality of information for rational and virtuous voter decision-making. Votes are cast on a bundle of issues all competing for the attention of the voter with some matters conflicting both with one another and the citizen's own values. Indeed, as I have already related, a lot of the important issues for voters aren't even on the table at the time of the infrequent exercise of (limited) voice. Moreover, voters only ever have imperfect information – they stand at great disadvantage with respect to incumbent politicians and even more so relative to bureaucrats who often are far better informed than their political masters. Indeed, because individuals have almost no chance of influencing public policy it becomes a rational choice to remain ignorant of all but the barest detail of government policy. Further complicating good decision-making is the prevalence of political capitalisation (turning hard capital – derived from taxpayers and future generations (via debt) – into votes) which is designed to appeal to the individual voter's vices of greed and imprudence – obscuring the common good and skewing decision-making towards what is believed will create the greatest short-run personal benefit. It is notable that the promises made by prospective representatives are generally not binding and little immediate recourse is possible should the elected representative fail to act virtuously after appointment to office.

The second set of problems relates to the fact that in most western democracies the political environment has become a game of numbers, rather than a contest of ideas or an exercise in deliberation. I agree with Riker (1982, p. 285) that politics, rather than economics, is truly the dismal science because to the winners go the spoils and the losers are forced to not only 'forfeit the values [that] they believe in, but also abide by, if not accept, the values that they despise'<sup>6</sup> The belief that numbers confer legitimacy relies on either an assumption that most people are making good decisions on the basis of practical reason orientated towards the common good, or that utilitarianism (the greatest good for the greatest number) is a right way to employ the substantial resources and coercive powers of the state. I think you and I both know that the former proposition is not true in this age, which leaves us with a foundation for democracy that rests on the idea that where a majority express a

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<sup>5</sup>I acknowledge, that since at least the time of Riker (1986) we have been confronted with the fact that the winning majority in parliament is often only representative of minority preferences due to heresthetical manoeuvres, preferential voting, and the like. However, notwithstanding the substantial evidence against the proposition people still cling to the notion of majority rule.

<sup>6</sup>Thus, it is often the case that people are forced to facilitate (especially through taxation) public policy that they find repulsive for religious or other reasons – such as the state-funded killing of people that the majority have deemed to be a different category of human (as is the case for abortion and euthanasia; Finnis, 2011).

common self-interest then this somehow legitimises incursions into the dignity of minorities via the placing of burdens and establishment of constraints on action. The assertion that the self-interest of superior numbers should always triumph over the rights of the remaining citizens certainly explains most of the public policy and public policy evaluation tools<sup>7</sup> that we see employed in this day: it also explains why human dignity has become such a precarious state of affairs. Moreover, the numbers game results in a concentration of demographics within the ranks of the political elite – with there being good reason to claim a preponderance of the male, stale and pale. Concentration of older demographics, in particular, has long been recognised as introducing deleterious debt bias (the rational choice of political leaders to opt for debt to fund new goods and services in the knowledge that the decision-makers probably won't be paying tax long enough to fund their share of consumption; Drew, 2020). However, concentrations of demographics also clearly influence other areas of decision making. For example, it is probably not coincidental that draconian COVID-19 measures have been introduced under the leadership of relatively old<sup>8</sup> and physically unfit leaders – precisely the people that the literature tells us are most at risk of the virus (see, for example, Jordan, 2020 on her discussion of comorbidities).

The third major set of problems relate to the disproportionate influence that some citizens and associations are able to exert in public policymaking. For instance, both politicians themselves, as well as public servants, not only get an equal voice at elections but also get to heavily influence public policy implementation (usually resulting in budget expansion; Brennan & Buchanan, 1980; see also my discussion of the public value paradigm in the appendix to Chap. 3). In addition, large party donors, party staffers, commercial consultants, and think-tanks get frequent access to decision-makers and thus a disproportionate opportunity to advocate for their preferred policy. Indeed, lobbyists are employed and backed with substantial resources with the sole mission to get good outcomes for their backers, and going on the number of registered lobbyists their efforts must be quite effective. Strong influence is also exerted by media owners and commentators who selectively promote content as well as manoeuvre people into articulating things that are consistent with their goals (as naïve scholars like I frequently discover). It has also been said that social media can influence policy, although I think that the effectiveness of this channel is overstated (especially given the recent aggressive moves by corporations

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<sup>7</sup>Welfare economics is underpinned by a utilitarian ethical paradigm. Distasteful concepts such as the Hicks-Kaldor principle are archetypically utilitarian (see Chap. 3).

<sup>8</sup>According to Aristotle (2012, p. 116) 'virtues are divided between the young and the old: the young are brave but intemperate, the old temperate but cowardly. To put it generally, all the valuable qualities that youth and age divide are united in the prime of life...the body is in its prime from thirty to five and thirty; the mind about forty-nine'. On this reckoning most democratically elected representatives could not be considered to be at their prime, which might explain an overly cautious approach to decision-making.

and governments to censor content<sup>9</sup>). For all these reasons there is good cause to think that voice expressed via the ballot box might be far less determinative, in a public policymaking sense, than most people would like to think.

Government, of course, is not a natural association and democracy is certainly not the received wisdom of the Divine. It never fails to amuse me how many natural law theorists go to extraordinary lengths to defend democracy as if it were some treasured theological principle intrinsic to whatever religious belief system the writer adheres to (see, for example the work of Novak (1999) who, it should be said, I respect enormously especially with regards to his prodigious talent to apply natural law concepts to the problems of government and society). The truth of the matter is that the founding fathers of both the monotheistic natural law traditions were pretty dismissive of democracy. For example, Aquinas (1949) extols the rule of one as more efficacious, more stable, more consistent with the rule of the universe (by one G-d), and more in accordance with nature (although as a beekeeper I cannot agree with the claim that ‘among bees there is one king bee’<sup>10</sup>; p. 14). This kind of strong endorsement not only arises as a result of the undisguised preference of the bible for a monarchy, but probably also harks from the fact that a benevolent monarch *is* the happiest of circumstances for citizens (although this seems to leave the imposing problem of having some fail-safe means for selecting and anointing benevolent monarchs – something that even great prophets struggled with).

Notwithstanding my criticism of majoritarian democracy, I am not blind to the benefits that the institution might bring. It provides some, albeit weak, accountability on earth which is probably a much more appealing prospect to many than the deferred accountability postulated by Aquinas (1949) in the afterlife. Democracy also creates a helpful forum for the articulation of competing ideologies (even though this more lofty engagement is a relatively rare thing). It also creates space for political careerists who have the interest and capacity to convince others of their purported skills and competence. In addition, democracy gives rise to the party machine that is uniquely positioned to collect and apply resources to problems. Moreover, the western version of representative democracy is undoubtedly more efficient than true rule by the demos (Tullock, 1969).

For all these reasons I think we ought not throw the baby out with the bathwater. Instead, I propose an innovation to extant political systems – the use of sortition as check on power and protector of human dignity – which I will elaborate on henceforth.

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<sup>9</sup>Few of us will ever forget the arrest of a heavily pregnant woman in her home in response to an anti-lockdown post she had made on Facebook (BBC, 2020).

<sup>10</sup>In defence of Aquinas we must remember he was the theologian son of a Count and thus had probably never been an apiarist. Indeed, he seems to be merely repeating Aristotle’s famous account of bees.



## 4.2 Sortition as a Device to Protect Human Dignity

Put in its simplest terms, sortition is merely choosing by lot. It was famously used as a method for selecting those who governed in the Athenian city state during the fifth and fourth centuries before the Christian era (BCE). However, this use of sortition to choose those who govern was considerably pre-dated by the oft-neglected employment of sacral lot to choose King Saul in the eleventh century BCE (Lindblom, 1962): here a prophet cast sacred stones to identify who would be the first monarch of the fledging nation of Israel.

The advantage of employing lot to choose who governs turns around the fact that it is an *arational* process. This means that the choice is not biased by prejudice, subjective judgements, nor emotions. Providing that the method yields consistent probabilities over large samples, then the system is also resistant to manipulation. Indeed, selecting people by lot to fill a governing chamber significantly reduces threshold costs, creates equal opportunity for serving, and establishes both a non-factional and non-dependent body of decision-makers. This stands in stark contrast to the democratic system which really only presents opportunities for the well-resourced and connected (Hirschman's 'alert' – see Chap. 1) who are also willing to subscribe to the political ideology of an established party (and hence are both factional and dependent on the said party).

Indeed, the use of lot to select people to govern ought to result in a mini-public that is representative of the cognitive and demographic diversity of the jurisdiction. Cognitive diversity has important implications for how a sortition chamber would operate (see the next section), whilst demographic diversity is essential to combat the debt bias and policy bias that I wrote of in the previous section.

The specific proposal that I make is for a House of Review (HoR) to be chosen by lot that would be invested with both veto and exit powers. A chamber of this kind would both combat the extant concentration of power and competence, and also protect human dignity. Competence would be enhanced through better exposing those chosen by lot to the discretionary spending, taxation and legislative decision-making calculus of the lower chamber – it would thus serve an educative function amplified by frequent rotations. Human dignity would be protected by ensuring that competent adults would have a binding voice in preventing new measures of the legislative assembly that were perceived to unduly restrict people's right to choose their existential ends<sup>11</sup> (see Chap. 2).

Bi-cameral sortition (augmenting a legislative assembly of democratically elected people with a house of review selected through lot) preserves the advantages of democracy (in the legislature) but introduces better safeguards for human dignity

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<sup>11</sup> It also conforms well with Dahl's (1990) famous three criteria for a desirable system of authority – personal choice, competence and efficiency. Personal choice is protected by veto powers with low thresholds; competence is assumed to lie with the people with respect to the decisions that affect their lives (not with philosopher kings); and efficiency is maintained (certainly over other options such as direct democracy) due to the fact that one would only have to serve 2 years, at most, during one's lifetime.

in the HoR. It ensures that the losers of democratic contests still have some voice and thus some way to protect themselves from being compelled to facilitate the values that they despise. It also provides the winners from electoral contests with some way to ensure that the people who they selected to represent their interests do indeed remain faithful to their promises. Moreover, the proposed solutions to new and unexpected public policy conundrums (such as the coronavirus) can be tested against a randomised sample of the citizenry in a prompt manner (that is, outside of lengthy electoral cycles).

When I first heard of the idea of sortition I thought it completely impractical and completely unworkable. However, since this time I have come to realise that both the precedents from history, as well as more recent practices, confirm that it is a genuine alternative to our current deeply flawed system of government. Indeed, in the canton of Glarus, Switzerland, citizens already have the right to assemble annually and veto, modify, or suspend any proposal made by their Parliament (Drew, 2019). Moreover, evidence shows that up to 55% of eligible citizens do attend, and challenge about 43% of the Parliament's decisions, ultimately overturning around 7% of said decisions (Gerber & Mueller, 2018). This practice has been happening since 1387, so is clearly both completely practical and workable. Indeed, there is good evidence to believe that the mere possibility of review and veto has caused parliamentarians to become more reflective and accommodating to the disparate views of citizens.

Some scholars continue to question whether randomly selected citizens are sufficiently competent and willing to serve in a sortition House of Review (see the excellent edited volume of Gastil and Wright (2019)). However, to seriously prosecute these claims one ultimately ends up undermining highly-esteemed extant institutions. For example, democracies implicitly claim that their citizens are capable of making good judgements on public policy – all that is proposed in a sortition House of Review is for people to be able to do this on single issues with more frequency. Moreover, many countries use randomly selected juries to decide weighty legal issues – presumably they have been finding sufficient numbers of competent people for centuries.<sup>12</sup> Indeed, it seems to me that people who claim that others are not sufficiently competent to make important decisions affecting their lives must be at heart neo-Platonists who believe that the masses must be ruled by their betters (philosopher kings). I, on the other hand, am firmly in the school of Aristotle (on this matter) who believed that the average citizen, when provided with good information, is eminently competent to have a say in the decisions that affect their lives (Dahl, 1990).

To my mind, the only things required to extend protection of human dignity, and check concentrations of power and competence, is the foresight to establish systems that minimise opportunity costs and provide appropriate incentives: these are the matters to which I now turn my attention.

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<sup>12</sup> Indeed, people who oppose sortition must also be ignorant or dispute the success of assemblies (such as the British Columbia Constitutional Assembly and the Glarus Canton Assembly) that clearly demonstrate both willingness and competence.

## 4.3 Some Practicalities Regarding Sortition

Elsewhere I have written extensively about sortition and the practicalities of implementing same at the local government level (where it is most workable). Thus, in this section I do not propose to go into great detail and refer the reader instead to Drew (2019, 2020). Indeed, I will concentrate on the two biggest issues: (i) the criteria for selecting members of a sortition House of Review, and (ii) how I propose the house would examine proposals from the legislature.

### 4.3.1 *Selection Criteria*

Sortition for the purposes of human flourishing comes with something of a conundrum – on the one hand, we want the pool to be as wide as possible (have few disqualifiers) in order that we might yield a good representation of the citizenry; on the other hand, we do not wish to perpetuate or exacerbate the extant inequalities in democracy, nor have vice-ridden people being handed veto power with respect to measures which ought to lead to the instantiation of public virtue.

To promote a wide pool of potential sortition house members we would need to construct a relatively large HoR with relatively frequent rotations (because each of these factors are proportional to the probability of serving at some point during one’s lifetime). In my previous work on sortition I have shown that it ought to be possible to achieve probabilities of serving on the HoR during one’s lifetime of one in four or better in moderate-sized decentralised government (see the next section) – for national government the chamber would either have to be very large or the rotations very frequent (which is one important reason for why I agree with Brennan and Buchanan (1980) that most functions ought to be decentralised). Moreover, I believe that it is useful for HoR members to experience at least one full financial year cycle so that they understand the trade-offs that must occur with discretionary spending and taxation. If this is done, and we also want to have a constant mix of both experience and fresh perspective<sup>13</sup> in each HoR then it suggests the establishment of a regime of half-chamber annual rotations.

To enhance willingness to serve the obvious thing to do is to reduce opportunity costs (a term economists use to describe the next best option foregone). This can be done by having the HoR only consider proposals that have passed the lower

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<sup>13</sup>Experience provides a certain degree of predictability for legislators and also improves the quality of decision-making. Fresh perspective means that legislators have a reasonable prospect of pushing an agenda previously thwarted by a HoR earlier in their political term – indeed, in a 4 year cycle with annual half rotations legislators will have the opportunity to present their proposal to two-and-a-half times the number of people constituting the HoR – if they can’t convince this many different sets of people that their proposal has merit then they are either poor politicians or are not acting in a way that promotes human flourishing.

chamber, facilitate voting via electronic means<sup>14</sup> (including at one's home or workplace), restricting the time allowed for those who support or object to a proposal to make their pitch (which ought to be constructed according to practical reason and public virtue arguments – see Chap. 2), and remunerate HoR members for their time. It would also be wise to prohibit public deliberation by the HoR members for at least three reasons: (i) 'time's harsh and inescapable constraints' (Dahl, 1967, p. 957), (ii) because deliberation tends to disadvantage those with little rhetorical skill and hence suppresses the cognitive diversity that is a positive feature of sortition, and (iii) deliberation would make it difficult to have flexible remote electronic voting (debates would have to happen at a set time).

In terms of who ought to be disqualified from serving on a HoR, I am likely to offend many (because of my desire to correct the flaws of democracy and also promote public virtue). However, truth is not contingent on how many people find it convenient or appealing (Maimonides, 1956). Thus, I am obliged to state plainly that those who have been convicted of grave lapses in virtue (such as murder, sexual deviancy, theft, perjury, and bankruptcy) ought not to be eligible for the HoR until such time that they can mount a convincing case that they have remedied their vice (see Chap. 3). Moreover, those who already exert disproportionate influence over the public policy process – such as registered lobbyists, current politicians and their staffers, commercial consultants engaged on government work, large donors, and political media commentators – ought not be given further opportunities to shape laws and policy. Similarly, senior and middle management public servants have considerably more influence over government policy than other citizens and also do not need to be provided with even more opportunities. Indeed, the proclivity of bureaucrats to support budget expansion for their own empire building benefit – to the detriment of the obligatory donor taxpayers (and future generations) – is another reason to disqualify them from a HoR (see Brennan and Buchanan (1980) for their discussion of alarming and enduring increases to government expenditure and debt). For the same reason, people receiving charitable<sup>15</sup> welfare (pensioners and the unemployed) ought not to have a voice in a HoR during the period that they receive financial support. Indeed, finding oneself in the position where charity is required often speaks to earlier imprudent behaviour. Moreover, people ought to be able to disqualify themselves for other reasons when they can construct robust practical reasons for not serving (a necessary further protection for human dignity).

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<sup>14</sup>What I suggest here is that the proposal would be voted on using IT that would first present the pitches for or against a measure via pre-recorded video, then allow people to study the wording of the proposal before voting on it at a time most suitable to them (within a sensible deadline period).

<sup>15</sup>Welfare is clearly a form of coerced charity according to Thomistic thought (and common sense). Other people are forced to pay taxes so that putatively less fortunate people can have their money to service needs (and, unfortunately, often wants). Sadly, the provider state mentality is so pervasive in the west that people think of pensions as an entitlement and rarely give a thought to the sacrifices that taxpayers are forced to make to provide for them (Messner, 1952; Sirico, 1997). Moreover, it is just quite strange (and incredibly optimistic with respect to levels of virtue relative to self-interest) to argue that people who receive charity ought to have a binding say on how it is provided.

Thus, the need to be both practical and virtuous suggests that the sortition pool will be smaller than the democratic voting pool. However, we must remember two important things – first, people disqualified from serving on the HoR will likely still have an equal voice in the democratic process that putatively drives the public policy agenda; and second, democracy also has a range of disqualifications (based on age, citizenship, and certain crimes). Therefore, to argue against the measures I propose might well mean that a person finds themselves either arguing in favour of certain people being given disproportionate influence, or against extant arrangements.

### *4.3.2 Operation of the House of Review*

The House of Review is designed to be a critical element of the various measures explained in this book aimed at defeating the natural tendency of power to try to extend itself. It is therefore mostly concerned with the defence of human dignity and the business of the HoR will be shaped accordingly.

As I have already noted, members of the HoR only have veto and exit powers, they will not be able to deliberate or propose new policy and legislation (these tasks are clearly outside of the human dignity defence remit). Nevertheless, it is important to place limits on the number of matters referred to the HoR to keep workloads manageable and also ensure that government has the freedom to fulfil its core function (to cultivate and protect the common good). Moreover, the precise arrangements should be determined only after a careful trial had been made of the institution; thus the following is meant only as a guide, not as a prescription.

Veto powers should apply to (some) legislation, all taxation, and all discretionary spending proposals. Legislation that does not seek to constrain or coerce choice need not go to review – that is, rules that are only put in place to avoid confusion or confirm longstanding social convention need not detain the HoR. Taxation policy should definitely be a core concern of the HoR with an emphasis being placed on distributive justice within a requirement for balanced budgets on operational spending (see the next section). In similar vein, all discretionary spending reflects choices that the legislature have made which will ultimately need to be paid for by current or future residents<sup>16</sup> and thus warrants oversight (see Chap. 7). Moreover, discretionary spending is particularly worthy of close scrutiny because of the high likelihood that it is, in fact, an exercise in political capitalisation – a practice that contrasts starkly to the ideal of public virtue.

For human dignity matters it would seem reasonable to set the threshold for veto rather low because the losers from political contests represented on the HoR are likely to be few. If one was content that the aforementioned disqualifications worked effectively and that the HoR members had been provided with sufficient and

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<sup>16</sup>Future residents pay either through taxation to service debt, or inflation (responding to growth in money supply) which effectively acts as a tax on stored monetary wealth.

appropriate training then perhaps a single veto vote might be considered appropriate to thwart the legislature.<sup>17</sup> It is also possible that good reasons could be constructed for having different thresholds for certain issues and as a natural law advocate I would certainly not object to conclusions for acting that were supported by practical reason. Clearly this means that a lot of the kinds of measures routinely introduced by governments would probably struggle under sortition – but that is precisely the point (to stop the widespread violation of human dignity indicative of Leviathan-like government that has haunted us since the dawn of civilisation). Otherwise stated, given the prospect of review by sortition elected representatives would either need to do a far better job at convincing the public of the virtues of their proposals or alternatively government would ultimately end up doing far less (thus also relieving some of the fiscal pressure as well as creating the existential space for plural associations to once again bring forth their munera).

The other power that a HoR ought to be able to exercise is exit (see Chap. 1 for a discussion of Hirschman's (1970) famous thesis). This could take at least two forms. First, a HoR could choose to exit a particular leader of the political legislature's representatives. That is, the randomly selected house should have the capacity to remove a leader from office if they fail to act for the common good (that is, they become a tyrant or demonstrate incompetence). Because a decision of this kind represents a reflection on the earlier choices made in a democratic process, the action must be taken only for grave reasons and receive the almost unanimous support of the HoR. A second exit option should be to return to the polls – this is an even graver matter and thus would require the strongest level of support from members of the HoR. In both cases, exit options allow for the mitigation of some of the big problems in extant majoritarian democracy – for instance, the infrequency of elections, the introduction of unexpected policy challenges (such as coronavirus), politicians not keeping promises or meeting expectations, as well as the disproportionate influence of lobbyists and the like.

However, even with the strong oversight of the sortition chamber it may be hard to preserve dignity and thus promote human flourishing. Accordingly, a range of additional measures would need to be taken, and in the next section I briefly orientate readers to these.

#### 4.4 How Sortition Fits in with Theory and Other Measures

As I noted in Chap. 1, the great Albert Hirschman (1970) prescribed exit and voice, Buchanan (1975) suggested decentralisation and fiscal constitutions, and Messner (1952) Catholic Social Teaching and social forces. All of these have failed to gain traction and sufficiently protect human dignity necessary for people to flourish. I

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<sup>17</sup>If one was not so sure then to veto a proposal might require two or more negative votes.

therefore conclude that a much more comprehensive suite of measures will be required to finally free citizens from the threat of Leviathan.

A House of Review is a crucial measure but it cannot hope to succeed alone. Indeed, for it to operate at all would require a strong constitutional framework that protects it as an institution from the political class that certainly won't welcome it. History teaches that such a radical change is only likely to occur following a grave crisis that prompts a revolution (Dahl, 1990) – perhaps the economic and human dignity devastation arising from the coronavirus may prove a catalyst, or maybe we will sadly need to plumb even lower depths first.

Moreover, after the revolution we will require a constitution that also sets out the instrumental role of government with respect to the common good, and offers strong protections for human dignity. Our constitution in Australia, whilst relatively young, fails to do these things as is also the case in many jurisdictions abroad. It is hard to see how Leviathan can ever be overcome unless we set rules for the game that place firm limits on government in a range of matters and protect the inalienable rights of people to choose their existential ends without undue interference. Constitutions written hundreds of years ago when virtue was still taught and esteemed, and most people feared G-d, are simply not up to the job of providing adequate protection for people to flourish in these times. I won't say much more here on this topic but instead refer the interested reader to the large literature produced by esteemed natural law jurisprudence<sup>18</sup> scholars during the past few decades (see for example Rice, 1999).

To (re-)create a government that allows people to flourish we will also need to get the structure, size, and remit of government settled. Thus far, I have only hinted at the need for decentralised government wherein most of the powers must reside – in the next chapter I will spell out my reasons for this prescription with reference to the work of Dahl (1967), Buchanan (1975) and also Hirschman (1970).

It will also be necessary for a moral government to employ a morally licit framework for taxation. In Chap. 7 I will detail how we can raise the funds necessary to finance government in a way that respects the dignity of the person. Moreover, I will show how a cleverly designed tax system would not only enhance the voice and exit options which are also a feature of sortition, but could also be used to promote virtue, equality of opportunity, as well as combat vice.

Related to this is the need for a fiscal constitution (a point that Buchanan (1997) was very strong on). In particular, balanced budget legislation (BBL) and debt brakes (DB) are critical to protect the dignity of future taxpayers from the selfishness of the current taxpayers. BBL requires governments to pass a balanced budget with respect to operational expenditure ('opex' is money spent on staff, contracts, or items that are expected to be fully consumed within 12 months). As I have written elsewhere (Drew, 2020) BBL needs to be supported by strong legislation, significant penalties, and rigorous oversight. Moreover, contrary to what one often hears

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<sup>18</sup> Indeed, this is where most of the natural law efforts to-date have been directed, which is why a book like *Natural Law and Government* was so important to write – laws alone aren't sufficient for the good life; we also need to be able to apply the philosophy to the wider functions of government.



from politicians (who resent the constraint on their capacity to practice political capitalisation), BBL does not prevent the political class from either fulfilling campaign promises or responding to community need. It merely insists on a quid-pro-quo: that is, money spent on the current generation of taxpayers must be matched with sufficient revenues from the same cohort.

Debt brakes (DB), on the other hand, should refer to capital expenditure. In some cases, and according to strict constraints<sup>19</sup> it *may* be morally appropriate to fund enduring assets (the object of capital expenditure) through debt, because future generations at least will get some benefit from them (unlike opex which will be fully consumed by the current cohort). However, even when used carefully debt is a dubious way to fund government because it smacks of hypocrisy. Hypocrisy arises first because most of us have been beneficiaries of enduring government goods that were paid for, in full, by previous generations. Second, it is also the case that most of us would never dream of leaving our children worse off than we were ourselves with respect to our personal finances – I know that I have worked hard and saved hard so that my children could have far more than I ever had. It would be contrary to the logic of *kal vahomer* to deviate so strongly from the behaviours that we prize in our personal finances when it comes to collective finance.

Notably, I do not support tax and expenditure limitations (also known as tax capping or tax pegging) for two important reasons. First, as I have already related, taxation is a key area of focus for the HoR thus making other measures redundant. Second, if tax and expenditure limitations operate at the same time as BBL then one really is making it difficult for the political class to implement election promises and respond to new need (notwithstanding the fact that they could still ‘fund’ new expenditure by cutting existing programs or finding efficiencies). Therefore, my proposal for a fiscal constitution would largely be limited to balanced budget legislation and debt brakes.

Without a citizenry that understands theoretical and practical reason, virtue, the instrumentality of government, as well as the sanctity of human dignity it is hard to see how citizens could operate effectively in the HoR, and also how any hard-won gains for human flourishing might persist. Indeed, it has always been recognised by the ancients that the key to a good society is education and for much of human history important teachings were a feature of either the family, formal education, or religious instruction. I thus spend considerable time in Chap. 8 outlining how the education ecology would need to change to support a system of government focussed on creating human flourishing.

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<sup>19</sup>As I detail in Drew (2021) the minimum criteria for morally licit debt is: (i) that debt has been taken out for the right reasons (not because of debt bias, nor misapprehensions regarding Keynesian economics), (ii) that the capital item is long-lived and likely to also be valued by the future generations asked to pay for it, (iii) that repayments commence immediately in proportion to the consumption of the asset and are quarantined in budgets, and (iv) measures are taken to combat fiscal illusion (which occurs when citizens don’t understand the full value of what they consume) by clearly communicating the quantum forced onto future generations.



Thus, it should be clear that at the end of this chapter we have only still sketched an outline of a portrait of human flourishing. There is still much to be done, and I look forward to working with you to generate an understanding of how government ought to contribute to good lives in the pages that follow.

## 4.5 Concluding Remarks

I commenced this chapter with an account of the relatively large protests that arose in response to the public interventions regarding the coronavirus. Maybe they were ‘spreader’ events (although we will never know because any person that would attend a protest of this kind is hardly going to go get tested afterwards), and maybe they did put people at risk (especially the protestors themselves which I watched footage of being beaten by police).

But what else could these people have done?

Elections were still years away in New South Wales. In addition, people had no exit option – one couldn’t even travel interstate let alone emigrate away from Leviathan. Were people meant to just sit impotently in their houses for years watching their dreams crash about them, grateful for a few hundred dollars per week from the government?

If a sortition House of Review had existed I very much doubt that the later lockdowns would ever have been allowed to proceed (the early ones seemed reasonable to most people). Moreover, there would certainly have been some viable opportunities for exit – either exit from the leadership, or perhaps a return to the polling booth.<sup>20</sup>

The protests are thus best seen as a desperate (and rather predictable) response by a group of people who felt completely powerless in the face of massive incursions into their human dignity (whether or not these incursions were effective or reasonable is an entirely different matter – see Chaps. 6 and 9).

Perhaps if we had had human-sized government where people could feel moral empathy, exert a powerful voice, and still maintain a plurality of crucial associations, things might have been different. In the next chapter I will consider precisely this proposition.

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<sup>20</sup>Indeed, it is remarkable that we had a much-celebrated vote for homosexual marriage – which really had little impact on most people’s lives – but never had a binding say on indefinite home detentions that affected all but the politicians, media and the elite.

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## Chapter 5

# Structure, Remit, and Size of Government



*Power-hungry premiers know that we'll never eliminate Covid...most Covid-19 infections now pose a greater threat to public freedoms and economic activity than they do public health (Kenny, 2021).*

*For human beings seem to desire ruling power in the same way that the sick desire health (Aquinas, 2007, p. 3196).*

**Abstract** It is true that different sized government is sometimes required for problems of different dimensions. However, it is equally clear that most problems can be dealt with best by human-sized associations which have better knowledge of the challenges faced by citizens, a higher moral stake in seeing efficacious solutions implemented, greater transparency, as well as a higher capacity for moral empathy. In this chapter I draw on the principle of subsidiarity to set out a case for highly decentralised government with a carefully defined remit, augmented by larger associations only when the necessity for scale dictates. I also explain how a balance can be maintained between the centralising tendencies of higher tier governments and the decentralised authorities that I champion. I conclude with some observations regarding the needless costs incurred because of the failure to match coronavirus policy to human-sized government.

**Keywords** COVID-19 · Government remit · Government size · Federations · Human-sized government · Theory of federalism · Rhetoric · Heresthetic

As I write this chapter, I am in a state-wide lockdown in New South Wales, Australia. From 17:00 on Saturday 14th August until 12:01 Sunday 22nd August 2021 I must stay in my home unless I have a reasonable excuse. Police and military are knocking door to door to check on compliance and also patrolling streets and shops. Indeed, there is a website listing hundreds of rules that citizens must now abide by – most of them draconian in nature (NSW Government, 2021a).

The irony is that as the lockdown was implemented there was still not a single case of coronavirus in the local government area where I live and work (Tamworth local government spanning an area just shy of a million hectares; NSW Government, 2021b). Indeed, there was not a single case in any of the surrounding local government areas either (NSW Government, 2021b). Yet I am locked in my home and my family is subject to significant disruption to their lives.

As an individual person I find it very difficult to understand how my home detention 400 kilometres away from the outbreak epicentre is helping matters. Indeed, I find it difficult to empathise with the plight of the vulnerable people in Sydney, in about the same way that I have failed to identify closely with those suffering in, say, India or Brazil. Certainly, I am sad for their suffering, but I would be misrepresenting matters to suggest that I am losing sleep over it. Moreover, I don't feel like I am morally invested in the success of measures being implemented there and definitely don't believe that I ought to be held accountable to the citizens of Greater Sydney with regards to either my vaccination decisions, nor the diligence with which I observe covid-safe practices. In fact, I have no close acquaintances in the capital city of New South Wales and would be hard pressed to explain what life is like for them – to describe where they live and how they would ordinarily move about the place. It is thus unsurprising that I don't feel particularly inclined to respond to their plight (certainly not with alacrity), despite grim media reports of same.

I don't believe that my lack of moral connection to the people of Sydney means that I am a horrible person though – I just think that I am human and suspect that my readers also hold similar feelings about how matters are transpiring many hundreds of kilometres away from where they live. I might belong to a state called New South Wales, but I hold little loyalty for the government, people and institutions that constitute it (indeed only a decade ago I was living in the state of Queensland). My identity as a New South Welshman really only extends as far as my state-issued drivers' licence, and the requirement to vote at state elections every four years. I do have a little more loyalty for my country though, and take far more interest in national politics and policy. However, it would still be a mistake to suggest that I feel for people living, in say, the Northern Territory, understand their needs, or am prepared to make huge sacrifices for them. Indeed, I have only ever seen four of the eight subnational jurisdictions that make up the nation and probably have less knowledge of the lives of Northern Territorians than I do the lives of Israelis or Japanese (where I have travelled extensively).

Once again, I submit that I am not particularly uncaring or ignorant – just human and honest. It is completely natural to struggle to empathise, understand the effects of our choices, feel morally accountable, know, or respond to people that one has never met, nor is ever likely to meet. This is probably the reason why Aristotle (1992, p. 405), writing on the size of the ideal state, enjoined that 'citizens ought to know each other and know what kind of people they are...[and that the state] must not be so large that it cannot be easily surveyed'.

Otherwise stated, humans need human-sized government in order to feel the kinds of things that most of us associate with true community – empathy, moral accountability, concern, and a willingness to respond to need. Reasons can always

be found for arguing that a government must be bigger in order to be described as great, but this kind of thinking ignores the whole justification for why government exists in the first place: people. For people to flourish we must put their needs and moral capacity at the centre of what we do, instead of focussing so much on the needs and capacity of institutions.

The question that I seek to answer in this chapter is: what is the most effective size for government? In the next section I briefly remind readers of the main tenets of the principle of subsidiarity (see also Chap. 3) and use this knowledge to sketch a picture of a morally appropriate structure for government. Following this I map out the appropriate remit for different levels of government with an emphasis on preserving the plurality of social forms required to promote human flourishing. Thereafter, I examine some of the long history of thought regarding the vexed matter of the size of government. In the penultimate section I apply some of the ideas of Riker's (1964) theory of federalism to show how we might both strike and maintain an appropriate balance between the roles of decentralised and central government. I conclude the chapter with a brief summary of the costs incurred as a result of failing to tailor public policy to human-sized jurisdictions.

## 5.1 The Structure of Government

The principle of subsidiarity is derived from the catholic social teaching with respect to the natural law tradition (see also Chap. 3). It specifically confronts the tension between human dignity and the common good and thus has special relevance to the question of government remit.

At its heart lies an assertion of an ontology of plural social forms, with the family being afforded primacy. Moreover, families and other lesser associations are considered to have dignity by virtue of their irreducible ends and unique *munera* (gifts). The lesser associations are also acknowledged as essential mediating institutions between the person and the state.

Government is assigned the role of supreme guardian of the common good. However, in subsidiarity thought the danger of concentrations of power and competence are recognised and the principle responds with a strong preference for smaller associations which it is argued are also more effective, more responsive, and imbued with greater moral proximity. To protect the lesser associations from being over-awed by government two moral dictates are established.

The first is a negative prohibition on the subsumption of the functions of persons or persons in lesser associations. Indeed, Pius XI (1931) equated subsumption with evil such as communal theft on the basis that when greater associations intrude into the legitimate remit of their smaller peers it results in the latter being starved of capacity and competence, thus ultimately causing them to wither and no longer be able to bring forth their unique *munera*. Indeed, for Pius XI (1931), subsidiarity was no mere preference, but rather a matter of the gravest moral importance.

The second dictate is an obligation established on all greater associations to provide *subsidium*<sup>1</sup> (help) for cases of *bona fide* need. In fact, this obligation goes as far as to require greater associations to establish and stimulate lesser bodies where necessary, thus ensuring that the suite of plural associations are not mere relics of history, but instead dynamically change in response to human need which itself changes as a result of both social progress and new exogenous challenges. Once again, this is no mere preference, but instead considered to be a sacred and moral duty.

Notably, Pius XI (1931, paragraph 78) appealed to the self interest of central governments in his promotion of the principle, warning that its neglect would cause ‘great harm [to] the State itself; for, with a structure of social governance lost, and with the taking over of all the burdens which the wrecked associations once bore, the State has been overwhelmed and crushed by almost infinite tasks and duties’. Given the subsequent rise of dizzying levels of ever-escalating sovereign debt, isolation and despair it seems that the unheeded warnings of Pius (and later popes) might have been rather prescient.

The preference for functions to be performed at the level closest to the person and their need can, and has, been applied to the question of the ideal structure for government (see, for example, Drew, 2020). It is probably no accident that the principle wasn’t articulated until the late nineteenth century (by Leo XIII, 1891) because until that time government had been much more human-sized and proximate to the person (and hence less of a threat to human dignity). Indeed, prior to the nineteenth century the presumption had been that government would take the form of the city state and this had been conventional thinking for around two-thousand years (Dahl, 1967). City states were far smaller<sup>2</sup> and had much closer proximity to the person and often were ably supported by village governance structures. In fact, Aristotle (1992, p. 413) noted the importance of a plurality of governments to accommodate ‘different sets of people [who] seek their happiness in different ways and by different means, and so make for themselves different lives and different constitutions’. However, the rise of the nation state significantly disturbed both the proximity and plurality of government with respect to the person thus creating both a need for the articulation of the principle of subsidiarity in addition to more formal decentralised government apparatus.

Nation states appear to have arisen in response to three main drivers. First, was a desire to carve out territories that covered sufficient geographical area such that a certain degree of self-sufficiency could be attained, especially with respect to

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<sup>1</sup> *Subsidium* involves providing help only for *bona fide* need, and then in a way that makes it superfluous as quickly as possible. Providing *subsidium* for wants, or failing to build-in redundancy, does not respect the compulsory donor and also, perversely, encourages dependency contrary to human dignity (see Drew, 2020).

<sup>2</sup> There is some doubt regarding the population of ancient Athens: one estimate places it at 30,000 citizens (plus slaves and resident aliens), another provides a ceiling of no more than 40,000 males (Dahl, 1967). In any event, it was far less than any modern nation state, and even less than some local governments.

essential commodities (Aquinas, 2007). Trade was always an option, but it left people vulnerable to global market supply shocks as well as disruptions associated with war, pestilence, and the like. Second, and perhaps more compelling, was a perceived need to be sufficiently large so that an adequate levy of soldiers might be raised for the purposes of either self-defence or for providing succour to allies (Plato in Jowlett, 1986). Third, was an aspiration to capture spillovers (also referred to as externalities by economists). Spillovers occur when the actions of one state exert either positive or negative consequences for a neighbour (for instance, in 1979 when Ethiopia planned to dam the Nile River this occasioned a dispute with Egypt because of the potential for the project to disrupt the latter's main source of fresh water). In extreme cases, neighbouring states which experience large negative externalities might be prompted to launch military action to mitigate same, and states with large positive externalities might be encouraged to enter into federations to cement mutual advantage.

Using the aforementioned logic to justify the expansion of nation states, ultimately leads to a quest for ever bigger territories: even nation states the size of entire continents may well find themselves insufficiently large to be self-sufficient in commodities, defence, or to mitigate disagreeable spillovers. But how could a person be expected to feel loyalty and moral connection towards such massive nation states? Moreover, a person confronted with a disagreeable mega-state would have few viable options to remedy their situation because as size increases voice becomes more indirect (only possible through representatives), more expensive (in terms of both time and money to get the ear of decision makers), and more one-way (top-down rather than bottom-up; Dahl, 1990). In addition, a world of mega-nations would provide far less opportunities for exit and considerably more expense for those electing to do so (please see my discussion of both Buchanan's and Hirschman's seminal works in Chap. 1).

The good news is that the far majority of goods and services can be effectively provided by highly decentralised government. Indeed, only a relatively few functions require larger scale and when this is necessary then federations of decentralised governments – at the nation state level or higher – can, and are, established. Moreover, it is clear that the need to establish a large-scaled federation or government to deal with a particular problem, does not provide a justification for the organisations thus constituted to expand their remit beyond the original need (see the penultimate section for a discussion of how to combat the natural tendency of power to try to extend itself). Indeed, to be consistent with the dictates of practical reason each additional function of a government tier or federation ought to be justified with good reasons.

Thus, different sized governments, as well as different federations, will be required to deal with some problems of vastly different dimensions. As the principle of subsidiarity teaches, most public problems will be most effectively dealt with by associations closest to the people – that is, the decentralised government. Human sized decentralised governments allow people to feel empathy and understand how their own actions affect the common good. Moreover, regions would be much less likely to be 'forgotten' (and hence subject to crippling levels of regional inequality),



and also minorities<sup>3</sup> would be much more likely to have an effective voice in highly decentralised government. Decentralised government ought to be the provider of services that are most frequently accessed and relied upon by citizenry, because this is where the greatest benefits of co-operation are to be found (as well as the greatest threats to human dignity) and hence where we need both audible voice and optimal effectiveness. Indeed, if we made decentralised government responsible for more of the services that affect our lives closely then it would provide citizens with more reason to become engaged in the political arena which should result in government becoming more responsive to the needs and concerns of its citizenry.

Some problems will, of course, require the co-operation of multiple decentralised governments. A good example of where this is sometimes necessary is in the area of riparian management (unless communities along the entire catchment area co-operate there is little chance for effective management of waterways). Other problems require even larger federations of decentralised government (such as the nation state). For example, the existence of national public goods (such as defence) as well as the small scale and leaky borders of decentralised jurisdictions mean that some matters must be assigned to the central state (see the next section; Oates, 1999). Yet other problems require the scale of international federations to be handled effectively. Climate change is a good example of such a problem, as is the coronavirus. In certain circumstances, by banding together, nation states can co-operate for the common good of large swathes of the world's population and deal with some problems more satisfactorily than individual nation efforts might be expected to achieve.

Notably, for all federations – including both domestic and international co-operative efforts – the principle of subsidiarity is an ideal organising principle. Subsidiarity protects the dignity of the constituent elements (the decentralised government or nation state) but also ensures that the greater association understands its moral obligation to provide help and support for *bona fide* need (which, of course, is its sole justification and source of legitimacy).

Indeed, the foregoing reasoning should result in a large number of decentralised governments supported by federations of varying permanency and constitutions at the national and international level for particular problems only where large scale is an advantage. However, the most essential tasks as well as the most extensive remit would reside with the decentralised government – that is, power and competence should be widely dispersed with respect to the matters that affect people's lives the most. Indeed, under this prescription, decentralised government would take on the status of the most important government association for most people. In the next section, I set out the appropriate remit for these governments.

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<sup>3</sup>Because people tend to congregate in areas where similarly minded citizens reside it is quite likely that a national minority might find itself to be in a majority in a much more decentralised government area. Thus a group that could barely register as a voice on a national podium, might control a decentralised government (or at least be audible).

## 5.2 A Limited Remit for Government

It will already be clear that I prescribe a relatively small role for government if the intent is to allow people to be given the freedom and existential space to flourish. Moreover, fostering a plurality of social forms means that power and competence will not be concentrated and thus significantly reduces the risk to human dignity. It also ensures that people have maximum choice, voice, and exit options. Indeed, it is for government to prove that ‘it’s jurisdiction rightly reaches so far into the lives of those persons and associations whose good is more intrinsic than its’ (Finnis, 2013, p. 156). Otherwise stated, ‘before the state can socialise an industry or assume a new function, it must prove beyond all reasonable doubt that this is necessary and cannot be performed by individuals or by a smaller group’ (Kenney, 1955, p. 34). Failure to do so robs people and their associations of existential space and freedom which ultimately denies them the capacity to flourish.

Indeed, precisely this sentiment was once common currency amongst western democratic governments as illustrated by Eisenhower’s 1955 State of the Union address:

The aspirations of most of our people can best be fulfilled through their own enterprise and initiative, without government interference. The Administration follows two simple rules: first, the Federal Government should perform an essential task only when it cannot otherwise be adequately performed; and second, in performing that task, our Government must not impair the self-respect, the freedom and the incentive of the individual . . . Government can fully meet its obligations without creating a dependent population or a domineering bureaucracy.

Sadly, things have changed radically because people have adopted a muddleheaded view that others can be *forced* to flourish through the intervention of government – oblivious to the fact that for a person to internalise change that they must be both part of the striving and also agree with the proposed destination. The result is that I now find myself writing a book length treatise for people to learn what was once considered obvious and beyond dispute. The legitimate areas for government action can, for the most part, be categorised according to a subset of the types of goods and services recognised by economists: public goods, merit goods, demerit goods, goods with externalities, as well as private goods associated with *bona fide* market failure.

Public goods are things that are both non-excludable (I can’t reasonably put measures in place to prevent you from consuming it) and non-rival (your use of the good does not materially affect my ability to also use it) in consumption. The classic example are roads and street lighting. Goods of this kind are the *raison d’etre* of government and the justification for taxation (see Chap. 7). However, it is important to clarify that not all public goods must be provided by government – indeed the history of the civilised world graphically illustrates that public goods can often be best provided by smaller associations such as religious or benevolent foundations (as in the case of the first hospitals, schools and universities). Even today, some parks and community infrastructure continue to be provided by these lesser

associations: it is thus important for government to respect their mission and leave them with sufficient existential space.

Merit goods are things wherein virtue is internalised as a result of consumption. Thus, the consumption of merit goods is generally consistent with the cultivation of virtue required for people to flourish (see Chap. 2). There is a case for government to contribute to the provision of such goods, and fund this action through the tax pool (Chap. 7), when no other association is competent to provide them. However, many so-called merit goods provided by government may not be particularly meritorious or could easily be provided by lesser associations. An example of the former are the barely used velodromes and bike tracks that exist even in rural Tamworth – presumably the supposed merit is physical fitness but one doesn't need to ride a bike to accomplish this (we have legs for walking). An example of the latter are public swimming pools that could usually be much better run by local aquatic groups, or the market, than by government (indeed I know of many local governments where the management of pools have been successfully outsourced to swimming clubs or private individuals). Moreover, many truly meritorious goods are often not recognised as such, and even limited support from government attracts strong criticism from the media. A notable example are religious associations for whom tax relief is often attacked despite the fact that these organisations are principally and competently engaged in the teaching of virtue.<sup>4</sup>

Demerit goods are rarely mentioned in the literature nowadays – due probably to a fundamental confusion between the concepts of freedom and liberty<sup>5</sup> – but were once an important area of economic inquiry (Mastromatteo and Solari, 2014). Demerit goods are things wherein consumption, or excess of consumption, is likely to cultivate vice. Items such as pornography, prostitution, alcohol, nicotine, marijuana, gambling, non-productive asset speculation and the like. Government has an important role with respect to discouraging consumption of items that are known to grievously impact human flourishing or otherwise provide a poor example to impressionable people. I agree with Aquinas that government ought not place legal burdens on people that they cannot bear, because to do so may ‘produce a negative attitude toward the law [and government] in general, and lead to resentment and hardening of hearts, and possibly even rebellion<sup>6</sup>, (George, 1993, p. 32). Moreover, we know from the prohibition in America (and some Muslim countries today) that bans are rarely successful and simply create markets for criminals. However, there is a clear role for government to discourage consumption (for example, by levying a demerit tax – see Chap. 7), or provide alternatives (perhaps community bonds as

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<sup>4</sup>We have only to pause a few moments and compare levels of crime and vice in current times to other moments in modern history, when most people attended religious services, to understand the importance of religious associations to the good life and good society.

<sup>5</sup>Being free to indulge in vice does not necessarily set one at liberty – instead a vice-ridden person becomes captive of their animal lusts and desires (a far cry from a flourishing human being – see Chap. 2).

<sup>6</sup>A fact that seems to have been lost on the architects of the excessively draconian COVID restrictions in many countries such as Australia.

an alternative to speculative, unproductive, and gambling-proxy cryptocurrencies). Sadly, governments across most of the political spectrum have been extremely permissive and even facilitated and encouraged the production of items of vice<sup>7</sup> and it should be no surprise to any of us that many people now find themselves the captives of animal lusts instead of living as flourishing human beings.

Goods with externalities are things that provide a benefit or cost to people other than those that consume the good or service. As I described in Chap. 3 government has a legitimate role in co-ordinating and negotiating Coasian solutions for these kinds of problems (which may include subsidising consumption out of the common tax pool when all people in a decentralised government area receive a positive benefit).

Government also has an important role to play in the case of market (and association) failure. Market failure occurs when business does not provide the goods and services that consumers need or want. It is quite prevalent in rural and remote communities where supply chain costs are high and the potential market is too small to allow business to be confident about operating at a profit. As I have written previously (Drew, 2021) there is a legitimate role for government to play as the provider of last resort in these circumstances – indeed many rural and remote local governments already run post offices, grocery stores, medical clinics, banking agencies and the like because no-one else has been prepared to do so after an earlier provider decided to withdraw. In these instances it is essential for the common good that government takes on the responsibility – but consistent with the concept of *subsidium* this should be done with a view to divesting as soon as possible. Similarly, where a new need arises there may be a strong case for government to establish a new business – especially where it is believed that the enterprise should ultimately prove to be commercially viable. Because decentralised government is likely to have both better knowledge of the circumstances faced by citizens, as well as higher capacity to absorb risk, it can sometimes be best positioned to establish the viability of a business. Once this has been done then it should be easier to find market participants or non-government organisations willing to take on the task as a going concern. For many rural and remote communities this may be the only way that they will be able to access goods and services that most people feel are essential. However, I stress that these commercial activities should always have divestment as the ultimate goal – government should be in the business of producing some public goods and merit goods; not in the business of making profits.<sup>8</sup>

At this juncture many readers might be expecting me to set out the precise remit for the two principle tiers of government indicated by theory – decentralised and central government. However, to do so would not be wise given that the tasks

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<sup>7</sup>One example is the legalisation and listing on the stock market of brothel enterprises and marijuana suppliers.

<sup>8</sup>Because doing so denies others the existential space and also exposes communities to risk which is the key justification for profit taking (but something that most citizens generally don't feel is inherent to government). Indeed, any risk taken – even when for the highest motives – should be explicitly acknowledged and consented to by the citizenry during the course of practical reasoning.

allocated to government must be contingent on the needs and capacities of the people and lesser associations that constitute the particular community (see the next section). Therefore, I will instead content myself with outlining a few important principles.

The founding principle for the assignment of government remit is the presumption that goods and services ought to be provided at a human-sized level. Only when good reasons can be given for doing otherwise, should provision by central government be contemplated. Thus, health, emergency services, most law and order, certain aspects of education and particular tasks of welfare would seem to comfortably sit with decentralised government. Moreover, responsibility for building and maintaining most hard assets – such as transport infrastructure – should also be assigned to decentralised government except when there are large inter-jurisdictional externalities that can't be mitigated through grant distributions or Coasian solutions.

Second, the national public goods that I have already alluded to – things like defence that confer a benefit to the whole nation but can't be decentralised due to the very high likelihood of freeriding<sup>9</sup> – must be delivered at the level of at least the central state in order to assure the common good of all. Third, leaky border issues – sub-optimal outcomes that would arise because it is generally very difficult to prevent the movement of people and capital across decentralised borders – must also generally be addressed at the nation state level. Here we find matters such as monetary policy, some aspects of macro-economic stabilisation, and international immigration.<sup>10</sup>

Fourth, is the need for central tax collection in some areas to avoid destructive tax competition, tax avoidance or inefficient migration of capital and labour (see Chap. 7). It might also be far more efficient to collect taxes centrally in some cases. For example, the demerit taxes I referred to earlier only really work when they are applied at equal rates across adjacent jurisdictions (because otherwise people merely travel across boundaries to do their vice-laden shopping).<sup>11</sup> Moreover, the collection of some tax at the central level, especially when combined with a limited remit for the central state, opens up potential for two types of intergovernmental grant transfers. The first kind, are vertical fiscal equalisation transfers that must be

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<sup>9</sup>There is an implicit incentive for each decentralised government to do less than their fair share, knowing that the efforts of others will ultimately protect them – essentially the problem noted by Trump in relation to NATO.

<sup>10</sup>These are matters where unilateral action by one or more decentralised governments would be ineffective because low barriers would mean that people and capital could simply move to a different decentralised government. For example, it would be futile for one decentralised government to introduce a moratorium on international immigration (or require minimum standards of language proficiency) unless all did so, because people would simply avail themselves of internal migration after arrival in the country.

<sup>11</sup>I acknowledge that even nations often do not have sufficient control over the movement of capital for taxation purposes – hence the recent OECD proposal for collaboration on a minimum corporate tax rate. Thus it may well be the case that nations will have to enter into federations subsequent to the assignment of powers to the central government (see also the next section on the size and shape of international federations).

implemented to return the centrally collected taxes to decentralised government. These transfers should be made according to open and transparent formulas to avoid political manipulation (see the next section). A second type are horizontal equalisation transfers to decentralised government which are essentially an instantiation of the moral obligation of *subsidium*.<sup>12</sup> Thus, it may be appropriate for the central government to transfer additional funds to certain decentralised units so that they have the capacity to meet *bona fide* need. I emphasise both that transfers of this latter kind ought to be done in accordance with natural law principles (which differ significantly to how intergovernmental grant transfers currently operate – see Drew & Miyazaki, 2020) and also that it should be subject to the informed consent of the other decentralised governments (so as to safeguard their dignity).

Fifth, is the need for some laws and legal frameworks to be established at the central government level. For instance, there needs to be a high court to arbitrate on constitutional matters and disagreements between decentralised governments (see the penultimate section of this chapter for important detail about how this should be done to curb centralising tendencies). There also needs to be national legislation and associated institutions to regulate economic matters under the central state remit – for instance to ensure the smooth operation of markets (Messner, 1952). In addition, it is also appropriate for central government to make laws and arbitrate on matters closely associated with respect to critical issues on human dignity (certain rights of choice), voice (vote, sortition, and protest) and exit (movement between decentralised borders). Furthermore, legal frameworks need to be established to safeguard the rights of lesser associations. Most other laws can be enacted at the decentralised level and should focus mainly on the protection of human dignity, dignity of associations, and the common good (especially with respect to deterring the most grievous vices). Moreover, it ought to be mandated that laws be reviewed on a regular basis to ensure that they are still relevant and fit-for-purpose and changes should go through the sortition house of review (see Chap. 4).

Government also has a role in market stabilisation and due to the problem of leaky borders, that I wrote of earlier, most of this activity will need to occur at the level of the central state. Regulation will sometimes be needed to address emerging problems, and it may also be necessary for central institutions to participate in the market to try to stabilise the currency, bond markets or reign-in inflation. However, any intervention should only be made for *bona fide* need and then in a manner consistent with practical reason and other principles of natural law (such as justice and prudence). For instance, a certain degree of intervention was clearly necessary to prevent markets from collapsing in the face of the initial coronavirus shock – however, recent data seem to confirm my initial judgement that governments were far too active. For example, the fact that equity markets are booming despite supply shocks and lockdowns confirms that policy ultimately funded by all citizens

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<sup>12</sup>The purpose of a horizontal equalisation grant is to allow all decentralised governments to be able to offer a basic level of public goods and services through reasonable effort (see Drew, 2021). The need arises because some regions are simply poorer than others – due to the distribution of natural resources, or patterns of settlement and industrialisation.

disproportionately favoured the rich. Similarly, emerging evidence of growing and persistent inflation tells us that too much money supply has been created – which will ultimately result in a ‘sneaky’ tax on wealth (inflation; see Chap. 7). In addition, reports of firms experiencing difficulty in finding willing workers suggests that welfare measures may have generated dependency rather than dignity.

Thus, we see that even small government is still busy government engaged in many areas necessary for the common good. However, busy government inherently poses a risk of discordance between the policies implemented, and the preferences of citizens. To help ensure that government remains responsive to its citizenry it is therefore important that we also get the size of the various jurisdictions correct. In the next section I spend some time outlining the most important principles for achieving human-sized government, wherever possible.

### 5.3 Human-Sized Government

One of the most enduring, and elusive, questions of government relates to the optimal size and shape that it should take. Indeed, it seems that many scholars have given up on ever finding a solution, notwithstanding the fact that the question of size is one of the most fundamental issues confronting us. Both our human dignity as well as our capacity to generate common good through co-operation seem contingent on finding an answer to this puzzle so that we can have good reasons for drawing our government boundaries.

One of the earliest attempts to reckon the ideal size of government is found in Plato’s (2004) *Laws*. Here the rather precise figure of 5040 free male adults is provided as the optimal number of citizens. When combined with women, slaves, children and resident aliens the prescription of Plato probably came to a population of about 50,000 residents (Jowlett, 1986). The main ideas driving the size of the optimal Platonic state seem to have been: (i) maximising the number of arithmetic factors that could be divided into the prescribed population number (which allows for neat divisions of allotments and houses amongst inhabitants), (ii) the capacity of farmers to produce adequate food for a self-sufficient and moderate lifestyle, and (iii) sufficient numbers to provide for defense as well as succour for allies. Notably, the implied focus on equal allotments (this is why Plato was so hung up on specifying the number that he thought had the largest array of factors) seems to have been motivated by a desire to ensure that each family would be close to self-sufficient for the necessities of life and thus not dependent on trade and labour for sustenance. This preference for self-sufficiency was common amongst ancient cultures (for instance, the early Israelites; Borwoski, 1998), not just because trade was



unsophisticated and poorly regulated, but also because the ancients saw the danger to human dignity associated with others (employers and merchants<sup>13</sup>).

Both human dignity and the common good were a focus of the twentieth century's most famous attempt at estimating the optimal size of government – the work of Robert A. Dahl (1990). However, here self-sufficiency was not considered, nor defence (presumably because the former was taken to be irrelevant to modern life with sophisticated markets and the latter was still assigned by him to nation states). Instead, Dahl (1967) focusses on the trade-off between democratic participation (which can be linked to human dignity) and the capacity of the government to do things and capture spillovers (related to the common good). Indeed, in a famous dictum Dahl (1967, p. 960) asserts: 'at one extreme [of size], then, the people vote but they do not rule; at the other, they rule – but they have nothing to rule over'<sup>14</sup> (Dahl, 1967, p. 960). Dahl (1967) also refers to the importance of realising economies of scale for efficient government, which to a natural law economist sadly mars his brilliant work (see below). Notably though, Dahl (1990) also canvasses the importance of citizens being able to feel loyalty and moral connection to their government which is an area on which I feel he stood on much firmer ground.

As I have previously related, Aristotle (1992) also understood the importance of citizens knowing the geography and fellows of their community. Without such knowledge it is difficult to see how citizens could ever be expected to cultivate moral attachment or understand the needs of others (and hence how they should co-operate for the common good). For these reasons Aristotle (1992, p. 403) asserted that it was a mistake to 'judge greatness by the number of people' and instead emphasised the importance of capacity, transparency, and accountability. Some of his arguments are very dated and seem incongruous in the modern world – such as his fear that the town crier mightn't be able project his voice sufficiently for a large state – but his underlying thesis (that government should be about people, not numbers) is as relevant today as it was 2400 years ago.

Unfortunately, modern economists and public policy architects seem to be either ignorant or dismissive of the Aristotelian legacy because the main criteria employed for decentralised boundary reform is actually the presence of economies of scale (which is used to determine the most economically efficient scale). Economies of scale is a neo-classical economic concept whereby it is expected that some production functions might benefit from decreased average total costs as output expands. It is important to note that economists don't believe that all functions of government will be amenable to economies of scale. Moreover, if production is allowed to expand too far then economists expect a lengthy domain of constant returns to scale (whereby there is no change to average total costs with increased output) followed ultimately by diseconomies (in which average costs increase with expanded output).

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<sup>13</sup> Indeed, Aquinas (2007) uses the fear that people would be led into the vice of greed by traders as a reason for insisting on self-sufficiency.

<sup>14</sup> This might be restated as: *at one extreme of size, then, the people have maximum human dignity, but cannot flourish due to a lack of common good; at the other, they have a potential surfeit of common good but very little dignity.*



I refer my readers to Chap. 4 of *Reforming Local Government*, Drew (2020), for the most comprehensive discussion of this economic concept with respect to boundary design.

As it turns out, economies of scale at the decentralised level of government are generally trifling in magnitude and occur at rather low levels of population size (Drew, 2020). It is thus rather silly to give up on other more important values (see below) in a quest to realise economically optimal scale. Nevertheless, economists and public policy architects have been fixated on the idea for the last half century or so, therefore it seems incumbent on me to also elaborate on the logical fallacies of allowing this economic concept to dictate the size of our decentralised governments.

The first problem I have with allowing optimal economic scale to dictate government size is that the practice perceives people as mere proxies for output, rather than as humans with unique needs and capacities. My early career was mostly occupied with the econometric estimation of the optimal size for local government, so I stand guilty as charged with respect to having once been a scholar who thought it reasonable to think that people were merely numbers and dollars could somehow approximate human flourishing (I now know better). My second problem with the pursuit of economies of scale is that it implicitly asserts that efficiency is an important value with respect to the optimal size of government. I think few people really value government as an efficient vehicle for delivering services but instead care more about things like equity, human dignity, the common good, democratic accountability, due process, and responsiveness. By focussing on economies of scale for the purposes of determining government size we are essentially asserting that this ‘value’ ought to trump other reasons for having political communities – indeed, it fundamentally confuses the purpose of government with the purpose of business. Lastly, a pursuit of economies of scale mistakes ‘means’ for ‘ends’ – efficiency is never pursued solely for its own sake but rather so that other things might be facilitated (lower taxes, or higher quantity and quality of government goods and services). Accordingly, efficiency in government arguments ultimately boil down to a desire to swap some things (for example greater democratic accountability) for others (for instance, better roads). What is required then is for economists and public policy architects to provide good reasons for why one set of wants should be preferred over another – an essential task that is invariably side-stepped (Drew et al., 2018).

Rather than employing an inappropriate economic concept for the task of deciding the critically important scale of government I propose that we should instead pay heed to the three ideas of homogeneity, fiscal equivalence, and regular patterns of activities.

Homogeneity refers to the importance of ensuring that our communities are composed of similar people with similar outlooks, as far as practical. As it turns out, people tend to do this naturally anyhow in response to location rents,<sup>15</sup> availability

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<sup>15</sup> Arising from the preference of one location over another – for instance, my wife would be willing to pay considerably more to live by the sea, while I strongly prefer the countryside.

of certain kinds of work, presence of places of worship, distribution of extended family, and the like (Tiebout, 1956). There are usually very good reasons for why most adults choose to live where they do and we should be conscious of these differences which are generally spatially distributed. Ensuring that we draw boundaries sufficiently small as to capture, more or less, homogenous groups of people means that citizens constituting a government area will have similar tastes and preferences for government goods and services. This in turn will help political representatives discern the common good and cultivate support for co-operative endeavours (it will also, incidentally (but not determinatively) result in increased economic efficiency according to Wallace Oates's (1999) famous Decentralisation Theorem).

The second important principle for deciding on the size and shape of decentralised government is the idea of fiscal equivalence. This is an economic concept made famous by Mancur Olson (1969) which asserts, quite reasonably, that the boundaries of a given tier of government should match the spatial distribution of the goods and services funded in whole, or part, through taxation.<sup>16</sup> For economists this principle is required to ensure maximum allocative efficiency (that production is aligned with citizen consumer preferences), however, for natural law philosophers it seems that it is a basic instantiation of the public virtue of justice (giving each person their rightful due by elevating their human dignity). It is simply not just to levy taxes on a population that is unlikely to consume the good or service (except for the case of merit goods), nor is it just for people to regularly use the goods and services of neighbouring jurisdictions without contributing to same.

The third important idea for determining the ideal size of government is a closely related, but more nuanced version of fiscal equivalence: boundaries should encapsulate the patterns of normal, everyday, activities. That is, government should cover an area that includes the businesses and institutions that people use regularly, such as shops, schools, places of worship and the like. I guess in one sense this idea is a modern version of the self-sufficiency principle cherished by Plato, Aristotle and Aquinas – people ought to be able to access the regular things that they need for life without having to leave their government area. The big points of departure, it seems, are that modern people believe that they have much more extensive 'needs' (for example, entertainment), and are much more heavily dependent on others to satisfy same (few, if anyone, even tries to satisfy all of their own needs directly through their own labour). Attempts at decentralised responses to COVID-19 exposed the failure of (generally historical) boundaries to keep up with modern patterns of behaviour facilitated through automobiles and the like. This prevented the use of more targeted lockdowns and other restrictions that could have significantly reduced the impact on national and international economies, as well as deferring 'restriction weariness'. Otherwise stated, if our decentralised government boundaries were fit for modern purposes *and used effectively* then I might not be currently writing this

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<sup>16</sup>That is, the concern relates to public goods, merit goods, and goods with positive externalities. For private goods paid for in full by fees there is no real correspondence problem.

book chapter while in lockdown despite the nearest COVID-19 case being almost 100 km away!

Indeed, to ensure that boundaries remain fit-for-purpose regular review of decentralised boundaries should be a feature of any system of decentralised government. Ideally, boundary reviews of this kind should be led by an independent expert panel which is indeed both unbiased and competent (which would make a great change from how things are usually done with respect to local government; see, Drew, 2021). Moreover, boundary reviewers would need to take into account all three criteria and perhaps make trade-offs which should be clearly articulated with practical reasons (good reasons for acting; see Chap. 2). To prevent political mischief making, proposals should be subject to veto by the sortition house of review after full disclosure as described in Chap. 4.

Notably the three essential criteria for government size could also be logically applied to the nation-state (and states or provinces within nations). To do so one would need to be far less stringent regarding the application of homogeneity (perhaps evaluation could be restricted to fluency in the national language and adherence to core values of a nation), fiscal equivalence (only as it related to national goods such as defence), and patterns of activity (mainly with respect to national trade, tertiary equivalence, and barriers to movement). In this respect I agree with both Dahl (1990) and Oates (1999) that states or provinces are generally irrelevant but unfortunately can't be easily done away with because of constitutions (which themselves are frequently not fit for modern purposes). Indeed, the boundaries for nations often don't make sense in the modern world but I am not about to suggest that we attempt to disrupt them (although Buchanan and Faith (1987), as well as Hirschman (1978) both presented interesting arguments on the potential of secession that are well worth reading).

With respect to the various federations that are needed to deal with problems that go beyond the scale of the nation state the three criteria for size that I enumerated earlier will be of little, if no, use. Instead, the main determinants of size will relate to the scale of the problem, scale of externalities, and the resources required. Ideally federations would be flexible and single purpose entities, to avoid the potential for remit over-reach and international bullying. Indeed, with upwards of 195 nations there is a good chance that some forums subject to large externalities, such as climate change federations, would severely limit the voice able to be asserted by smaller nations – not only because of time's cruel guillotine (Dahl, 1990) but also due to the great disparity in power between members such as the likes of the United States, on the one hand, and a tiny island nation such as Fiji on the other. Given the likely constraints on voice in some forums, exit may well be the only option open for influence and it is therefore imperative that membership remains both flexible and voluntary.

Indeed, the whole matter of governments maintaining their dignity when obliged by circumstances to enter into larger federations is an important area for inquiry and one to which I will now turn my attention.

## 5.4 How to Establish and Maintain Optimal Structure, Remit, and Size

To realise the dream of a moral system of limited remit and mostly decentralised government we need to both strike an initial bargain as well as maintain the deal. Modern history shows that considerable effort is likely to be put into resisting our efforts, so it is wise to establish measures from the outset to thwart those who resent the dispersion of power and competence.

A good source of advice is William H. Riker's (1964) Theory of Federalism. I do not necessarily advocate formal federations over unitary systems for nation states, but certainly see loose federations as the most promising way for different nation states to co-operate on problems with large spillovers, or where significant resources or co-operation are required. Moreover, even in unitary states a tension exists between the powers of decentralised government, on the one hand, and central governments, on the other, that must be addressed. I believe that the ideas presented in Riker's theory can be equally applied to these systems also.

Riker is rather infamous for making provocative and big assertions that attracted significant scholarly criticism (Filippov, 2005). One such statement is that federations generally arise only in response to a significant exogenous threat, specifically a threat of a military kind. I think the point that Riker (1964) was attempting to make was that there needs to be pressing reasons for colonies or nation states to even contemplate giving up rights and powers inherent to the act of federating. Certainly, an existential threat to the security of citizens might prompt the contemplation of an otherwise unpalatable proposition.

A similar argument needs to be developed to explain how our moral system of limited remit mostly decentralised government might be expected to come about in the first place – certainly a radical departure from extant highly intrusive and centralised government. History shows that major changes to constitutions and governments generally come about in response to major shocks to populations: on the heels of a military threat (as per Riker), subsequent to a military defeat (Japan and Germany following World War II), following civil war (amendments following the American civil war), or subsequent to an economic collapse (the Eastern Bloc). COVID-19 has certainly been a major shock to populations that has exposed deep societal divisions, and still threatens the viability of many economies. Moreover, government responses to the coronavirus have illustrated how precarious human dignity is, and how easily personal wealth can disappear – to my mind it therefore might ultimately prove the catalyst for the kind of reforms that I advocate (similar to how the Black Death ultimately led to the Reformation). Only time will tell.

After a new deal between citizens (wishing to regain their dignity) and central government (forced to relinquish some power) has been struck, the question then turns to how we might maintain the new status quo. I think most of us know that it is much easier to start relationships, than maintain them, and the relationship between central government, decentralised government, and its citizens is unlikely to be any different. Here the key problem is to avoid what Riker (1964) asserts is the

inevitability of centralisation (something that I clearly don't believe needs to be the case). The Theory of Federalism focuses on the importance of the constitution and its arbiters, dual loyalties, and party politics for resisting the centralising tendency of functional assignment. To this I add the importance of placing constraints on the public service, and also the need to put measures in place to swing the balance in favour of rhetoric over the much more politically devastating weapon of heresthetic.

### **The Constitution and Its Arbiters**

Riker is clear that a carefully and strongly framed constitution is important, but not sufficient, to resist the overawing of lower tiers of government by the central peer. Ideally this would be negotiated by the people, rather than the political elite, in similar vein to the British Columbia Citizen Assembly (see, Drew, 2019). The document needs to be owned by the people and free of potential bias that might be incorporated by central politicians (particularly) with an eye on the end game. In addition, education of the public and continued education of young people through the school curriculum<sup>17</sup> is essential if we are to have a citizenry who understand the importance of striking a balance between human dignity and the common good for the purpose of human flourishing. Aristotle (1992) recognised the importance of education for the viability of a republic 2400 years ago and this has become no less urgent with the passing of years (see Chap. 8). Indeed, all radical changes to political regime have been accompanied by strong incursions into the education curriculum for the very reason that knowledge is essential to preserving a revolution (see, for example, work by Mueller (2017) regarding the efforts put into revising memory in post-war Germany from 1945 onwards).

In addition, stability in the assignment of remit can be promoted by ensuring that most decentralised governments have sufficient access to revenues to fulfil their functions (at least after the distribution of regular grant transfers). Australia is a good example of how money can be used by central governments to exert power in remits that the constitution clearly assigned elsewhere – thus to guard against grants being used to make incursions into remit vertical fiscal imbalance grants must be formula based and horizontal fiscal equalisation grants set on the foundation of independent arms-length distribution according to the natural law concept of *subsidiarity* (see Chap. 7 as well as Drew and Miyazaki, 2020). It is also important for centralising institutions – particularly the Constitutional (or High) Court – to be strongly influenced by the decentralised governments. Accordingly, the power to nominate members to the court should reside with the decentralised governments, and strict term limits should apply to thwart the development and articulation of ideology by those appointed.

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<sup>17</sup>It is not lost on me that a considerable democratic deficit has emerged in Australia after the removal of explicit citizen education from most high school curriculum. Indeed, standing in lines at polling booths one immediately realises that many people have no idea of the remit of various tiers of government and no idea of policy positions (let alone more weighty concepts such as the common good). Clearly a vote made in ignorance is a worthless expression of voice that undermines the political legitimacy of any government.

## Loyalty

Citizen loyalty to decentralised government will increase the political costs of central politicians who decide to try to push for greater power. When decentralised governments are provided with a more comprehensive remit, and accompanied by amplified voice and exit options,<sup>18</sup> then Hirschman's (1970) theory predicts that loyalty will grow. Indeed, as a local government reform scholar I have noted that the particularly strong feelings of loyalty in rural areas (where local government has a much broader remit due to both market failure and higher tier government failure) have proved decisive in resisting and reversing central government attempts at boundary change. Notably part of this loyalty is derived from more frequent interactions which are, of course, proportional to the remit assigned or adopted by the authorities. I predict a similar response when citizens are finally presented with human-sized decentralised government that does more of the things important to their lives and hence brings about more frequent (and hopefully positive) interactions.

## Party Politics

The main insight of Riker (1964) is that federalism (like all politics) is basically a repeat game of personal bargaining. Thus, the structures of the party machine prove decisive. Indeed, Riker (1964, p. 101) asserts that 'the decentralised party system is the main protector of the integrity of our states'. He lists a number of reasons for this conclusion and his ideas can be easily applied to the task of maintaining a balance between decentralised and central governments.

First, Riker (1964) notes the importance of having the power reside with the local branch of political parties – especially the power relating to nominations of central state representatives. If one or more local party branches are wholly contained within single decentralised boundaries then parochialism is likely to encourage central candidates who appreciate the importance of decentralised governments (especially to their own political careers). Second, he notes the importance of having representatives reside in the jurisdictions that they seek to represent – this stops the party from parachuting in people who don't have a strong loyalty to decentralised government areas. I would suggest that representatives might have to be resident for a number of years to increase the costs of those who try to game the system.<sup>19</sup> Third, Riker (1964) claims that it is critical that the decentralised governments retain the power to prescribe the manner of elections – I agree that this heterogeneity of process will make centralisation more difficult, but would insist that the requirement to have at least the review house selected by sortition be made non-negotiable (see Chap. 4). Fourth, term limits are seen as an essential device to thwart the

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<sup>18</sup>Voice options are amplified by each vote having relatively more power, more direct access to decision makers, and (especially) sortition. Exit options are amplified mainly because there will generally be more alternatives to choose from within a reasonable distance of a current abode (the latter reduces some of the intangible costs of moving).

<sup>19</sup>An example of this gaming occurred a few years back when state MP for NSW, Adam Marshall, conveniently moved up to Armidale from a few hundred kilometres away to putatively study at the university there. A 'surprise' by-election occurred a little while later and Mr. Marshall took full advantage of his situation.

development and prosecution of ideology. As Riker (1964) shows, it takes many years to clearly articulate an ideology and gather sufficient adherents to prosecute one's case. By setting relatively short term limits it ought to be possible to prevent major ideological moves. To these four wise prescriptions I would also add a prohibition on decentralised politicians being permitted to later run for central office. This would prevent people who have an eye on the long game from bargaining away decentralised rights and responsibilities according to the hope of ultimately seizing the additional central powers.

### **Constraints on Public Servants**

One thing missing from Riker's ground-breaking analysis was an explicit consideration of the role of senior public servants who are often just as active in bargaining and seeking power as their political representative peers (Buchanan, 1975). It seems to me that we should take similar precautions against the accumulation of power and competence in this group to what we do with respect to political representatives.<sup>20</sup> For example, insistence on key public servant office holders residing in the particular decentralised jurisdictions ensures both clearer loyalties and also establishes a higher stake in seeing efficacious solutions implemented. Similarly, term limits hinder development, articulation and action on ideology and also ensure a better distribution of competence. Moreover, a ban on consulting for former key public servants (analogous to the proposed ban on decentralised politicians running for central office) would ensure rights and responsibilities aren't traded off for future influence – it would also disrupt the flow of lucrative work to consulting firms who often exert unreasonably large influence on policy and can easily promote uniformity which is a forerunner to centralisation.<sup>21</sup> Similarly, a ban on transitioning from key office holding at the decentralised level, to the central level, ought to be established to remove some of the temptations for senior public servants to trade away decentralised autonomy or remit. Moreover, it also seems important to refute and defeat public service models that promote unhealthy levels of autonomy and power for senior bureaucrats (see my discussion of the Public Value paradigm in the Appendix to Chap. 3).

### **Promotion of Rhetoric Over Heresthetic**

Rhetoric is the ancient art of persuasion and heresthetic is its more recently identified peer (the art of political manipulation). The former is consistent with a moral public life organised according to practical reason and virtue, the latter is not.

Aristotle (2012) identified three dimensions of the art of rhetoric in his work by the same name – the *logos* (reasoning supporting the assertion of truth; see my

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<sup>20</sup> Indeed, according to Headlam (1890) the Athenians used sortition specifically for the purpose of ensuring mediocrity in the appointment of bureaucrats for presumably the same reason – that is, knowledge of where true power often lies.

<sup>21</sup> For many years I have noted that the hiring policy for key consulting outfits seems to revolve around engaging recently retired senior public servants who then use their close contacts with former colleagues to procure a steady stream of lucrative work.



discussion of practical reason in Chap. 3), the *ethos* (the character or portrayed character of the rhetor; something that is particularly important in the field of public policy where there is often considerable uncertainty) and the *pathos* (the emotions of the auditors; something that should not necessarily be appealed to in a public life based on reason). Aristotle (2012) urged his students to practice this art in order that they might gain proficiency and thus come as near as possible to success in persuading others. However, successfully prosecuting a rhetorical argument is an imposing task because persuasion often involves having others (at least implicitly) acknowledge that they have previously erred in the holding of their opinions.

For this reason, politicians tend to eschew rhetoric in favour of heresthetic. As I have already noted, heresthetic is the art of political manipulation. It makes no pretence at an *ethos* and instead lauds cunning behaviour (Riker, 1986). Moreover, heresthetic is also pursued according to three main devices. First, is agenda control whereby the politicians decide what will be spoken of and how bills for voting will be presented. Second, is strategic voting which mostly relates to the practice of trading votes on one issue for support on another – what is commonly referred to in the American literature, particularly, as logrolling. The third heresthetic manoeuvre is dimension control: the introduction of salient new dimensions to a debate which are designed to split-off adherents from an otherwise dominant winning coalition (see, Drew, 2018). Notably, heresthetic is likely to be far more successful than rhetoric because it mostly trades in latent attitudes and hence does not generally require people to admit that they might have previously erred in their opinions. For this reason, heresthetic tends to be a much more powerful political weapon and also represents a graver risk to the idea of a political community orientated towards reason. Accordingly, I feel that efforts should be directed to promoting rhetoric and also making life more difficult for herestheticians.

With respect to the promotion of rhetoric a key device will be the structure of the sortition deliberations that I outlined in Chap. 4. Empowering a group of representative and randomly selected people to veto proposals based on a short presentation, from both supporters and dissenters harking from the lower house, will create existential space and respect for proficient rhetors. Moreover, rhetoric could be further promoted by re-introducing the teaching of the art to the school curriculum (thus displacing some of the entertainment curriculum which seems to attract the bulk of pedagogical efforts). In addition, requiring minimum standards of virtue for aspiring and incumbent democratic representatives will aide the cultivation of *ethos* which is so critical to the trust required to prosecute decisions in an environment of uncertainty (such as is usually the case with respect to public policy; see Chap. 3). These minimum standards should accord with the adopted public virtues of a community and failure to uphold them should come with sanctions. A person who can't act in accordance with basic virtue in their own life is clearly a person who will be much more likely to engage in heresthetic than rhetoric, and hence someone that a



moral government could well do without.<sup>22</sup> Related to this is the idea of closing information asymmetries on a range of matters – the more information that becomes available, the more capacity that people will have to evaluate both the *logos* and the *ethos*. Indeed, there is clearly a need for institutions to be set up to provide unbiased and factual information – although this must be done at the decentralised level in view of the danger that would be posed if power and competence with respect to facts became centralised.

Efforts should also be directed to dissuading some of the heresthetic devices. For instance, making information more easily available with respect to which way each of the members of democratic political chambers have cast their vote would certainly make logrolling behaviours more visible and hence more costly. Moreover, fixed election dates (where these do not currently occur) take away a little power from ruling politicians who seek to control the agenda. Similarly strict rules for the timing and giving of notice of intent to debate a matter might make some heresthetic manoeuvres more difficult. Also, banning omnibus bills would significantly constrain the behaviour of politician's intent on dimension control. It is likely that further measures exist that might be identified in future scholarship and each of these should be implemented according to the dictates of practical reason.

## 5.5 Concluding Remarks

Locking up an entire country or entire state in an attempt to prevent the spread of coronavirus is a clear admission that current boundaries are neither effective nor efficient. Moreover, high levels of resistance and non-compliance from citizens forced into months of (indefinite) home detention is confirmation that existing boundaries are also far from human-sized.

Establishing more human-sized government boundaries, and also relocating more of the remit to decentralised government, will increase the choice, voice and exit options for citizens. This should result in a better correspondence between the preferences of citizens and government policy interventions. As a result, a more moral (small remit and mostly decentralised) government structure should also give rise to more loyal and morally empathetic citizens.

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<sup>22</sup>Not so long ago a politician caught having an affair would be hounded by the press and ultimately forced to resign. However, more recently people like the current Deputy Prime Minister of Australia – who deserted his wife and children to live with his pregnant staffer – have publicly declared their grievous vice and been spared (even applauded by some media). I am extremely concerned about the more frequent and brazen disregard for morality, but this has nothing to do with being prudish. Politicians have made a deliberate decision to seek both the power and the trust of the community. Furthermore, trust is critically important in public policy because of both information asymmetries as well as the uncertainty of public interventions: if people haven't shown themselves worthy of the trust placed in them by their spouse and children, then how are the public supposed to rationally trust them in much larger matters?

As I finished this chapter a story broke in the media revealing that a prominent family law advocacy group recorded a ninety percent increase to requests for legal advice regarding family separation during the COVID lockdowns (Zaczek, 2021). This is a sad example of some of the high costs incurred as a result of failing to ensure that human-sized governments enact human-responsive public policy.

Indeed, if we had instead been able to make use of government boundary structures that captured more homogenous groups of people, better matched those receiving benefits to those paying the costs, and also encapsulate ordinary patterns of activity then we might have avoided some of the needless costs arising from coronavirus interventions. For instance, many people subjected to lengthy lockdowns might have been spared from this fate, or had durations reduced considerably, if boundaries had allowed for finer targeting of measures. In addition, measures might have been better tailored to the capacity and needs of citizens if boundaries had better reflected homogenous groups. Moreover, people might have also felt more empathy for their fellows (that the measures were designed to protect) in human-sized government. Indeed, they would also likely have had greater voice to suggest efficacious alterations to policy in more appropriately sized government. This could well have reduced the numbers at protests, divorce courts, and mental health crisis centres.

One of the other major reasons for why some of the public policy interventions caused so much harm is because public policy architects focussed mainly on case numbers, rather than people. People are more than numbers and success is more than merely having numbers behave in the way one might like them to do. It seems that many have forgotten what the sole source of justification and legitimacy for government is – the flourishing of people.

This neglect is somewhat unsurprising to me because the most popular evaluative frameworks taught to public policy architects at universities almost universally ignore the fact that government is ultimately a moral endeavour. In the next chapter I will review one of the commonly employed scholarly frameworks and explain how some rather simple changes could result in very important improvements to policy.

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# Chapter 6

## Evaluating Policy Success: COVID Response and Human Flourishing



*Commissioner Chalker said four people had been fined \$5000 each for not wearing a mask while allegedly breaking into a Darwin restaurant.... “Please do not target businesses who are already under the pump because of the lockdowns”, [he said] (Roberts, 2021).*

*It belongs to the liberty of free-will for man to be able to choose good or evil (Aquinas, 2018 [1273], p. 1551).*

**Abstract** Government is essentially a moral endeavour – its sole justification is instrumental with respect to human flourishing. Therefore, unless we evaluate public policy through a moral lens we cannot know whether a particular intervention has been consistent with the mission of government, let alone successful. However, popular extant evaluative frameworks frequently neglect to even consider the moral dimension of policy. In this chapter I show how a simple change to extant frameworks would ensure that public policy interventions become reorientated towards the flourishing of people. I then apply this framework to three contentious coronavirus interventions: mask mandates, lockdowns, and vaccine mandates. I conclude with a plea to urgently rectify the neglect in our extant policy evaluation frameworks in order that government might return to a focus on its sole reason for existence – the flourishing of people.

**Keywords** COVID-19 · Policy success · Policy evaluation · Vaccine mandates · Mask mandates · Lockdowns · Stay at home orders · Coronavirus · Pandemic

The last few decades have witnessed an explosion in both the public policy evaluation literature and also the teaching of evaluative frameworks. The reason for this keen interest seems to relate to a promise of ‘learning’ and ‘policy refinements’ that are expected to result in ‘social betterment’ (McConnell, 2010, p. 347). Otherwise stated, the hope is that through evaluating public policy we might be able to improve

the way that government goes about its business, and hence the outcomes for citizens. However, the current practice of public policy evaluation is unlikely to deliver on this promise because it fails to even consider the moral dimension.

In contrast to most scholars, I believe that government needs to deliver first on the moral dictates of human flourishing before worrying about other outcomes. What I propose here is the injection of a moral accountability test to evaluate whether a particular activity is consistent with the legitimate remit of government, in the first instance, and hence consonant with the acquisition of human goods (in a teleological sense). Indeed, the failure of extant frameworks to look at the moral dimension means that we can never really know whether a policy has been successful at all, in the way that matters to the existential ends of people. As I noted in Chap. 1, extant evaluative frameworks would have us celebrate the Holocaust as a triumph in public policy and this would be plainly perverse.

It is my considered judgement that a simple change to one of the popular evaluative frameworks could both prevent the perverse lauding of morally bad policy, and also refocus attention on the legitimate teleological ends of government (Drew, 2021). Specifically, I propose the addition of a moral lens which would need to be evaluated and satisfied *before* any public intervention could be considered a success. Without a device of this kind, public policy is likely to continue to erode human dignity and grow Leviathan government – we may indeed travel further along the road to becoming mere beasts as prophesised of old<sup>1</sup>: denied the freedom to choose in ever expanding areas of our lives, and thus denied some of the key activities that enable the excellence of humans (see Chap. 2).

To illustrate the importance of a moral lens for evaluating public policy, in this chapter I look at three contentious coronavirus policy responses: mask mandates, lockdowns, and vaccines. These are complex moral issues, but sadly it seems that those in charge of designing the public policies have been more or less oblivious to the gravity of their decisions with respect to the human person.

A mask mandate may seem harmless enough, but it was contrary to socio-cultural attitudes in the west and likely contributed to panic and feelings of helplessness (Shapiro & Boudier, 2021). Moreover, there are many documented accounts of police services using the mandate, and penalties associated with it, to oppress and harass citizens. For instance, video footage of a man being arrested and fined \$AUD5,000 for removing his mask whilst drinking coffee are very disturbing (Daily Mail, 2021) and reports like this are likely to have hardened people's hearts and given them reason to resent both the laws and law enforcers (George, 1993). Moreover, high levels of inconsistency in government advice on this matter have sown distrust regarding both the motives and competency of public policy architects – indeed, it wasn't so long ago that the Prime Minister of Australia stated that '[citizens] don't need to go around ...running around in masks...I mean the only people who would need to wear a mask is someone who's got the virus' (Elliot, 2020).

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<sup>1</sup>That the rulers 'will use their subjects as beasts, according to the violence of their own wills and inclinations, and other passions, as wholly carried away with the lust of power' (Josephus Flavius in Whiston, 1987, p. 156).

It is safe to say that lockdowns were perceived by all to be an entirely more serious matter. Nevertheless, most people did indeed accept the initial logic that lockdowns would buy government some time to gather medical resources so that it might cope with a surge in infections (WHO, 2020). However, nineteen months later a large number of people now feel that ongoing and indefinite lockdowns in Australia are doing more to flatten the economy and human dignity, than flatten the curve. Moreover, we now know that lockdowns come with disproportionate and serious burdens for women and children, in particular (Chu et al., 2020), and it is not lost on many that the politicians, bureaucrats and police who are making decisions on this matter have suffered exceedingly little, if anything, from the draconian policy. As the core lesson of economics states – people respond to incentives, and there seem to be precious few incentives for decision-makers and enforcers to empathise with those profoundly hurt by lockdowns.

Incentives are also at the heart of the final contentious public policy innovation that we will examine in this chapter – vaccines and vaccine mandates. From the very earliest days of the coronavirus a heavy emphasis was placed on the hope of an effective vaccine, perhaps displacing efforts on the development of effective treatments (Achenbach & Real, 2020). Many people believe that a number of coronavirus vaccines are indeed highly efficacious (although as I will show later there is a great deal of misunderstanding regarding how efficacy rates are calculated and what they actually mean) and this has motivated the Prime Minister of Australia to make vaccines as ‘mandatory as possible’ (Hayne & Norman, 2020). Indeed, across the globe vaccine passports and passes have been proposed and implemented much to the anger of a large portion of the population (Noack & Brady, 2021).

In this chapter I seek to answer a number of questions regarding these three public policy interventions: (i) is the anger and dismay of some citizens warranted? (ii) were the interventions morally licit? (iii) have the interventions contributed to human flourishing? In the next section I will outline what most scholars consider to be the most prominent public policy evaluation framework and I will explain the need for a moral lens. Thereafter, I apply the moral lens to the matters of masks, lockdowns and vaccines, respectively, with a view to demonstrating how a morally licit response would have differed. I conclude with my thoughts regarding the consequences of neglecting the moral dimension.

## 6.1 The Gaps in Extant Evaluative Frameworks

Arguably the most popular extant framework for evaluating public policy is based on the work of Bovens and various colleagues (2001). This framework calls for separate evaluations according to three discrete lenses.

The first lens is a programmatic way of viewing public policy – it requires an assessment based on facts and figures. It is meant to be objective and is generally empirical (although not always as robust as one might hope). The focus is on assessing outcomes at a particular point in time against the aims and objectives of the

policy intervention. This kind of evaluation has a long history based on the rationalistic tradition and is tailored to the needs of policy architects, economists, and bean counters (Ugyel & O’Flynn, 2017).

The second lens is a political way of viewing public policy – it assesses success according to things such as impressions, framing contests, blame games, heresthetic manoeuvres, and political casualties. It is a more subjective way of viewing matters and is generally not amendable to robust empirical analysis. The focus is on assessing outcomes in terms of theories and key actors. This is the kind of evaluation that one associates with media commentators, political scientists, sociologists and political staffers (Howlett, 2012).

The third lens is a process way of viewing public policy – it assesses the journey from mere idea to implemented policy. It tends to draw on a combination of both objective and subjective methods. The focus is on bureaucratic efficiency, resourcing and the like (McConnell, 2010). This is the kind of evaluation that senior bureaucrats and public value disciples would find most useful (see my critique of the public value paradigm from Chap. 3). It is a relatively recent addition<sup>2</sup> to the evaluative framework and one, that it must be said, was originally strongly resisted by the gatekeepers of the lens approach.

This lens approach – whilst seeming disarmingly simple – has indeed proved to have great utility and has resulted in a much sharper appraisal of public policies. Indeed, the lens methodology has not only been employed to assess the policy of the past, but has also proved useful as a tool for designing future policy (Miyazaki & Drew, 2021). The key innovation was to separate out the more objective ways of knowing from more subjective ones and thus compartmentalise bias and eliminate conflation. The lens evaluative framework has also been helpful in ensuring that particular evaluations are tailored to the specific needs of different stakeholders of public policy.

However, the framework is not without its problems – some of which are quite substantial. First, and most importantly, it neglects the moral dimension entirely. As such it fails to discern any difference between policy that contributes to human flourishing, on the one hand, and policy that denies people choice and hence a key pathway to the excellence of humans, on the other. Related to this neglect is the fact that the extant lens framework fails to address the needs of a very important stakeholder group – citizens. As I outlined in Chap. 4, an important pre-requisite for government that promotes human flourishing is that citizens are informed about both its legitimate remit and operations. Thus failing to address the needs of the citizen student may also contribute towards a failure to ensure government fulfils its teleological purpose.

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<sup>2</sup> Indeed, over the last few years a new lens – endurance – has been proposed. This approach implicitly asserts that the length of time that a policy survives is somehow indicative of its success. As a person who is well and truly weary of lockdowns, and very conscious of the significant damage wrought by the policy, I find it hard to accept the idea that Australia’s infamy for the longest lockdowns in the world means that we have somehow excelled!



In addition to the problem of a glaring neglect of the moral dimension, the lens framework also suffers from two other important weaknesses. The first relates to the temporal dependence of evaluation – that is, the conclusions one draws are often heavily dependent on when one conducts the assessment. The second problem is often related to the first – an epistemological (theory of knowledge) vacuum. It does matter how one goes about the job of collecting and categorising observations and the neglect to address this means that people studying the same policy from different epistemological perspectives, may well come up with very different appraisals. In other work I have provided a simple solution to both of these matters by employing the epistemology of Aristotle (see Drew, 2021).

Notably, a moral evaluation of public policy based on natural law is less likely to come up against these later problems because it draws on a robust and comprehensive account of how a person can know the moral qualities of acts. In addition, there are other compelling reasons to prefer a natural law appraisal over competing philosophical paradigms. For instance, the most enduring and compelling explanation for government is to be found in the natural law tradition and it is hard to see how one could accurately assess public policy outside of a paradigm that is capable of explaining why we have public policy at all. Furthermore, natural law – more than any other view – confronts the nature of the person both with respect to their internal struggles and external interactions. It spells out what it is that makes humans special and why we ought to respect human dignity (see Chap. 2). It is hard to see how one could accurately assess public policy interventions without understanding the unique dignity of the people that constitute the ‘public’. Moreover, natural law has a particular focus on teleological ends – it acknowledges that everything exists for a purpose and that the excellence of any thing is found in fulfilling this purpose to the full. It is difficult to see how one could evaluate government interventions without properly understanding the purpose of both government and the person.

Indeed, adopting a natural law moral lens as a determinative element for policy evaluation is likely to elevate human flourishing to the position of key element for good public policy design. A natural law lens boldly asserts that people are more than mere numbers or proxies in a public policy architect’s business case. Thus, a natural law lens will encourage architects to think deeply about human nature and how it fits with the purpose of government. My hope is that a more comprehensive and morally responsive evaluative tool will help shift government from its’ current Leviathan-like rampage onto a path more consistent with its proper teleological ends.

In the work that follows I evaluate three of the contentious COVID-19 interventions according to a natural law moral lens. To do so in a comprehensive way I first look at the medical perspective, then cultural and behavioural perspectives, followed by an assessment of the common good implications, and finally an appraisal of the significance for human dignity. I emphasise that my principal concern is for understanding the moral dimension of the public policy interventions and do not seek to make any definitive judgements regarding medical matters.



## 6.2 Evaluation of Mask Mandates Through a Moral Lens

One of the ironies of COVID-19 is that some of our most effective health measures to this twenty-first century pandemic are, in fact, non-pharmaceutical interventions first practised in the fourteenth century (Spitzer, 2020). Indeed, the wearing of masks, as well as lockdowns (that I deal with next) are both measures that were employed in response to the Black Death. One might think that this would mean that the full implications of these practices would be well understood, but sadly this is not the case.

There are no randomised controlled trials to unequivocally support the case for mask wearing with respect to the coronavirus due to ethical constraints (Howard et al., 2021). However, there is enough experimental evidence regarding the potential for masks to mitigate aerosol transmission, as well as clever natural experiment modelling between countries where mandates differed, to provide good reason to think that masks do reduce transmission when worn by the sick (there is considerably less reason to think that cloth and surgical masks protect the wearer; Matuschek et al., 2020). Moreover, because people can transmit several days before showing symptoms – and also given the extraordinarily high level of asymptomatic cases (estimates range from 42.5% to 60%; Spitzer, 2020) – many authorities have concluded that masks should be worn by all people.

Indeed, the medical consensus on masks mandates is strong, despite recognition of medical risks. One such risk is the effect that mask mandates have on supplies for medical staff, which affects the frequency with which they can be changed and hence the probability of transmission in clinical settings (Spitzer, 2020). A second problem is that mask wearing increases both the frequency and depth of breathing, and can therefore increase risk to the wearer (Howard et al., 2021). Masks have also been shown to increase the viral load for infected persons (Spitzer, 2020). Moreover, the effectiveness of masks is significantly reduced when worn incorrectly, changed infrequently, donned and doffed incorrectly, or touched regularly (Matuschek et al., 2020).

However the medical risks of mask mandates seem to be dwarfed by the cultural and behavioural implications. Faces are the basic ingredient to social interactions and are essential to transparency and recognition (Spitzer, 2020). Humans are at heart social animals and thus any barrier to the face has important implications for social behaviours. Indeed, masking of the face is normally associated with evil – masks are used by bandits to conceal their identity, and in the west there has been a strong narrative that certain religions employ masks as a way of oppressing women (Shapiro & Boudier, 2021). Moreover, masks are often associated with disaster and catastrophe and thus elicit feelings of fear and panic (Matuschek et al., 2020). Indeed, masks tend to remove the human face from public life and thus cancel a good deal of diversity (Shapiro & Boudier, 2021).

More concerning though is that masks significantly impede communication and can give rise to serious misunderstandings and conflict. Most of our positive emotional signals are concentrated around the mouth region, such as the smile. By way

of contrast, most negative signals come from the forehead and eyebrow regions. It thus follows that mask wearing strongly biases non-verbal signals towards negative emotions (Spitzer, 2020). Indeed, some positive signals (such as non-Duchene smiles (fake or polite smiling)), are transformed into negative cues when the mouth is obscured and only the creased eyes and narrowed eyebrows remain visible (which can be misinterpreted as a frown; Spitzer, 2020). In addition, there is less potential for emotive reciprocity – for example when first meeting someone we normally return a smile which establishes a willingness to communicate on friendly terms.<sup>3</sup> This kind of reciprocity is seriously impeded when masks are worn.

Masks can also be discriminatory in their effects. For instance, speech through masks reduces high frequencies which literally makes it more difficult to hear some women's and children's voices (Spitzer, 2020). It is also the case that deaf, or hard of hearing, people can no longer read lips. In addition, people on the autistic spectrum – who already experience considerable difficulty interpreting emotions – are even further disadvantaged. Moreover, the cost of masks can reduce access thus causing people to incur the health risks of multiple reuse. Indeed, masks are now a fashion accessory for some people which means that students from disadvantaged backgrounds are sometimes bullied and stigmatised for wearing standard white surgical style devices. Furthermore, wearing of masks has also become a way of signalling political affiliations – it has been noted that people on the left of the political spectrum are more likely to wear masks, even in situations where it is not required, whilst people on the right may exclude themselves from activities because of a reticence to wear a mask, or may be stigmatised or criminalised because of non-compliance (Shapiro & Boudier, 2021).

Perhaps most concerning, is that mask wearing can lead to risk compensation behaviours. Because people feel protected and safe they may be less likely to practice other important interventions – such as good hand hygiene and social distancing. Indeed, a nurse has told me that she finds herself and other staff being less diligent in hand hygiene because of the distraction of changing masks. Moreover, I think we have all witnessed people standing closer than normal to one another in an effort to communicate effectively through the cloth barrier. These behaviours are troubling because research indicates that the greatest efficacy is had when multiple interventions are concurrently practised (Howard et al., 2021).

Mask wearing is the intervention most closely associated uniquely with the common good – it does far more for others, than it does for the wearer and indeed might put the wearer at heightened risk (Matuschek et al., 2020). Additionally, it is rich in symbolism and conveys a strong sense of solidarity. However, natural law philosophers emphasise the need to balance the common good with human dignity in order to promote human flourishing.

Mask mandates clearly come at a high cost to human dignity. As I detailed in Chap. 1 the excellences of humans centre around abstracting, choosing, planning,

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<sup>3</sup>It was also common practice in the West to shake hands, which shows the other party that we are not carrying a weapon and have no hostile intent. This ritual was also largely abandoned because of COVID-19.

and reflecting. A mask mandate removes choice from the equation and makes reflection largely redundant. This is a shame because there are good reasons for believing that mask wearing is largely beneficial and most people are more than capable of grasping these good reasons. By mandating masks we have eliminated any need to provide or consider good reasons (that is, practical reasons – see Chap. 2) – instead the matter has been reduced to a binary choice of whether or not one wishes to obey the law. Similarly, the virtue of prudence has been largely sidelined. In so doing we have missed a valuable opportunity to educate the public on both the common good and virtue. Indeed, as Aquinas (2018, p. 5068) notes, by using law to inflict punishment for something other than a grievous vice we may well have pushed ‘them to break out into yet greater evils...[because] the precepts are despised and those men, from contempt, break into evils worse still’.

Thus, it seems that a natural law evaluation of masks mandates would find that the costs to human dignity was too great. Certainly, masks should have been strongly encouraged – and good reasons provided for doing so – but to legally force the wearing of masks seems a bridge too far, and a matter that unnecessarily caused resentment and entrenched disadvantage. Without a mandate it is possible that mask-wearing may have only reached proportions of seventy percent, or so (similar to vaccine uptake it seems; Howard et al., 2021). However, it would still have had an important positive effect with respect to controlling the virus – certainly not as high as people focussed entirely on the medical dimension might like, but no doubt considerably more acceptable to those who also value moral health in the community.

### 6.3 Evaluation of Lockdowns Through a Moral Lens

Robust empirical evidence demonstrates that lockdowns were indeed the most effective non-pharmaceutical intervention implemented with respect to COVID-19 (Haug et al., 2020). Quarantining people in their homes undoubtedly breaks the cycle of transmission, leading to reduced contagion and ultimately reduced deaths. However, locking up the healthy clearly contributes little to transmission reduction and thus makes the intervention incredibly inefficient (much the same shielding outcomes could have been achieved by only minimising the interactions of ‘at risk’ individuals<sup>4</sup>; Clark et al., 2020). Indeed, doing so led to significant and avoidable health costs – most notably mental health (anxiety, depression, obsessive compulsive disorders, and suicide), but also disruption to medical treatments as well as essential medical screening (such as mammograms and the like; Chiesa et al., 2020).

Medical costs were significant, but were likely dwarfed by the legion of cultural and behavioural consequences. To some the concept of lockdown was indistinguishable from home detention, normally employed to punish criminals and

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<sup>4</sup>Since the very early days of COVID-19 it has been known that the largest risk factors are age, hypertension, diabetes and heart disease (in that order; Zhou et al., 2020). It achieves relatively little to lock up young fit people.

these negative perceptions were reinforced by images of elites and law enforcement freely moving around the community (BBC, 2021). In addition, lengthy periods confined in small spaces led to an increase in some very concerning behaviours: substance abuse, domestic violence, increased eating, reduced exercise, and increased screen time (Chiesa et al., 2020). Moreover, the intervention undoubtedly exacerbated important extant inequalities – especially with respect to communication technology, food security, and poverty (Chu et al., 2020).

Verily, lockdowns disproportionately burdened certain demographics such as women, migrants, refugees, and children (Singh et al., 2020; WHO, 2020). For example, women were the most likely demographic to lose income, and also the group who bore the greatest burden with respect to the closure of childcare centres, and schools.

Indeed, coronavirus lockdowns had a profound effect on education that is unlikely to be fully understood for many years to come. Obviously, there was a disruption to learning, notwithstanding some efforts at distance education (Chiesa et al., 2020). However, lockdowns also gave rise to more enduring behavioural problems such as reticence to return to the classroom when the intervention ceased and difficulty establishing rapport with educators and peers. Moreover, in jurisdictions where meals are provided at school there were important consequences for nutrition. These consequences struck disproportionately at the disadvantage, as did the increased risk of abuse for vulnerable children (Singh et al., 2020).

Potentially more concerning were some of the moral dilemmas posed by the harsh interventions – such as the deep intrusion into human dignity and dangerous precedents set which motivated me to write this book. In addition, draconian interventions like lockdowns exposed both the fragility and potential for injustice of majoritarian democracy, further reinforcing democratic deficit (Murphy, 2020 – see, also, Chap. 4). Enforcement of lockdowns also disrupted important religious rites and prompted a good deal of religious vilification (especially directed at Muslims and Jews for their large gatherings; Yemini, 2021). As custodians of the natural law traditions – including teachings on virtue – disruption and vilification of religious institutions is likely to have profound long-term implications for society. Less pressing, but equally enduring and neglected, is the effect of COVID lockdowns and the like on scholarly research. As an editorial board member of a prominent scholarly journal I know full well the disruption caused to the research and publication process: it is extremely difficult to get reviewers for papers, and the rate of quality submissions has dropped off alarmingly.<sup>5</sup> The effect on research progress is thus likely to have long term negative consequences in a wide range of human endeavours.

With respect to the common good matters are less clear. On the one hand lockdowns – at least initially – were perceived by many to contribute to the common good and also reportedly elicited feelings of solidarity and altruism (Chu et al., 2020). Indeed, early survey data suggested that around three-quarters of adults

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<sup>5</sup>Part of this concerning development is due to scholars experiencing difficulty managing workloads from home, and another part is due to the exodus of the most experienced scholars through (mainly indiscriminate) redundancy programs designed to mitigate reduced revenue flows.

supported these harsh measures (Murphy, 2020). This is probably due, in part,<sup>6</sup> to the fact that even casual observers of global lockdowns could see that they seemed to have reduced deaths – for instance, a comparison of Sweden (notable for not having a nation-wide lockdown), with some of its Nordic neighbours is telling (although one might be surprised both by the incredibly small proportion of deaths which seem *prima facie* at odds with media reports, and also the poorer performance of countries such as France and the United Kingdom which both enforced extensive lockdown mandates) (Table 6.1).

However, these potential benefits from the common good must be weighed against substantial costs to the common good. For instance, a feature of the lockdown is that it increased economic inequality, seriously disrupted supply chains, resulted in heightened inflation, and was funded through alarming increases to

**Table 6.1** COVID-19 outcomes for selected countries, as at 14th September, 2021

Country	Number of Cases	Cases as proportion of population%	Number of deaths	Deaths as a proportion of population	Population	Death rate per case
China	123,544	0.009	5687	0.0004	1,402,112,000	4.6032
New Zealand	3593	0.071	27	0.0005	5,084,300	0.7515
Australia	73,605	0.287	1091	0.0042	25,687,040	1.4822
South Korea	274,415	0.530	2360	0.0046	51,780,580	0.8600
Japan	1,639,545	1.303	16,797	0.0133	125,836,020	1.0245
Norway	173,344	3.222	827	0.0154	5,379,480	0.4771
Finland	133,851	2.420	1039	0.0188	5,530,720	0.7762
India	33,264,175	2.410	442,874	0.0321	1,380,004,390	1.3314
Italy	4,606,413	1.398	129,919	0.0394	59,554,020	2.8204
<b>World</b>	<b>224,511,226</b>	<b>2.896</b>	<b>4,627,540</b>	<b>0.0597</b>	<b>7,752,840,550</b>	<b>2.0612</b>
Canada	1,538,093	4.047	27,170	0.0715	38,005,240	1.7665
Israel	1,176,270	12.762	7383	0.0801	9,216,900	0.6277
Germany	4,083,151	4.905	92,618	0.1113	83,240,520	2.2683
Russia	7,158,248	4.967	193,468	0.1343	144,104,080	2.7027
Sweden	1,138,017	10.992	14,703	0.1420	10,353,440	1.2920
France	6,702,450	9.946	113,566	0.1685	67,391,580	1.6944
Spain	4,903,021	10.355	85,218	0.1800	47,351,570	1.7381
USA	40,675,578	12.345	653,099	0.1982	329,484,120	1.6056
UK	7,226,280	10.751	134,200	0.1997	67,215,290	1.8571
Brazil	20,989,164	9.874	586,558	0.2760	212,559,410	2.7946

Source: WHO (2021)

<sup>6</sup>The other parts of this support relate to incentives (older people, politicians, scholars and public servants usually lost no income and gained from stimulus or being given the opportunity to work from home), and ignorance (especially regarding the true costs of interventions as well as their effectiveness).

sovereign debt (Domm, 2020; OECD, 2021). These effects will make it harder for people to co-operate in order to achieve their ends for many years to come – debt and inflation are particularly problematic because they represent a large cost that has been effectively deferred, thus entrenching concerning levels of fiscal illusion surrounding the public policy intervention (because the people who supported the measure have not yet paid the full price, they are likely to demand more of the same and not understand the challenges and burdens that they have placed on future generations).

With respect to human dignity things are much more straightforward, and frankly horrendous. Often with little warning, people's capacity to choose – to even leave their house – was abruptly curtailed. For many it became a criminal act to go to one's workplace, friend's house, or place of worship. Those who struggled with the decree were treated as 'bad men, whose desire for pleasure, is corrected by pain like a beast of burden'<sup>7</sup> (Aristotle, 1998, p. 7217). Research shows that this rigorous legalistic implementation was probably only marginally more effective than providing good reasons and communications to citizens (Haug et al., 2020). Moreover, a paucity of information, as well as tangible media bias, meant that people were placed in a difficult position with regards to the key human act of reflection: for instance, media seemed unwilling to contextualise case and death reports with information on co-morbidities or the numbers of lives claimed by regular influenza events and other important health challenges. This prompted many people to engage in flawed reasoning wherein the scale of human tragedy was compared to a nirvana where no-one ever died or became sick, thus prompting a notable level of hysteria in many communities.<sup>8</sup> Information is often critical to accurate reflection, and sadly facts were often missing from media and government narratives. Indeed, poorly represented facts are also at the heart of understanding the moral dilemma of vaccine mandates which I will describe henceforth.

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<sup>7</sup>I think here particularly of the physical violence and rubber bullets used against protestors (BBC, 2021).

<sup>8</sup>Sadly, as at 15th of September 2021 precisely 1102 people had lost their lives in Australia to COVID-19 during the preceding nineteen months. However, the Australian Bureau of Statistic data on deaths in 2019 puts matters into perspective. In this year 4124 Australians lost their lives to influenza and pneumonia. Moreover, even this high number was dwarfed by other deaths that might have been reduced through appropriate interventions such as heart disease (18,244), diabetes (4967), intentional self-harm (3318), neoplasms of the bowel (5410), accidental falls (3298) and the like. I recently pointed this out to an employee at my local produce store who was literally hysterical about COVID-19 and have since observed that her behaviour has become much more reasonable. It is concerning that incomplete reporting is causing great mental distress to many people.

## 6.4 Evaluation of Vaccines and Vaccine Mandates Through a Moral Lens

Before evaluating vaccines and vaccine mandates it is necessary to first spend a little time describing what vaccine efficacy data mean and also explain how trial parameters might affect decision making.

Several vaccines have been approved for use against COVID-19 across the globe. This is a very pleasing development and an important addition to the tool chest of both public policy architects and medical practitioners. However, it seems that many non-medical decision-makers don't really understand what the medical trial results mean, and hence have put far more emphasis on vaccines than might have been wise.

The first area of confusion relates to what the Relative Risk Reduction (RRR)<sup>9</sup> numbers, spruiked by the pharmaceutical companies and media, truly mean. As the name implies, RRR is a relative term and can only be properly understood by knowing what the background risk of becoming sick from the virus actually is. Accordingly, epidemiologists often also calculate Absolute Risk Reduction (ARR) to more appropriately contextualise the trial results (Olliaro et al., 2021). However, ARR for the vaccines are far less impressive, as demonstrated in Table 6.2, and it seems that the ARR numbers have been eschewed for fear that they might decidedly influence personal medical decisions contrary to public policy objectives.

Indeed, it seems to me that different data is relevant for different decision-makers: public policy architects probably are focussed on RRR because it provides an indication of the relief of pressure that might be expected for hospitals if vaccine targets are achieved. However, as an individual I feel that the ARR is far more relevant because it acknowledges the risk of contracting COVID in the first instance.

**Table 6.2** Vaccine efficacy by alternate measures

Vaccine	RRR	ARR	NNV
Pfizer-BioNTech	95%	0.84%	119
Moderna	94%	1.2%	81
Gamaleya (Sputnik)	91%	0.93%	108
Johnson & Johnson	67%	1.2%	84
AstraZenaca-Oxford	67%	1.3%	78

Source: Olliaro et al. (2021)

NNV is the number needed to vaccinate to prevent one more case of COVID-19

<sup>9</sup>According to the British Medical Journal (2021, n.p.) the terms are defined as follows:

AR (absolute risk) = the number of events (good or bad) in treated or control groups, divided by the number of people in that group

ARC = the AR of events in the control group

ART = the AR of events in the treatment group

ARR (absolute risk reduction) = ARC – ART

RR (relative risk) = ART / ARC

RRR (relative risk reduction) = (ARC – ART) / ARC

RRR = 1 – RR



Moreover, ARR alone is not sufficient for me to make a good decision— I also need to understand how the trials were done, what this means for transmission, and what the risks are.

Thus, my second area of concern relates to the confusion surrounding what the coronavirus vaccine trials were indeed measuring – the chance of developing *symptomatic* COVID-19 (Menni et al., 2021). The trials did not explicitly test for the efficacy of vaccines with respect to hospitalisation, death, or contracting non-symptomatic COVID (the latter of which, from a public policy perspective, may be more important because of its potential link to transmissibility). Moreover, few realise that participants in early trials were screened out for comorbidities, age, and were also gender biased<sup>10</sup> (Voysey et al., 2021). This has important implications for the replicability of vaccine outcomes in real world applications – especially given that those who stand to benefit most from vaccination were generally excluded (notwithstanding the fact that data out of Israel initially did look very promising; Haas et al., 2021). Indeed, the effect of the vaccine in reducing transmission was never specifically evaluated during the trials (contrary to what one hears and reads from government sources<sup>11</sup>). It is unusual for a vaccine developed to prevent symptomatic disease to also reduce transmission, although emerging evidence provides some hope that this may indeed be the case (Haas et al., 2021).

For all these reasons, high vaccination rates – whilst extremely helpful – do not guarantee that health systems won't still become overburdened (sadly illustrated by Israel when it recorded the highest per capita case load in the world for the week ending the fourth of September 2021; Avis, 2021). Otherwise stated, vaccine efficacy must be understood properly by both public policy architects, and the community, so as to avoid people labouring under the misconception that it is a complete solution to the coronavirus problem.

Moreover, there are also some important medical side-effects that must be factored into both the personal decisions of people contemplating vaccination, and those proposing vaccine mandates. Notably, short-run vaccine side-effects<sup>12</sup> are generally 'moderate in frequency, mild in severity, and short-lived' and most common amongst women, younger people and those who had previously tested positive for COVID-19 (Menni et al., 2021, p. 948). However, serious complications can also arise – for example the Australian Therapeutic Goods Administration has received 495 reports of death (only 9 confirmed) as at 2 September, 2021, and the American Centre for Disease Control and Prevention recorded 7653 reports of death as at September 14, 2021.

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<sup>10</sup>More female trial participants, but severe COVID-19 is more likely to be experienced by males (Voysey et al., 2021).

<sup>11</sup>The closest was weekly swabbing of *some* of the AZ trial group that might give an indication of prevention of asymptomatic COVID-19 and hence transmission – if one assumes that asymptomatic people would have otherwise gone undetected and circulated the virus in their public interactions (Voysey et al., 2021).

<sup>12</sup>Long-run effects are unknown of course.



Thus, like every medical decision, risks must be weighed against potential benefits and informed consent is clearly important.

The cultural and behavioural implications of vaccination are similarly complex. On the positive side is a strong predisposition in a large portion of the community to avail themselves of annual influenza vaccinations. This ought to have resulted in high uptake of the coronavirus vaccine, although it seems that a sharp focus on vaccine technologies employed (such as mRNA) may have resulted in vaccine hesitancy.

On the negative side is the high likelihood of unsafe compensatory behaviours that seem to have been exacerbated by both government spruiking of RRR and the explicit linking of vaccine uptake to the lifting of restrictions. If people believe that they are 95% safe from the coronavirus, then they may not put as much care into distancing and hand hygiene as is warranted – in doing so they ignore the fact that they would be even more safe not to catch the virus at all. This is why it is important for the community to be educated around what the efficacy results actually mean.

Moreover, strong encouragement or coercion regarding vaccines potentially opens up a host of cultural schisms. For instance, many religious communities oppose vaccines, or vaccines created or trialled with aborted foetal cells.<sup>13</sup> In addition, quite a few people who have long used ‘my body, my choice’ as a rallying cry for abortions, now find themselves in a state of pronounced cognitive dissonance. Even more concerning is the explicit vilification of people who have made an informed decision not to be vaccinated at this time, in the media and at the hands of most politicians (see, for example, the repulsive diatribe in the *Sydney Morning Herald* by Fitzsimmons,<sup>14</sup> 2021). However, all of these negative behaviours pale to the institutionalised discrimination being facilitated by vaccine mandates and vaccine passports.

Across the globe many governments have established vaccine passports for COVID-19 and instituted vaccine mandates for various workers. This is a clear injustice (with respect to the virtue I defined in Chap. 3) especially if liability for adverse consequences (both medical and vocational) is not accepted, and where vaccine choice is constrained. The implicit argument is also contrary to practical reason (Chap. 3), particularly with respect to the failure to universalise.<sup>15</sup> However, most concerning, for natural law philosophers and most fair minded people, it sets up two categories of humans (with concomitant differences in dignity) – those who refuse vaccination at this time (who like to refer to themselves as Pure Bloods) and

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<sup>13</sup> Curiously, most of the vaccines in the West used foetal cells, many of them derived from a baby killed in the Netherlands in 1973 (the HEK293 line). Several companies (Sinopharm, Merck) did not use foetal cells at any stage or development or testing – making it clear that it is an option, not a necessity (European Institute of Bioethics, 2021).

<sup>14</sup> ‘The enemy is not just COVID itself, it is the motley collection of anti-vaxxers, conspiracy theorists, and bag of assorted nutters who seek to oppose all of the above at every opportunity’ (Fitzsimmons, 2021, n.p.).

<sup>15</sup> The argument for vaccine discrimination generally proceeds as follows: the unvaccinated are a danger to themselves and others. However, the problem is that obese people, smokers, HIV positive people, and a whole host of other potential categories equally fit this description – they should therefore also be discriminated against if we propose to follow this line of reasoning.

those who comply. This is precisely the mistake made in Nazi Germany with respect to the declaration of certain people as *Untermensch* – it is in the act of accentuating differences that people begin to make excuses for not reciprocating human dignity, which ultimately undermines the claims of all to certain otherwise regarded inalienable rights. Like most grievous transgressions, the categorisation seems a rather mild and innocuous thing – until it isn't.

In terms of the common good – and in the absence of any known long-term serious side-effects – vaccination makes a very great contribution to the lives of many. Thus, every opportunity should be taken to inform and encourage the uptake of the vaccine by as many people as possible.

However, when mandated, coerced or used as a tool of discrimination the vaccine becomes incompatible with human dignity and thus morally unacceptable. Fear of losing one's job, or the hope of regaining some of one's former freedoms, are not good reasons for undergoing a medical procedure. Moreover, mandates curtail people's capacity to choose and often significantly constrain reflection. At the point of coercion we deny people the virtue of justice, and also contravene the principle of double effect (bad side-effects, such as loss of job or liberties, become certain rather than merely foreseeable; see Chap. 3). Moreover, mandates represent a judgement that public policy architects and leaders do not think that people are competent to make decisions about things important to their lives. Indeed, resorting to mandates and coercion suggests that policy architects and leaders have failed to inform and communicate the great benefits of the vaccines.

Otherwise stated, when public policy architects resort to mandating vaccines they also declare that they have utterly failed to consider matters through a moral lens.

## 6.5 Concluding Remarks

Many of the policy interventions targeted at COVID-19 have been lauded by medical practitioners as great successes. Yet natural law philosophers, as well as quite a few people on the street, have been deeply disturbed or even angered at the measures taken. I imagine that such reactions have prompted more than one public policy architect to pause and scratch their head and wonder why people have been so ungrateful – which is precisely the reason why we need to more consistently plan and evaluate public policy with respect to a moral lens.

There is little doubt that the coronavirus responses were motivated by good intent, but as the natural law principle of double effect teaches, good intent alone is not sufficient to ensure that an act can be deemed morally licit (see Chap. 3). We need to also respect human dignity and act in a manner consistent with public virtue.

People aren't merely case numbers, but instead are unique and social animals that strive towards their existential ends by carrying out activities peculiar to the species – planning, abstracting, choosing, and reflecting. When we deny people these functions – and also fail to provide them with good reasons for doing so – we

no longer respect their dignity and hence significantly impact on their capacity to flourish as humans.

To illustrate this point I often refer to operations on my farm: like most farmers I vaccinate my animals annually, and confine them to particular sheds or paddocks at various times for their own good. Yet I never try to tell them why – for example, I don't take the time to explain the possible side-effects of the vaccines, nor do I empathise with their efforts to get to the other side of the fence where the grass is invariably greener. I don't do these things because my stock are mere animals, incapable of sophisticated rational thought, and kept only for my benefit. However, the way I treat my stock should contrast starkly to the way we treat other humans who *are* rational beings capable of grasping good reasons and acting in ways consistent with their ends.

Sadly, because we have eschewed a moral lens, I fear that we haven't always treated people justly (that is, given them their due as rational human beings). Indeed, it seems that we have focussed somewhat disproportionately on the health of the body and completely neglected the health of the soul. By so doing, we may well have made the 'good' life in the 'good' society even more elusive.

In sum, the moral dimension is clearly important with respect to policy design: it is also essential to a defensible regime for funding government – the task to which I now turn my attention.

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# Chapter 7

## Funding Moral Government



*The level of outstanding central government marketable debt for the OECD area is expected to increase from USD 47 trillion in 2019 to almost USD 56 trillion in 2020, to USD 61 trillion by the end of 2021.*

OECD (2021, p. 5)

*Another practice of tyrants is to multiply taxes, after the manner of Dionysius at Syracuse, who contrived that within five years his subjects should bring into the treasury their whole property.*

Aristotle (1992, p. 8079)

**Abstract** It is difficult to understand how people could be expected to flourish under a government that failed to conduct its funding through moral means. People ought to be able to keep sufficient fruits of their labour to maintain their household at the level that it is accustomed to. Moreover, it should be possible to raise adequate funds to support the legitimate remit of government without resorting to unjust tax regimes. In this chapter I outline six principles of taxation that are consistent with the natural law. I then proceed to specify the particular kinds of taxes that conform best to these principles. Thereafter, I spend some time considering both the morality and dangers of funding government operations through debt. I conclude with my thoughts around how we might make the transition to morally funded government.

**Keywords** Moral government · Revenue · Debt · Taxation · Natural law · Moral taxation · Proportionate equity · Demerit tax · Tax and expenditure legislation · TELs · Debt brakes · Balanced budget legislation

Government responses to the coronavirus pandemic have resulted in unprecedented levels of peacetime spending. For instance, the International Monetary Fund (IMF, 2021) records that for the period up to July 2021 Australia spent 20.2% of GDP, Canada 19.9%, Germany 41.4% (on top of European Union spending of 10%), the United Kingdom 32.9% and the United States 27.8%. Indeed, towards the end of 2020 there seemed to be some kind of feverish competition between national leaders to see who could spend the most money, in the quickest space of time.

Thus, it probably comes as no surprise to learn that the ‘pandemic has pushed global government debt to the highest level since World War II, surpassing the world’s annual economic output’ (Walker, 2021, n.p.). Indeed, as I write, there is a fierce debate surrounding the need to lift the debt ceiling for the United States, yet again. Most economists are cheering on political leaders who are willing to incur more debt to fund government spending; the equities markets have clearly become addicted to quantitative easing and fiscal stimulus, and many citizens have become morally indifferent to the burdens that they are placing on future generations of taxpayers.

The coronavirus certainly was a grave matter which required some early interventions that warranted some form of compensation. In addition, it was critical to keep markets operating in an orderly manner. However, I wonder whether we have gone too far in our spending efforts, and am certain that we haven’t given it the moral consideration that was due. Moreover, the beneficiaries of the spending have fallen disproportionately and this presents an important moral dilemma. For example, old age pensioners who were most at risk from the virus (and hence were the greatest health beneficiaries of the policies), were also given significant amounts of fiscal stimulus. At the other end of the spectrum young workers in the gig economy, who appear to have had relatively little risk from the virus, were prevented from working nevertheless and saw most of their income disappear overnight.

Ultimately the unprecedented spending on the coronavirus response will need to be paid for. If those who benefitted most from the measures bear most of the burden of paying for it then there is little problem. However, aged pensioners and the like generally pay little to no tax, and it therefore seems that the younger workers who suffered the most pecuniary cost from policy will probably also ultimately get to pay for a good proportion of the government spending. Moreover, if history has taught us anything at all it must be that majoritarian democracy is unsuited to fulfilling financial obligations when they fall due – which suggests to me that taxpayers not yet born may also pay at least part of the price. Giving away ‘free’ money is popular and an easy thing to do in a democracy – taking it back is a much more difficult proposition.

Essentially there are two conventional<sup>1</sup> options available to pay for the additional coronavirus spending: debt or higher taxes.

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<sup>1</sup>I do not consider things such as Modern Monetary Theory here, suffice to say that I agree with the bulk of my colleagues that it would be a very dangerous thing for an economy to give politicians licence to literally create money!



‘Politicians prior to World War II would have considered it to be immoral (to be a sin) to spend more than they were willing to generate in tax revenues, except during periods of extreme and temporary emergency’ (Buchanan, 1997, p. 119). However, it is now claimed that ‘the world has changed...the intellectual frameworks have evolved...we don’t need to worry about debt’ (Sheard in Walker, 2021, n.p.). Certainly, the world has changed, but I wonder whether human nature has evolved as much as many might wish to believe: for debt to be used in a moral manner it is essential that those binding the communities to future burdens do so in response to benevolent motivations, rather than selfish or political ones. Furthermore, the use of public debt opens up a significant moral hazard and I wonder whether future political leaders and current citizens will honour the commitments that have been made. It may be true that there is no such thing as a free lunch, but I think that few would pass up the opportunity to consume a highly subsidised one!

In many respects, debt is really just future taxes anyhow which means that eventually the coronavirus spending will need to be repaid by taxpayers. Indeed, it seems that global leaders have recently come to acknowledge the fact that their largesse will need to be funded through higher taxes. However, human nature being what it is the emphasis has been on trying to ensure that the largest proportion of voters possible escape explicit tax rises – hence the United States led push for a global corporate tax agreement and also a focus on taxing the wealthiest people (who represent the lowest voting bloc; Franck, 2021). However, the emphasis on corporate tax – whilst having good optics – is probably misguided because most of the tax increase will be passed on to consumers anyhow (Messner, 1965). Moreover, efforts to date have had only marginal effects on government revenue and it is clear that a lot more suffering will have to be inflicted to pay for the coronavirus response. The most important question for both citizens and natural law philosophers is: when might we expect taxation increases that are sufficient to start paying down the debt in a meaningful way?

Financing the coronavirus pandemic response is a tricky moral problem that really cannot be excised from an understanding of human nature. Sadly, it is in our natures to see matters as a desperate predicament when it suits our purposes, but seek to shirk our (debt) commitments when the crisis has passed and our selfish desires reassert themselves. Notably the coronavirus measures were initiated in response to moral reasons – especially concern for the vulnerable. It would thus be rather peculiar to fail to fund the response in a morally licit manner.

To demonstrate how government can fund its mandate in a morally legitimate way I next set out some of the core government finance concepts with respect to the natural law. Following this I outline six principles to guide moral taxation. Thereafter I apply the principles of moral taxation to a number of potential tax instruments. I then spend a little more time to explicate the unique nature and dangers of government debt with respect to the personal finance metaphor. I conclude with some remarks regarding the importance of using reason to cast a light on government finance.



## 7.1 Government Finance and the Natural Law

The natural law is an ideal framework through which to answer questions regarding the financing (expenditure and revenue) of government because it alone provides both a compelling argument for government as well as a recipe for how to resolve the inevitable tension that arises between the common good and human dignity.

The sole justification for government, according to the natural law, is as an instrument to cultivate and guard the common good. It thus follows that the expenditure and revenue activities of government ought to be orientated to providing help to people through the co-ordination and co-operation of the ends of people and their associations (see Chap. 2). Moreover, because of the tendency for power to strive to extend itself, it is necessary that government finance be constrained by the principle of subsidiarity (Messner, 1965; Chap. 3). That is, government finance activities should never subsume the efforts of people or their associations and must always be provided only for *bona fide* need and in a manner designed to make it superfluous as quickly as possible.

There is a real danger that government spending can crowd out the legitimate activities of persons and their associations thus constraining their existential space and, in so doing, concentrating power and competence. Natural law philosophers are wary of such concentrations because both history and human nature suggests that they will be exploited to the detriment of human dignity. Indeed, there are good reasons to believe that finance activities should be specifically designed to promote plurality – policies such as family tax credits and preferential treatment for small and medium enterprises may prove essential to guard against individualism and monopolies respectively that might otherwise destroy competition at the cost to the greater society.

As detailed in Chap. 5 the legitimate remit of government is largely constrained to a subset of needed public goods and services that cannot be provided by smaller competent associations. Supplying wants and wishes, whilst politically popular, does not respect the dignity of the compulsory donor (taxpayer) and hence unreasonably offends human dignity. Moreover ‘in assuming activities proper to individuals or private groups, the state is creating a group of incomplete, imperfect men (sic)’ (Kenney, 1955 p. 34).

Natural law philosophers have always provided their qualified support for the collection of taxes to enable the legitimate remit of government and have viewed this as part of the covenant between rulers and citizens. However, excessive tax burdens have been seen as indicative of tyranny (Aristotle, 1992). Messner (1965) informs us that prior to World War I, the average tax rate was 10%, consistent with the biblical tithe rate. During the interwar period government considerably expanded its remit and average tax rates doubled in response (Messner, 1965). Today, according to KPMG (2021a, b) income tax rates alone range from 31% to 42%, and corporate tax is levied at an average of 19% to approximately 27% (individual countries are not shown on the table). On top of this, consumption taxes, land taxes, and stamp duties are also charged. If Aristotle (1992) considered the Dionysius tax equivalent

**Table 7.1** Average tax rates by region, 2021

Region	Personal	Corporate
North America	35	26.75
Latin America	31.89	27.18
Asia	28.38	21.43
European Union	37.77	18.98
OECD	42.0	22.81
Global	31.27	23.64

Source: KPMG (2021a, b)

to 20% to be indicative of tyranny one can only imagine what he would make of modern tax regimes! (see Table 7.1)

Yet despite these extraordinarily high rates of taxation most developed nations are mired in government debt which confirms that revenue efforts have not kept pace with spending. Part of the problem is that government spending is popular and attracts votes, but taxation is neither of these things. The other reason for rising debt is the modern fondness for ‘convenient’ intergenerational equity arguments with respect to infrastructure.

To understand the intergenerational equity argument one needs to recognise the two fundamental types of spending. Operational spending (opex) refers to goods and services which are expected to be fully consumed within a year. It can never be morally licit for government to borrow money to facilitate opex because the items will already be fully consumed by the time that future generations of taxpayers commence the repayments. It is akin to me sending you the bill for a lavish banquet that you were never invited to – it would be unreasonable to do so and I am sure you would feel aggrieved if I made the attempt. Capital expenditure (capex), on the other hand refers to goods of a durable nature that are likely to be available for consumption many years hence. Things like bridges, roads, and buildings. Provided that certain morally binding commitments are made it *may* be reasonable to ask future generations to contribute towards the cost of these assets (see the penultimate section of this chapter). However, adopting this attitude with respect to intergenerational equity often involves conveniently forgetting that previous generations of taxpayers largely bequeathed us unencumbered assets.

Thus, government should be constrained by its legitimate remit with respect to finance and be also able to provide good reasons for acting. A lot of the problem with government finance relates to the high level of spending that often far exceeds *bona fide* need (Chap. 3). This is a very simple thing to fix in principle – we need to simply constrain ourselves to a level of spending that can be morally justified (a task which will be assisted by both education as well as institutions such as sortition – see Chaps. 8 and 4 respectively). However, even morally defensible spending will still require substantial funding. To have government that truly contributes to human flourishing it is critical that this funding be generated through morally defensible taxation principles – in the next section I spell out six such principles that are consistent with the natural law.

## 7.2 Principles of Moral Taxation

Sadly, most of us live under a complex and confusing patchwork of taxes introduced at various times in history to either address particular needs for revenue, or attract the votes of particular classes of citizens. Chaotic systems of this kind make it difficult for citizens to make good decisions and act in productive ways. Indeed, it is not reasonable for us to persist with taxation regimes that are based on happenstance or political heresthetic.

Nor do we need to.

The natural law can be applied to cast light on the key principles that should form the foundation of a moral system of revenue collection:

1. *Everyone has a moral obligation to pay tax.*

All wealth and income is ultimately derived from nature which exists for the benefit of all (Aquinas, 2018). Ownership and control of land and resources is only able to be justified as a measure for the common good – that is, conferring rights to control resources is justified by the greater productivity that can be gained by doing so (Messner, 1965). Without clearly defined property rights, resources might not be managed effectively (including investment and improvements), because others could easily acquire the fruits of one’s labours. Moreover, considerable time and resources would be likely to be wasted dealing with disagreements.

Nevertheless, ‘everyone has a natural right to a fair share in the consumption of natural resources’ (Finnis, 1998). We can ensure that people are able to consume natural resources necessary to sustain life<sup>2</sup> through a system of taxation and its associated spending. Moreover, a carefully constructed tax will encourage people to put the natural resources to productive use, which ultimately benefits all (Drew, 2020).

2. *As far as possible people ought to keep the fruits of their labours.*

It is the nature of people that they are unlikely to expend maximum effort unless they have some reasonable hope of believing that they will be able to enjoy the fruits of their labours. Indeed, being able to benefit from one’s efforts encourages the uniquely human act of innovation, which generally improves productivity, leading to a stronger economy and ultimately higher living standards for everyone (Messner, 1965). In addition, it is often necessary for those who produce intermediate goods to have control over them so that they can ensure that appropriate value adding is conducted.

3. *As far as possible, taxes should be incident on the superfluum.*

The *proprium* is wealth and income required to keep a household in the manner that it has *reasonably* adopted for the foreseeable future (Drew, 2021). Thus, *proprium* includes productive investments and prudential savings in addition to items

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<sup>2</sup>Hence the Levitical laws with respect to gleaning rights and a prohibition on harvesting the edges of fields.

expected to be readily consumed. Because nature (and hence the wealth and income derived from it) exist for the benefit of all, it follows that the poor have a natural right to the *superfluum* (that which exceeds the *proprium*; Finnis, 1998). Moreover, different households will be accustomed to various standards of living in response to factors such as culture, tradition, environmental constraints, as well as virtue attained.

Notably, the so-called progressive taxes (whereby those who earn more are taxed at a higher rate) are inconsistent with the natural law because the mere possession of wealth is not necessarily indicative of *superfluum*.

#### 4. *Taxes should encourage good decision making.*

Natural law is a philosophy concerned with people having good reasons for acting (practical reason, see Chap. 2). It thus follows that a moral tax system ought to encourage acts consistent with good reasons orientated towards the perfections of people. Thus, a taxation regime motivated by the natural law would not distort decision making in ways contrary to the good of people. In particular, investments into human capital (education), prudential savings, and productive investment would not be the subject of government revenue collection. However, speculative non-productive investment (such as crypto-currency), as well as spending on vices (such as consumption of dangerous drugs, gambling, pornography, or prostitution) would be heavily taxed because these things ultimately detract from people reaching their perfections.

#### 5. *Taxes ought to promote proportionate equity.*

This generation is remarkable for its misapprehension of the concept of equity, essential to justice. As both Plato (2004) and Aristotle (1998) emphasised there are two fundamental kinds of equality – numerical and proportional. The former occurs when we treat all people exactly the same – providing them all with numerically identical consideration (for instance, providing all unemployed people with the same welfare benefit, or the proposed universal basic income) irrespective of their acts and qualities. This approach is not always just and often results in needs not being met and human dignity (relating to both donor taxpayers and recipients) not being respected. Numerical equality is endemic to ‘the welfare state which has been deliberately constructed to be amoral... that neither demands nor rewards responsible behaviour.. and pays equal benefits to those who spurn virtue...[and] subsidises irresponsibility’ (Novak, 1994, p. 27). Indeed, (despite probably good intent) a misapprehension surrounding the justice of numerical equality explains both why the welfare state continues to grow and why virtue continues to diminish (it is also the reason why most communist systems have failed).

By way of contrast proportional equity demands that people be treated according to their due, especially with respect to effort and virtue (Plato, 2004; Aristotle, 1998). It asserts that people who work harder, invest more into their human capital, or attain greater heights of virtue should receive more in proportion to what they have done. This concept is consistent with human dignity because the far majority

of us can choose to do these admirable things<sup>3</sup>; moreover, it is also consistent with the common good and the good society that relies on people making intellectual and moral progress. We ought not shy away from rewarding people who pursue the excellences of humans because this is ultimately our reason for being and our hope for a better future.<sup>4</sup>

#### 6. *Taxes should encourage people to act charitably.*

Moses Maimonides (2010) established a hierarchy of charitable acts which can be used to cast important light on both the purpose and our obligation for doing so. The highest level of charity is to help a person before they become impoverished by assisting them to establish a business, or aiding them to find employment. When we act in this way we allow people to fully realise their human dignity (with respect to being all that they can be given their talents and other circumstances). Moreover, we also implicitly ensure that the help becomes superfluous as quickly as possible, hence avoiding the dependency trap. Lower forms of charity include, *inter alia*, providing donations (especially when the recipient becomes aware of the donors identity), providing funds only after having been asked to do so, and giving grudgingly.

This hierarchy thus speaks to the object of charity being the preservation of human dignity and also that the obligation to do so revolves around our own claim to these inalienable rights. That is, my claim to the right to choose my existential ends without undue interference is only as good as my recognition of your own claim. When we hold back the *superfluum* derived from nature we may deny people their natural right to use natural resources to come closer to their ends. In doing so, we unduly interfere, deny others their human dignity, and also erode our own claim to same.

It would be nice to think that people would understand the obligations arising from both human dignity and the ontological state of nature (as belonging to all). However, human nature is such that most of us will only acknowledge these things when circumstances suit us to do so. It is thus necessary to operate a system of taxation in such a manner as to ensure that people do not backslide with respect to their moral obligations (Aquinas, 2018).

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<sup>3</sup>Clearly there will always be some unfortunate people incapable of working, learning and acquiring greater virtue – but these are exceptional cases (such as the comatose person), not the norm.

<sup>4</sup>I am reasonably sure that my position on this matter will evoke some vitriolic response from ideologues who believe that we can somehow build people up by doing things to them. However, this is clearly muddleheaded thinking – it is inconsistent with the fact that the rise of the welfare state has indeed failed to dignify people (in a natural law sense) and also contrary to our experience whereby most of our own growth has occurred when we have *chosen* to strive with others. No-one has ever learned to walk, read or write solely on the basis of the efforts of others – this fact ought to make clear that human dignity occurs when we work with people, not merely do things to people.

### 7.3 Applying Natural Law Principles of Taxation: Some Specific Examples

The taxation principles I articulated above would clearly augur against a lot of the mainstays of the extant system – for instance, income tax, most corporate tax,<sup>5</sup> payroll tax and stamp duty. Most of these imposts are considered important from an economic perspective – particularly with respect to revenue stability, collection efficiency, and pecuniary sufficiency – but fail to advance the moral objectives of a good society.

However, striking out these extant taxation instruments still leaves us with considerable scope to collect sufficient revenue to fund the legitimate remit of government. In the work that follows I list some of the more promising candidates: the list isn't exhaustive and the candidates aren't perfect, however they are certainly an improvement on much of what is done at present. Moreover, I note that some of the taxes would need to be collected centrally and re-distributed according to recognised grant principles (see Chap. 5) to avoid destructive tax competition and gaming of the tax. Furthermore, it should be noted that some of the candidates (such as luxury goods and vice taxes) are also absolutely essential to ensure adequate exit signals (see Chap. 1) and thus their benefit goes beyond merely reflecting the natural law principles of taxation that we deduced earlier.

Perhaps the candidate that fits our criteria best is the unimproved land tax, strongly championed by Henry George (2010). Generally, land tends to rise in value because it is in relatively fixed supply that stands in contrast to population and economic growth. Moreover, most of the increase to land value occurs as a result of the efforts of others – the building of roads and rail, establishment of new industries, or organic population growth. It is therefore not reasonable for people to keep this unearned wealth and a tax on the unimproved portion of land ensures that part of the wealth is returned to the community from whence it was derived. Moreover, it is generally *superfluum* to households – few live off the increase in their land value.

Notably a tax that is broadened to also consider the capital investments of owners to their land erodes the moral credentials of the land tax. However, the development of high density (particularly high-rise) housing and retail significantly complicates matters. Furthermore, in most jurisdictions unimproved land tax is calculated incorrectly (whereby the land tax is incident on the entire unimproved land value, rather than the increase in the land value since the last assessment (see Drew, 2021 for a thorough treatment of this tax instrument)).

In essence the unimproved land tax operates as a tax on unrealised capital gains with respect to land assets. Consistent with the principle of universalism, it seems reasonable to also apply a capital gains tax to other assets such as collectibles (for

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<sup>5</sup>A tax on multinationals and large corporations might be defensible given that these tend to stymie competition and hence concentrate power and competence. However, any tax rate applied would need to closely reflect the scale benefits that these companies enjoy and be levied with the intent of creating a level playing field.

example, art or antiquities), crypto currencies, foreign currency trades and equities. Indeed, it is probably more important to do so because speculative activity in these areas is symptomatic of succumbing to the vice of greed and does little, if anything, for the common good.

For efficiency's sake it is probably sensible for a broad-based capital gains tax to be levied at the time that the asset value is realised (otherwise governments would spend considerable sums trying to make and substantiate valuations). Moreover, it is not reasonable to provide substantial discounts to citizens as a way of encouraging compliance (for instance, in Australia 50% of the unearned wealth is exempt from the capital gains tax). As I have already noted compliance with any tax regime is a moral duty and efforts should instead be directed towards educating people regarding their obligations. Furthermore, it would be important to provide exemptions for capital gains related to investments for tools and equipment used in business enterprises, to be consistent with the natural law.

Our third candidate also strongly responds to the principles of natural law philosophy – a death tax. However, in Australia and also many places abroad, death duties are contentious and often evoke passionate defences against introduction (presumably by wealthy people who tend to have power and influence (and a good deal of self-interest)). A death tax denies no-one of the fruits of their labours because it is the act of dying that does so. Moreover, inheritance is generally *superfluum* – few adults ought to be relying on an inheritance, at an unspecified time in the future, in order to sustain their household. In addition, a death tax allows everyone to fulfil their obligation – especially the elderly who tend to consume significant public resources in their twilight years.

However, a death tax can prove problematic when the estate includes (working) agricultural land or other business assets. The simple solution to this would be to exempt particular assets specifically related to production. Death taxes can also encourage people to make bad decisions – such as spending money to try to avoid the tax – and once again, good communication regarding obligations may prove key to ensuring compliance.

A broad-based consumption tax is generally endorsed by economists (which is understandable), but also occasionally by natural law philosophers such as Messner (1965; which is less understandable). Broad based consumption taxes are regressive in nature (that is the tax erodes a higher proportion of low incomes) and also can disproportionately affect families (the fundamental unit of association). Moreover, taxes of this kind are incident on both the *proprium* and *superfluum*. I therefore instead advocate for two, much narrower, kinds of consumption taxes – luxury taxes and vice taxes.

Luxury taxes are much more likely to fall on the *superfluum* and exert much less regressive pressure on low-income earners. Taxes of this kind might also steer consumers towards more modest consumption which could be more consistent with prudence. The trouble with regimes of this kind is that there can often be some controversy around what is considered a luxury item and it would therefore be important for governments to provide good reasons justifying categorisation (and perhaps also mandate regular reviews by the sortition house; see Chap. 4). Moreover,



it would also be important for the tax rate to be justified with relevance to good reasons – especially given that reducing consumption of these items does not necessarily present itself as an obvious and reasonable objective. We do want people to still consume luxuries from time to time, as their incomes dictate – so arguments for advocating a certain rate of taxation may need to be orientated mostly towards the levels of revenue required to help other people to meet their more basic and natural needs.

Vice taxes share the potential for controversy but might also introduce the potential for improving virtue attainment. Some items such as pornography, prostitution, and drugs which always present a danger should be relatively straight-forward. However, other items – such as alcohol, caffeine, sugar, or fat<sup>6</sup> require much more thought and justification. Ultimately things that are proposed for a vice tax should be justified by good reasons and also be consistent with public virtue (the latter of which suggests that vice taxes might be another item requiring regular review by the sortition house; see Chap. 4). However, establishing the particular rate of taxation for items of vice might be a little easier than it is for luxuries – one would simply tax at the level required to achieve certain targeted reductions to consumption (which would likely be specific for each item).

As I stated earlier, there is probably no such thing as a perfectly moral tax. However, the examples I cite above are certainly much more consistent with the natural law than many of our extant instruments (such as income taxes). Otherwise stated, just because we can't eliminate all of the grey areas from our tax practice, it doesn't follow that we ought not even try. Indeed, much the same might be said about debt – the matter to which I now turn my attention.

## 7.4 Debt

Natural law philosophers have long harboured concerns regarding the potential for public debt to distort good decision making (Messner, 1952). Debt is essentially the bringing forward of future revenues to fund immediate resource consumption. Public debt allows governments to control and spend more of the available national resources – which reduces the scope for persons and lesser associations to realise their dignity. In addition, public debt also constrains the choices of future generations because it commits some of the resources that they might have otherwise enjoyed to present consumption.

Indeed, most public debt is contrary to good reason. It implicitly asserts that government, rather than the person, is best placed to know how to allocate resources for good ends. There is an unspoken – and unbelievable – assertion that government

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<sup>6</sup>All of these items either currently attract tax or have been proposed for tax. What sets them apart from the earlier list is that they don't cause harm when consumed in moderation. I therefore don't support a tax on these kinds of things, unless it can be contrived in a way that is only incident on excessive consumption.



will be as wise with spending as the people themselves would have been (Friedman, 2001). Moreover, public debt allows the current generation to be profligate in its spending, without necessarily incurring any of the costs of doing so. Indeed, unchecked profligacy of this kind could ultimately lead to the unjust situation whereby a future generation's entire tax revenues had been spent before they even arrived on the scene.

This unreasonable attitude to public debt stands in stark contrast to how most of us conduct our personal finances. Generally, people take extraordinary care with their finances because they know that they will personally bear the full consequences of decision-making. Thus, a person might be inclined to only accrue debt to fund purchases of a durable nature – such as a house – and will usually take significant pains to ensure that they get good value for money because they know that they will personally be required to sacrifice to pay for it. Indeed, it is generally regarded as a given that personal debt will need to be serviced through sacrifice (either lower discretionary spending or higher income) from the moment that it is drawn down. Moreover, most of us make this sacrifice willingly with a view to increasing our store of nett assets and thus leaving our children in a better position than we ourselves found.

The way that most of us approach personal finances was once largely echoed by governments with respect to public finance. For example, President Roosevelt famously remarked that ‘any family, can for a year spend a little more than it earns....but you and I know that a continuation of that habit means the poorhouse’ (cited in Borna & Mantriprgada, 1989). However, attitudes changed remarkably following the Great Depression. Prior to this time government had been seen as a necessary evil, but following the New Deal (of Roosevelt) increasingly came to be seen as the cure for all evils (Friedman, 2001). This dependency on debt fuelled government spending was exacerbated further a decade later when Keynes developed the economic infrastructure to justify benevolent government spending to smooth out economic cycles. In so doing, he ‘exorcised from public consciousness the moral constraints that had [previously] acted to insure fiscal responsibility’ (Buchanan, 1997, p. 120).

The huge flaw with Keynesian economics<sup>7</sup> is, of course, the fact that few – if any politicians – are indeed benevolent (Buchanan, 1975). Most people are attracted to politics because they feel that they personally need to hold power to bring about desirable change (either for themselves or others). Moreover, most realise that spending resources of future generations allows them to garner greater electoral power at little personal cost, and it seems that the temptation to engage in this kind of political capitalisation is too great for many to resist.

Indeed, since the Great Financial Crisis (circa 2008) ‘new’ Keynesian economics has been attracting more and more disciples, especially it appears, amongst the voting population. It now seems to be common currency that government is *obligated* to spend money to mitigate *any* degree of suffering encountered by citizens. The

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<sup>7</sup>Another important matter is that the concept is much more suitable for national governments who control their own currency. Decentralised governments may not be able to grow their way out of debt, and certainly can't inflate their way out of it.

apparent success of post-GFC measures, combined with record low interest rates, and a literal belief in the dictum that the object of the spending doesn't matter has seen just about every economist and political commentator clamouring for public spending in response to just about every perceived evil.

Unfortunately, it is human nature to focus on exaggerated benefits and ignore the consequences of propositions consistent with our own immediate self-interest.<sup>8</sup> It is true that government spending does have the potential to stimulate some economic activity but it also makes future generations vulnerable to interest rate risk and a host of other serious and deleterious consequences. Indeed, it seems that the new disciples of Keynes have forgotten how things ended for the old disciples of Keynes in the 1970's (crippling inflation and an ignominious bailout of the United Kingdom by the International Monetary Fund).

As I have already noted, debt fuelled government spending – especially when conducted in something of a panic – tends to result in some special cohorts receiving large sums of unearned wealth at the expense of future generations of taxpayers with no apparent enduring common good benefit. For example, the practice of posting large stimulus cheques to pensioners and the unemployed during the lockdown phase was both unjust and unproductive<sup>9</sup>: unjust because it called for future taxpayers to bankroll the immediate consumption of strangers and unproductive because most Australian businesses were closed at the time. Indeed, it would have been both more just and more prudent to have invested the money into durable assets that might have benefitted the whole community – especially medical infrastructure and equipment (Indeed, it was notable that the first full pandemic budget in Australia totalled \$AUD311B (15.7% of GDP) but contained just \$AUD20B (1% of GDP) on actual health spending (Commonwealth of Australia, 2021)!)

In the past, government feared the accumulation of debt because of its potential to result in high and persistent inflation (Messner, 1965). Inflation is a problem because it is both very painful to control and also comes with a lot of intolerable side-effects. However, it seems that people might have forgotten the full implications of living in an inflationary environment – no doubt because inflation has been largely absent for the better part of three decades.

In many respects, inflation is a sneaky tax – it represents the destruction of the buying power of money that is mostly incident on stored wealth (incomes tend to go up during inflationary periods and are thus less exposed). As such, it represents an unjust and quite arbitrary transfer of wealth from savers to borrowers (including, but not limited to, government). Inflation also tends to distort financial markets because it exerts a corrosive effect on nominal returns (and hence favours businesses with pricing power). It biases people against prudential savings in banks (exacerbated by poorly designed income taxes that don't discriminate between nominal and real returns) and encourages people to bring forward spending. In addition, inflation

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<sup>8</sup>Hence the need for the cultivation of the virtue of prudence.

<sup>9</sup>One of the key lessons from the GFC was that consumer consumption was better facilitated through the distribution of coupons that could only be spent in national retail outlets, rather than cash (that might be saved or spent online). It is remarkable that this core lesson from a decade earlier could have been forgotten so readily.

adds to business costs (menu costs whereby prices need to be constantly revised to mitigate changes to input prices) and non-productive transactions (such as more frequent bank withdrawals of lower quantum to try to partially preserve spending power). In short, inflation unnecessarily consumes economic resources and makes it more difficult for people to plan for the future.<sup>10</sup>

A further negative consequence of public debt is that it tends to fuel fiscal illusion amongst citizens. Fiscal illusion occurs when people no longer understand the true cost of the public goods and services that they consume and also misapprehend the financial circumstances of their government. The result of fiscal illusion is that it encourages citizens to demand more and higher quality goods and services than might be optimal. This kind of behaviour clearly has grave implications for financial sustainability, but it also poses a threat from a natural law perspective: it encourages dependency on government and crowds-out the existential space of people and their lesser associations. Dependency is not a state of dignity for the current generation, and high debt burdens means that dignity will also prove elusive for future generations.

Debt fuelled government spending also acts contrary to public virtue. We want citizens and our governments to be in the habit of acting according to good reasons – especially with respect to the cardinal virtues of justice, prudence, fortitude and temperance (see Chap. 2). A good portion of recent government spending is both imprudent and unjust and therefore unlikely to set an example that we might like others to follow. Moreover, public debt raises some important moral hazards: (i) there can be no certainty that current generations won't exploit their position of temporal advantage simply to fulfil their own selfish desires and (ii) there is no reason to think that future generations will feel morally obliged to respect the obligations that their predecessors made.

Notwithstanding my significant reservations regarding public debt I do believe that it is possible to fund some long-life assets through this means in a moral manner if we take reasonable care. To do so, actors would need to satisfy at least four pre-requisites.

First, it would need to be established that the debt was taken out with good intent. This means that it would be drawn upon only to fund long-life assets likely to be valued by the next generation and not motivated by debt bias<sup>11</sup> or political expediency.

Second, it would be necessary for repayments to commence immediately in proportion to the likely consumption of the asset and also involve some sacrifice. This means that repayments would need to occur at a level at least commensurate with depreciation. It also means that the repayments should be funded by either savings on other discretionary spending, or new streams of revenue.

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<sup>10</sup>Very early on in the COVID response (March 2020) I wrote to my Prime Minister and raised the prospect of a stagflation outcome arising from his government's public policy intervention and profligate spending measures. At the time I seemed to be a lone voice crying in the wilderness, however, I now note that many others are warning of potential disaster.

<sup>11</sup>Debt bias is the rational – but not moral – preference of older people to fund government spending arising from the fact that they are unlikely to be paying taxes long enough to fully pay their share. Notably most people in government are well past middle age which probably explains our immoral finances (and also underlines the importance of sortition – see Chap. 4).

Third, governments would need to have access to appropriate debt instruments – preferably bonds that had maturity dates no longer than the expected useful life of the asset.

Fourth, those advocating debt for government spending would need to have a plan to combat fiscal illusion. Specifically, the amount of debt required, as well as the commitments made by the current generation, would need to be communicated clearly to taxpayers and users alike (see also ‘[Debt Brakes](#)’ in the [Appendix](#)).

In sum, debt poses a danger to the soul of a community. However, when used with care potential damage can be mitigated. Sadly though the moral dimension is rarely considered when debt is accrued. Clearly, if we accept that government ought to be a moral endeavour then we will need to do much better than we have in recent times.

## 7.5 Concluding Remarks

The fiscal response to COVID was very large and fuelled mainly through debt. Much of this spending is difficult to defend on moral grounds – especially funds directed to private consumption, and transfers of unearned wealth. Indeed, there will be few – if any – enduring benefits for the common good arising from our latest example of government profligacy.

However, there will be enduring costs. Debt levels have reached new highs and inflation is already raising its head. Supply bottle-necks have also emerged in part due to fierce competition between government and people for the more-or-less fixed resource output of the global economy. In addition, there have been recent agreements struck for higher corporate tax, that will ultimately be borne by most consumers.

Things could have been much different and hence much more morally defensible. Spending could have been more prudent and directed towards the acquisition of durable assets (especially of a health nature) orientated towards the common good. Taxes could have been designed so that the major beneficiaries made some reciprocal contribution to the good (for example through the introduction of a death tax). We also could have quickly reduced discretionary spending or established new lines of revenue so that the debt was serviced in a morally defensible way. But alas, we did none of these things.

I do not believe that future generations of taxpayers will thank us for the burdens that we have obligated them to, especially for things that we have already fully consumed. Indeed, it seems that we have acted quite immorally with respect to our public finances. This is ironic given that the entire coronavirus response was motivated by moral reasons.

We must do better in the future if people are going to be provided with the opportunity to flourish. Part of this effort might involve changing the rules of the game to make political capitalisation and immoral spending more difficult (see the [Appendix](#)). The other part will require people to better understand the role of government, the proper ends of humans, and also acquire the skills to articulate and demand good reasons for acting. In short, we will need our citizens to be much better educated: this is the matter to which I will soon direct my attention.

## Appendix: Debt Brakes, Balanced Budget Legislation, Tax and Expenditure Legislation

A number of rule changes have been proposed over the years to try to constrain the appetite of Leviathan government with respect to the consumption of resources. The most prominent suggestions are: (i) balanced budget legislation, (ii) debt brakes, and (iii) tax and expenditure legislation. One might think that legislation of these kinds would be unlikely to succeed given that it would constrain politically popular action. However, political heresthetic<sup>12</sup> – specifically agenda control – means that this is indeed possible if we only ask *current* politicians to bind *future* actors with *prospective* legislation (perhaps a decade or more into the future). Potential rule-based constraints are therefore worthy of our serious attention.

### *Balanced Budget Legislation*

Generally, this rule requires that operating expenditures be at least equalled by current revenue flows. A balance of this kind is important to strike because funds spent on open are for things that will be consumed within 12 months (and thus can't ever be morally funded through accruing additional debt).

Critics of balanced budget legislation try to argue that it would undermine the democratic mandate of politicians and also stop them from responding to *bona fide* community need. However, this argument is not true at all – balanced budget legislation simply forces politicians to make trade-offs. That is, in a balanced budget regime, new operational spending would need to be matched by cuts in other areas, or new streams of revenue.

I am in favour of balanced budget legislation but do concede that clever politicians will try to circumvent the spirit of the fiscal constitution<sup>13</sup> (Levine et al., 2013). Elsewhere I have set out how a sortition chamber might be used to supervise and enforce budget rules of this kind (Drew, 2020). Supervision is an especially important task if provision is made for a rainy-day account which is advisable so that governments can respond appropriately to unexpected shocks. Compliance with balanced budget rules would also be aided by an informed and engaged citizenry (see Chap. 8).

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<sup>12</sup>Heresthetic is the art of political manipulation – see the seminal work of W. H. Riker (1986).

<sup>13</sup>This can be done by a number of means including: moving 'loss-making' government activities to off-book enterprises, manipulating depreciation accrual data, and passing budgets with the full knowledge that they cannot be kept to (see Drew, 2020).

## *Debt Brakes*

Debt brakes require parliaments to seek approval before acquiring additional debt in excess of a pre-set ceiling. In some nations this approval must be sought from the politicians themselves, which just opens up a new playing field for political games. A much better design would require politicians to seek approval via referendum from citizens.

Debt brakes controlled by citizens not only avoid political heresthetic, but also come with at least two important side-benefits. First, it ensures that citizens are aware of how much debt they have burdened future taxpayers with. Making this plain will do much to combat fiscal illusion, and might also stimulate moral debate on this important matter. Second, when politicians try to sell changes to the debt brake they will inevitably point to the capital good that the debt will putatively fund. The vote on the debt brake will thus also communicate whether the broader community does indeed value the proposed new good (McEachern, 1978).

Once again, close supervision is required to ensure that the spirit of the debt brake is indeed observed.<sup>14</sup> However, it is certainly worth the effort to do so because an effective debt brake will undoubtedly result in much more morally defensible government finance.

## *Tax and Expenditure Legislation*

Taxation and expenditure limitations (TEs) are mainly focused on capping the rate of tax paid by citizens (see Drew, 2021). Not surprisingly, these kinds of measures tend to be very politically popular and are often forced on decentralised governments by their higher tier peers (who get all the political benefit and none of the political cost).

However, TEs are completely incompatible with both balanced budget legislation and debt brakes. We want our governments to fund expenditure in moral ways and to do this they need to have the freedom to raise additional revenue. Moreover, instituting TEs tends to provide governments with an excuse for learned helplessness, which is often a key ingredient to financial failure (Drew, 2020). This final measure is thus a very bad idea if we want to have morally funded government capable of helping people to flourish.

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<sup>14</sup>Debt brakes can be circumvented by measures such as moving debt to off-book enterprises, issuing revenue bonds, and running up implicit debts such as deferred maintenance (see Drew, 2020)

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# Chapter 8

## Education



*Compared to 2019 results, there has been no statistically significant fall in foundational literacy and numeracy skills despite predications that remote learning would see a dive in results.*

*Australian Curriculum, Assessment, and Reporting Authority cited in Duffy (2021)*

*But if you ask what is the good of education in general, the answer is easy – that education makes good men, and that good men act nobly, and conquer their enemies in battle, because they are good.*

Plato, The Laws (2004, p. 582)

**Abstract** From ancient times it has been recognised that education is a critical ingredient to the making of good people and good societies. However, of recent times we seem to have forgotten this purpose of education and instead have been more engaged in entertaining and programming our students. If people are to flourish then they need pedagogical support to develop the skills at the core of human excellence. In this chapter I explain the need to reform our education institutions with a view to making them more conducive to the development of reason and virtue. I also describe the need for a new paradigm in public management scholarship to balance out extant and competing frameworks. I conclude with some thoughts on the importance of education for combatting Leviathan-like government and affirming our human dignity.

**Keywords** COVID-19 · Intellectual virtue · Virtue · Human flourishing · Curriculum

According to the Australian Curriculum, Assessment and Reporting Authority (ACARA) which administers the country's literacy and numeracy exams 'overall this [COVID shutdown of schools] has not had a negative impact on our students' literacy and numeracy levels, which I think should come as great encouragement to students, parents, carers, teachers, school principals' (de Carvalho in Duffy, 2021). However, a recent OECD report concludes that 'worldwide school closures in early 2020 led to losses in learning that will not easily be made up for even if schools quickly return to their prior performance levels...these losses will have lasting economic impacts both on the affected students and on each nation unless they are effectively remediated' (Hanushek & Woessmann, 2021, p. 3). These two evaluations seem wildly at odds with one another (and perhaps common sense). To understand why this is so one must look behind the headline, and also grasp what it is that we try to accomplish when we educate our youth.

The claim by ACARA was made on the basis of average performance data for each state, as well as the nation overall. So, it is possible that the average student was largely unaffected, but it is also possible that the top cohort improved considerably against a declining trend of their peers and thus dragged the average<sup>1</sup> up (Drew & O'Flynn, 2020). Moreover, the fact that there was no statistically significant decline in performance is hardly surprising given that we only have 1 year of post COVID shutdown data to make comparisons with (this lack of data makes it empirically difficult to demonstrate statistical significance and form robust conclusions which is why I am waiting until at least 2024 to do empirical analysis of the COVID education outcomes). However, most importantly I think that ACARA's incredibly narrow conception of what schools do explains an awful lot of the apparent discrepancy in evaluations of the effect of the shutdowns on young people.

'Children need to be better looked after in their schooling, their socialisation, their exercise, their mental health,' he [Professor Booy] said... "they have suffered to protect older adults through the lockdowns" (cited in Fitzsimmons, 2021). This wise statement points to the fact that education is not merely an exercise in teaching literacy and numeracy – it is the initiation of young people into a society and (hopefully) the moulding of future citizens and leaders. This wider conception of education was well understood by the ancients – Plato, Aristotle, Maimonides – but seems to be far less recognised by the educationalists of this day.

Before I critique our current systems for education it is important for me to establish my *bona fides*. Part of the problem with education is that a lot of the so-called experts, as well as decision-makers, have little experience (outside of their own privileged education<sup>2</sup>) upon which to base their prescriptions. By way of contrast, education is something I know a fair bit about from various important perspectives. Prior to a catastrophic motorcycle accident, I had been a practising mathematics and

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<sup>1</sup> It is beyond me why the national ACARA doesn't understand that the mean is an exceptionally bad choice of statistic by which to report on performance – I distinctly remember teaching Year 8 mathematics students why data of this kind needs to be reported according to quartiles.

<sup>2</sup> The Gonski reports, which were supposed to reform education in Australia, were led by a former lawyer who attended ivy league schools and universities.

science teacher in the public system and also served on a number of state government marking and moderation panels (I still perform occasional ‘relief’ teaching for the local schools). In addition, I have two sons whose education I have been very involved in. I have also taught education at tertiary level, and now teach economics, finance, and public policy. Thus, I am able to augment scholarly learning with a rich repository of practical experience derived from these different perspectives.

This all leads me to conclude that the COVID school shutdowns were incredibly destructive for both young people and ultimately our society. For bright children like mine, who always top their classes in academic subjects and are able to get appropriate support from their parents as well as access to information technology, things were not too bad. Indeed, my youngest son constantly remarked on how much more work he could get done and how refreshing it was to finally be extended a little. However, for children who were already struggling, unable to receive instruction from their parents, and suffering technology disadvantage matters would have been very different. This later group would undoubtedly have fallen behind. Moreover, whether educationally advantaged or not, students shared the experience of isolation and stress. Indeed, Kid’s Helpline (a not-for profit children’s counselling service) found that the frequency of crisis calls increased to one call every 69 seconds which is a rise of 40% on 2019 levels (SBS, 2020). In addition, statistics clearly demonstrate that those already subject to poor home environments, domestic violence, or other risks were put in more danger because of the decision to shut-down schools (for example, an increase in family and domestic violence sexual assault of 13% in 2020; Australian Bureau of Statistics (ABS), 2021).

Thus far we have discussed the performance of schools and young people in a relative sense (comparing it to pre-COVID conditions). However, it should be acknowledged that this is a comparison to a system that already put far more effort into entertaining students and programming them to the progressive narrative than it did into teaching reasoning skills or inculcating virtue.<sup>3</sup> If we were to compare things instead to an ideal – such as that prescribed by the philosophers of old – then things would appear very grim indeed (see Sect. 8.3). Our greatest hope of living good lives in a good society is through providing appropriate education; but sadly, ideologues captured education many decades ago and this probably explains a lot about the situation that we find ourselves in now.

To explore what is required to educate young people in a manner that makes them fit to be citizens and potential leaders I next conduct a short review of the ideal traits of an educated citizen. Following this, I explain the appropriate remit and need for plurality with respect to schooling. Thereafter, I sketch a picture of an exciting new paradigm – Creating Human Flourishing – that I am developing to bring some balance back into public management and education. I conclude with some thoughts

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<sup>3</sup> Like around half of the parents in Australia I fled the public system when the boys got to high school age in search of values and rigorous education. However, despite enrolling them at a religious school they seem to be taught in a values vacuum, still get indoctrinated with climate-change and other progressive narratives, and get offered elective subjects such as ‘Kicking Goals: Skills in Footy’ – I kid you not (name of school deliberately withheld).

on the critical importance of us doing better with respect to education if we are to ever escape the clutches of Leviathan-like government.

## 8.1 Goal of Education: The Good Person and Good Society

The goal of education is to facilitate people living together in community according to the excellences of humans (planning, abstracting, choosing and reflecting) in a way that is orientated to proper ends (possessions, healthy constitution, virtue, contemplation, holding of true opinions) (see Chap. 2).

In order to achieve this goal people need to develop both intellectual and moral virtues. Intellectual virtues are stable dispositions that can be summarised as: (i) grasping a principle (understanding), (ii) accepting principles (knowing), and (iii) glimpsing connections between principles and reality as a whole (philosophising). Principles are the ‘cause’ or ‘why’ of something. Thus, when one has *understood* they have grasped the why of a something; when they *know* they have come to see a number of principles as an orderly whole (or science), and when they have mastered *philosophy* then they have glimpsed what explains reality.

To understand, know or philosophise, humans must pursue truth, be humble, keep an open mind, have integrity (honesty and courage), reflect, and persevere (Aquinas, 2018; Maimonides, 1956; Aristotle, 1998). Perseverance is especially important if one wishes to master anything worth knowing.

The intellectual virtues are linked to the moral virtues by the most important cardinal virtue: prudence (the practical intellectual disposition orientated towards resisting impulse, seeking counsel or weighing up options, and commanding the best means to achieve a moral end).

The main moral virtues are exemplified by the remainder of the cardinal suite. In the generally accepted order of importance these are: (i) justice (giving to each person their rightful due by elevating their human dignity), (ii) fortitude (remaining steadfast in the face of obstacles or hardship), and (iii) temperance (self-mastery over irrational sense appetites (especially food, drugs, and sexual passions)). Notably prudence regards both the private good of the person as well as the common good; justice is directed principally towards to the common good; whilst fortitude and temperance primarily act at the level of the individual person.

If one could always display habitual orientations to the urgings of reason with respect to both intellect and morality then one would achieve the excellence of humanity – that is, the person would live a good life. If all people that interacted with one another did so, then we would have an excellent community.

The main question for educators relates to how we might instil both intellectual and moral virtues in people. People are not born virtuous – notwithstanding the claims of some religions – but acquire these dispositions over the course of their lives. During infancy and youth people are inculcated into habits and beliefs – thus suggesting the importance of instruction and practice. In late youth, or early adulthood the hope is that people will interrogate these habits and beliefs and integrate

them into a virtuous self (Stutz & Tauer, 2000), hence the importance of reflection and integration. Finally, with the accumulation of much knowledge some (relatively few) people might, with great persistence, strive to glimpse explanations of reality.

Thus, the educator must explicitly teach the intellectual *and* moral virtues through instruction, exposure to suitable materials, and (perhaps most importantly) example. With respect to the latter activity it becomes clear that the instructor must love truth for its own sake, be humble and open minded, exhibit intellectual integrity, reflect on their own knowledge and pedagogy, and work hard and long.

In addition, the educator must provide the scaffolding for practice and habit formation which includes: teaching syllogistic reasoning (see Chap. 2), academic skills (including induction and deduction), as well as rhetoric<sup>4</sup> (especially tropic thinking). It is also important that the educator implements timely intervention when necessary to correct any emerging vice. In this regard the advice of Moses Maimonides (1975) is important – undesirable emerging traits should be corrected by the extreme contrary until such time as the appetites return to normal. Following this the person should be instructed and guided to a more appropriate equilibrium (see Chap. 2).

Thereafter, the educator should facilitate exercises likely to encourage reflection and integration. This includes use of the Socratic method which poses questions intended to provoke discomfort and expose contradictions. In addition, exercises should be contrived whereby students are required to give good reasons for their position on a range of matters, identify and address objections to their position, and apply principles to cases (similar to the methodology of Aquinas, 2018).

Teaching another to philosophise is a skillset only likely to be possessed by the best of scholars and hence something that will largely take place at universities (see Sect. 8.4). However, having said this, it is clearly important to celebrate great minds (something that our society seems loath to do) and expose young people to the works of the great sages.

Notably the educator is no one particular person – and certainly can't be conceived only in terms of teachers or professors. Because virtue commences in infancy education starts with the parents and close family. In youth the influence of teachers and the wider community becomes important (hence the need for laws to contain the worst excesses of vice; George, 1993). During and after this time the person might also be fortunate enough to come into contact with some of the sages, both past and present (Maimonides, 1956).

Before completing this section, a word on pluralism seems warranted. Clearly I am in favour of a natural law approach to the education of people and communities. However, unlike the progressives who seek to shut down dissenting voices, I would, in fact, support the exposure of people to alternate philosophies. That is, when I say

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<sup>4</sup>Rhetoric is the art of discovering the means to successfully persuade others and makes use of the major tropes: metaphor (comparison to a known to aide understanding), irony (the deployment of incongruity and apparent contradiction to elicit frustration and outrage), metonymy (substitution of a suggestive or attributive meaning for what is really trying to be conveyed), and synecdoche (taking the part for the whole or whole for the part) (Drew & O'Flynn, 2020).

that open mindedness is a desirable trait, I actually believe it (indeed, my children have been instructed in all major philosophies and religious traditions). Indeed, if one believes that they have inculcated intellectual virtue in the student then there is no reasonable basis to fear exposing them to other perspectives.

## 8.2 The School

In the last section we reviewed the role of educators – specifically what and how they must go about their business (producing good people for a good society). In this section we will spend some time exploring the remit and need for plurality with respect to formal schooling – noting that the school is the most important mediating structure between the person and society, aside from the family.

A critical question to ask, and answer, relates to what the purpose of a school is. Some people appear to think that the role of the school is to equip students to function in modern society (hence the teaching of home economics, information technology, wood work and the like). Others appear to believe that the purpose of a school is to train the next generation of workers (this was clearly the dominant paradigm in the post-war period). Yet others perceive school as an ideal instrument for the indoctrination of the young and impressionable – a way to move forward their political objectives, especially if the current generation of adults aren't in unanimous support (hence the progressive agenda that plagues much of the western world). Another influential group puts the emphasis on socialisation and the cultivation of mere happiness (attested to by the primacy given to the entertainment curriculum that I wrote of earlier – see also footnote 3).

I believe all of the aforementioned perspectives are in error – they ignore where nature has placed the responsibility for learning and also seem to neglect the entire reason for being. Otherwise stated, the views I very briefly surveyed a few moments ago have overlooked both the beginning and the ends of human existence. School should instead be understood as an instrument to *help* parents produce good people which will in time contribute to a good society. A position such as this both acknowledges the natural order of things (whereby we find, time and again, that parents instinctually protect and foster their offspring) and also recognises the unique potential of humans. In so doing it sets the limits to the participation of the state and also directs our attention to the major activities that schools ought to engage in.

Aristotle (1962) would have also emphasised the importance of providing an undistracted opportunity to devote oneself to something really worthwhile. I agree, school is a precious and brief time in our lives where we need not be distracted by work and most responsibilities: it thus represents a time and place set apart from the rest of our lives where we should focus on the things important to the human person. Thus, it ought to be a place where we can receive instruction, take the time to practise and habituate ourselves in important virtues and skills, and receive interventions orientated towards remediation where necessary. When staffed with people who have already mastered the intellectual and moral virtues, an environment free of

distractions might be expected to appropriately augment the work of the family in cultivating the good person.

However, sadly our confusion about the purpose of education seems to have given rise to a broad, generally entertaining, but muddleheaded curriculum. The valuable, and all too brief moment in a person's life where they can dedicate themselves to the worthwhile human ends is instead disturbed by classes in dance, visual arts, drama, sport, music, and foreign language.<sup>5</sup> Focussed concentration and persistence is set aside in favour of short and timed periods of instruction in the various 'subjects' which take place to the distracting accompaniment of computing tablets and the like. If a person learns the intellectual virtues it is a complete accident – rather than an exercise in explicit instruction and practise – and if they stumble across the moral virtues then perhaps it is nothing short of a miracle! It seems patently absurd that we squander this precious opportunity to inculcate the intellectual and moral virtues necessary for the good life and instead deliberately introduce all manner of fun distractions. Indeed, a comparison with the curriculum of times past could not fail to disappoint – we have discarded most of the trivium (logic, rhetoric, and grammar) and replaced it with two-year subjects such as 'skills in footy' (see footnote 3). No wonder the world is in such a mess and that Leviathan runs rampant.

To a certain extent some of the responsibility for the decline of the school in the modern world must be laid at the feet of the parents. As I briefly alluded to earlier, it is the natural function of parents to educate their offspring – I see it all the time on my farm. From the first gasp for air or the tentative pecks at the inside of a shell parents naturally respond to high levels of dependency with both love and care. Moreover, as the infant animal begins to explore the world, the parent employs its love and authority to shape the choices towards the excellences of the particular species. How much more so, should this be the case for the animal that has one of the longest and most profound periods of dependency as well as the greatest potential for excellence (Messner, 1952)?

Indeed, Aristotle (1962) believed that humans are driven to give rise to offspring in order to leave an image of themselves. This view of reproduction gives even further impetus for the idea that parents are both best placed and most invested in seeing their offspring flourish. They ought to be highly motivated to ensure that their charges are exposed to practical skills and virtues, as well as explanations for the teleological ends of humans. Messner (1952, p. 302), asserted that 'nature proves that the essential education of their children is an existential end of the parent and thus their exclusive [unalienable] right'. However, sadly many parents have decided to try to abrogate this responsibility and privilege to the state and it seems that ideologues have been only too happy to welcome them.

Indeed, education has always proved a tempting target for ideologues because its objects are both relatively malleable and inexperienced. Thus, the twentieth century

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<sup>5</sup>Yes, I can hear the howls of protest from the influential entertainment curriculum cohort. However, I seriously doubt that they could demonstrate that the activities that they engage in are essential to human excellence or specifically contribute to the internalisation of virtue.



was notable for its politically inspired curriculum – the Hitler and Stalinist schools, as well as the progressive putsch. Indeed, as a teacher I quickly became tired of the almost annual arrival of new curriculum documents which invariably broadened the scope of what was taught to the accompaniment of lower expectations for student effort and proficiency. At the same time, families were more marginalised and political agenda were more normalised – things that were once mere theories were now required to be pontificated upon as if they were law with all potential objections ignored. This subsumption of proper functions by the state, when combined with concentration of power, ought to have been met with fierce resistance from parents, but instead was largely greeted with indifference.

Concentration of power and competence in the state provides the environment ideal for the emergence of Leviathan (such as we are witnessing now with respect to COVID-19). This is why natural law philosophers have, in the past, vigorously resisted any dilution to extant plurality. Moreover, subsumption and concentration also reduces the capacity of organisations to recuperate according to the mechanisms of voice and exit (Hirschman, 1970; see also Chap. 1). The more that government stipulates in precise detail what must be taught, the less educational institutions can respond to parent concerns or present viable alternatives.

For these reasons the state should only exercise a subsidiarity function with respect to school education (Messner, 1952) – not just because of the threat posed by concentrations of power and competence, but also due to the demonstrable fact that government has hardly covered itself in glory over recent decades. Educational progress (especially in the developed world) has at best stalled, but most likely deteriorated. The great flurry of new curricula, new pedagogical techniques and expert inquiries have produced no great or sustainable gain. Thus, there is no good reason to think that the role of the state ought to go beyond specifying certain essential subjects that must be mastered for participation in the modern world, the provision of appropriate *subsidium*,<sup>6</sup> and the role of provider of last resort.

Parents ought to be empowered and encouraged to perform their natural role and take responsibility for their offspring's education, both in their families but also via lesser associations such as private schools (which ought to be answerable to a school board dominated by parents), religious organisations, and private tutoring. Doing so would not only ensure plurality, but likely result in much better outcomes owing to the fact that parents have the greatest moral stake in seeing good outcomes realised.

To achieve this end some parents might need to be reminded of the privilege that parenthood bestows and also provided with appropriate choice and support to exercise choice. Indeed, parents should have absolute discretion as to where they send their child to be educated – completely unencumbered by bureaucratic blocks such as school zoning and the like. Moreover, they should be asked for an appropriate financial contribution towards the provision of education irrespective of whether the child is sent to a private or public institution. It is just plain unjust – in a distributive

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<sup>6</sup> Help provided for *bona fide* need and delivered in a manner to make it superfluous as quickly as possible (Messner, 1952).

sense – for the poorest parents to be asked to pay towards their child’s private education whilst the richest parents can dodge their responsibilities entirely by sending their child to a public establishment.<sup>7</sup> Irrespective of where a child is sent a price must be paid as part of the responsibility of parenthood, and *subsidiium* should be provided to ensure that no child is denied the best education for their needs simply because their parents lack resources.<sup>8</sup> I am quite sure that if all parents were required to pay more towards their child’s education then they would demand a far greater say in how it was conducted, and also make quite different choices about where to send their charges.

Protecting the plurality and competence of universities is also important – and this is the matter to which I now turn my attention.

### 8.3 The University

A critical question that must be asked and answered, at the outset, relates to the purpose of the university. How we choose to answer this question will have important implications for our understanding of the remit of these institutions.

Some people appear to think that universities are places for vocational education. Others clearly perceive universities as valuable export earners (Borys, 2021). Yet others appear to believe that universities are a key part of the immigration system (see Yang, 2021). I, however, believe that universities should aspire to far more than any of these functionally orientated descriptions. Instead, universities ought to be understood as academies of great minds where knowledge is created in mankind’s pursuit of building connections between principles and reality. Otherwise stated, universities should be places dedicated to the fullest development of the intellectual virtues.

However, sadly our confusion about the purpose of universities seems to have given rise to a broad, vocationally orientated, market-driven tertiary education. Focus has sadly shifted from intellectual virtue to job outcomes, from human flourishing to student numbers, and from knowledge creation to revenue streams.

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<sup>7</sup>The proportion of people who send their children to public primary school is much higher than it is for high school. The reasoning seems to be that primary school is less important and therefore that less damage can be done at that level (an opinion I do not necessarily agree with as primary school is where virtue should be first reinforced). Clearly people with sufficient means try to minimise the expense of having a family by availing themselves of a free education. If these parents were force to pay an appropriate fee than I am sure many of them would alter their choice accordingly.

<sup>8</sup>I broadly agree with Friedman’s (1962) famous proposal to issue school vouchers which parents could then spend at either public or private schools. If vouchers were tailored to parent means, it would allow them to make better choices about their children’s education. I suspect public schools would quickly lose enrolments and closure of these facilities would go some way towards helping to subsidise any additional cost associated with the vouchers.

Universities are now often places of mediocrity where ‘3’s equal degrees<sup>9</sup> and students are rarely challenged for fear that they might complain or punish their professors in the all important student evaluations. If intellectual virtue is internalised then it is probably an accident. Moreover, moral virtue is ignored and sometimes even held in disdain (in the name of political correctness). No wonder there are few able or willing to speak truth against authoritarianism that denies human flourishing.

To a certain extent the responsibility for the decline of the tertiary sector in the modern world must be laid at the feet of scholars themselves. Scholars often speak frankly to one another about their concerns with respect to the commercialisation of universities, plummeting standards, and academic censorship but rarely are they prepared to risk public comment or take a stand for academic integrity. The few brave souls that do so, are abandoned by their colleagues in haste, and then hung out to dry by the powers that be (see the sad case of Dr Peter Ridd who dared to provide an academic critique of climate change work; Byrne & Chomicki, 2021). The rest of us internalise the warning, avoid topics that could conceivably be deemed controversial, and thus become complicit in our own censorship. This is probably one big reason why few have dared to speak out against the destruction of human dignity wrought by the COVID-19 response – it is just too dangerous to do so.

Thus, many universities can no longer be said to operate as places where one might feel supported to fearlessly inquire into truth.

To rectify this disagreeable state of affairs, government needs to exercise a subsidiarity function with respect to universities. However, contrary to the situation with respect to schools, the state here needs to take a more active role in order to fulfil its remit as defender of the common good. It needs to be willing to curb the financial excesses of tertiary institutions that lead to financial dependency, insist that high academic standards are kept, and refocus attention on the intellectual virtues.

To achieve these ends some scholars might need to be reminded about the great privilege they enjoy – to be able to participate in humankind’s pursuit of truth through the creation and dissemination of knowledge. Moreover, they could be emboldened by the drafting of appropriate legislation that protects the frank exchange of academic views in pursuit of truth and also sheltered from the marketisation of university coursework. In addition, as a cohort, scholars should be able to articulate what they do, and be prepared to defend the truth at all costs. Indeed, there might even be a role for academics to play with respect to the design of subjects that specifically promote the flourishing of humans.

For instance, I have recently decided to try to influence how the state is managed by articulating a new public management paradigm called *Creating Human Flourishing*. The idea is to explicitly teach students in my masters coursework a natural law way of approaching public management that might well provide a middle path between the ‘roll back the state’ movement of the late twentieth century (New Public

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<sup>9</sup>A ‘3’ is a pass conceded. This commonly heard dictum demonstrates the mediocrity to which university students often aspire.

Management), on the one hand, and the emboldening of public servants to lead the charge in expanding government beyond its traditional remit (Creating Public Value) on the other (Dahl & Soss, 2014; see also, the appendix to Chap. 3).

Creating Human Flourishing emphasises the legitimate role of government as the preserver and cultivator of the common good, but tempers this with an acknowledgement of the inalienable right of people to human dignity. To achieve an appropriate balance an emphasis is placed on observing both the principle of subsidiarity and the principle of double effect (see Chap. 3). The former is occupied with preserving plurality of power and competence and places obligations on government never to subsume the work of people or lesser associations, and also provide help in cases of *bona fide* need. The principle of double effect emphasises the importance of government operating only with good intent, taking a risk with respect to bad foreseeable side effects only in matters of grave importance, and also ensuring all steps are made to mitigate potential harm. Together the two principles provide important guidance on how government ought to behave in order to promote the flourishing of people.

I accept that not all disciplines are so amendable to instruction aimed at human flourishing. However, any tertiary level course ought to promote the intellectual virtues and these at least can be incorporated into lectures, the example set by scholars, as well as the assessments that we set.

If we want to live in a society where people act in accordance with both the intellectual and moral virtues we have to do more than think wishful thoughts. It is up to all educators to do their part and help people to achieve the excellences of humans – and scholars should be at the forefront of this movement.

## 8.4 On the Importance of Education

I commenced this chapter by quoting some diametrically opposed views regarding the effect of COVID-19 lockdowns on education. The OECD position was that it caused lasting damage to people and nations whilst the Australian Curriculum, Assessment, and Reporting Authority asserted that there was no harm done at all. I think it is pretty obvious to most people – certainly parents and school-aged children – that online teaching is no substitute for face-to-face instruction. If it were so, then I am sure that the bean counters in government would have long-ago sold up the school infrastructure and made a permanent transition to a far lower cost model. I also think parents and children wouldn't have returned to physical places of education with such alacrity.

Moreover, education properly conceived is far more than mere literacy and numeracy. It is the thing that facilitates people living in a good community according to the excellences of humans. It is understanding, knowing, and philosophising – all activities which humans are uniquely capable of. Education is also something that all adults have a role in contributing to – either through direct instruction, or through example.

These less obvious elements of education have all suffered greatly as a result of the COVID public policy response – and not just because of the school shutdowns. Human dignity has been significantly eroded – for over 18 months, whether at school or not, people have had their capacity to choose, plan, abstract and reflect drastically constrained. People have also been forced to act contrary to both intellectual and moral virtue and had democratic and rational behaviour ‘corrected by pain like a beast of burden’ (Aristotle, 1998, p. 7217). Thus a good example for our youth has not been set. Indeed, vice has been normalised and ancient notions of virtue – such as justice, prudence and fortitude – gaily abandoned.

If we wish to regain our dignity then we as individuals need to push back a little – and we can do so best by living good lives. We need to prize the uniquely human excellences and despise the beast-like behaviours that many in authority seem to want us to exhibit. As the great educational psychologist William Glasser (1999) was fond to point out – no-one can ever force a human to do anything, we always have a choice. I am not advocating rebellion here, and I certainly don’t want anyone to do anything reckless to their health or the health of others. But we can in a myriad of ways make little protests by striving towards the excellences of humans.

In the chapter that follows – which concludes *Natural Law and Government: After the COVID Revolution* – I outline some of the things that we might each do to regain just a small measure of our human dignity.

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# Chapter 9

## Can We Have Government and Human Flourishing?



*It's possible what's happening in Australia might be instructive to us in the United States: in just two years, Australia's police went from raiding newsrooms to beating people in the street. Maybe the lesson is: things can change very quickly. One moment, the English-speaking world is mocking China for being dystopian and autocratic. The next moment, they're aping China and hunting people down who are two blocks from their home and smoking a cigarette.*

Fox News (2021)

*But in so far as it deviates from reason, it is called an unjust law, and has the nature, not of law but of violence.*

Aquinas (1273 [2018], p. 4999)

**Abstract** The ancient prophecy of the rise of a Leviathan-like government appears to have come true under the guise of public policy responses to the coronavirus. The important question now is whether people will allow themselves to continue to be subject to the will of those who hold power into the future. In this chapter I review the public policies that have heralded the arrival of Leviathan. I also show how more moral and prudent measures might have been taken instead to deal with the pandemic. I conclude by outlining the role that each one of us could play in order to mitigate matters – pursuing our excellences and thus consigning Leviathan back to captivity. Indeed, I argue that by implementing the reforms suggested in this book and becoming our best selves we can yet hope to be at liberty and once again behold government consistent with the natural law and thus amenable to human flourishing.

**Keywords** COVID-19 · Coronavirus · Pandemic · Human flourishing · Eudaimonia · Leviathan · Moral policy · Long-covid · Natural law · Human dignity



I think by now that it will be evident that I believe that the coronavirus public policy response was mostly inconsistent with the natural law and therefore incompatible with human flourishing. Perhaps I am in a minority at this present moment in time (although I suspect that future generations will look back on this pandemic response in a much more critical light). However, I am by no means alone – large protests throughout the world suggest that I have plenty of company. Moreover, it is clear that many people aren't willing to express their opinions publicly for fear of attracting a label, being rebuked, or being subject to employer or legal sanction.

I believe that our ability to reason sets people apart from mere animals and confers onto each of us an expectation of being afforded human dignity. I therefore feel impelled to subject the colourful rhetoric from both sides of the yawning political divide to reasoned critique.

Some of the protestor rhetoric is clearly irrational and can be dismissed pretty quickly. For example, claims that the virus is caused by the 5G telecommunications rollout, that the virus doesn't exist, or is the work of Bill Gates are hard to take seriously and do much harm to the cause of the protestors. However, placards and chants of 'my body, my choice', 'freedom', and 'think while it is still legal' (Weber, 2021) do warrant some attention.

My body, my choice is a common refrain of the pro-abortion lobby. The claim is that human dignity confers a right to all of us to decide what happens in and to our bodies even if this involves the intentional killing of a human being or potential human being<sup>1</sup> (Finnis, 2011). It is a kind of reasoning that has long met the assent of Parliaments, the legal community and many (perhaps most) citizens. Indeed, if this right to determine what happens in and to our body is so important that many people consider that it ought to trump the right of other human beings to live, then it is hard to see how it can be suddenly cast aside when it comes to the matter of forced or mandatory vaccination<sup>2</sup> (the refusal of which is only tenuously associated with the potential *unintended* death of another). We either have sovereignty over our body, or we do not – it is completely irrational to claim that these rights only apply in circumstances where they suit a political narrative.

Freedom is closely associated with the right to choose which is often preceded by planning and abstraction. It is thus critical to the excellences of humans according to the function argument I outlined in Chap. 2. Nevertheless, it is undeniable that as a society we have agreed that freedom ought to be constrained in some circumstances. For instance, I am not free to drive without a seat belt – which is, in fact, a common rebuttal offered to people who speak against mandatory vaccination. However, matters are not as simple as they seem.<sup>3</sup> The moral principles that we have

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<sup>1</sup>One widely accepted line of argument asserts that a foetus is not a person – if we accept this reasoning then we are left with a potential person.

<sup>2</sup>I absolutely support people being vaccinated for good medical reasons. My concern is for people who are coerced into vaccination so that they can keep their job, go to a café, or watch a sports match live.

<sup>3</sup>First, the mere fact that we currently have constraints does not lead to a rational conclusion that all other constraints should be automatically considered morally licit. Doing so would mistake

focussed on in this book reject acts such as the subsumption of the function of a person, or their chosen medical practitioner, to make medical decisions (principle of subsidiarity), and also declare it morally illicit to use people as mere means to ends (principle of double-effect<sup>4</sup>). Thus, the cry of freedom is consistent with inalienable human excellences and can only be refuted in limited and carefully managed circumstances.

The injunction to think while it is still legal is almost certainly a case of intended hyperbole. However it is not entirely inconsistent with acts perpetrated by authorities who have imprisoned people for speaking against policy, used violence against people peacefully protesting, or dismissed or de-registered medical personnel cautioning against certain medical treatments (BBC, 2020, 2021; Daily Mail, 2021). Thinking and reasoning are what humans do and seeking through law or intimidation to restrict others from communicating the outcomes of this human excellence is contrary to the natural law and hence morally wrong. However, people haven't been prevented from thinking (yet) so the claim at present might be considered alarmist and potentially unhelpful. Perhaps a more apt rallying cry would be 'exercise practical reason while it is still legal' however this doesn't quite have the same ring to it and could be construed to mistake matters (because many have indeed been coerced to act contrary to their reason).

The rhetoric by opponents to the protests was equally colourful and hence equally deserving of reasoned critique.

For example, the media frequently labelled protestors 'anti-vaxers' (Clench, 2021; Weber, 2021). This is, of course, not an accurate portrayal of most of the protestors and seeks to discredit and belittle the people attending the events by demonising and associating them with fringe groups. Many of the protestors were vaccinated against a number of diseases, including COVID-19. They were protesting against lockdowns, mandates and the like – and it is just plain wrong to abuse the media's power to misrepresent what was actually in dispute.

Indeed, the Chief Health Officer (CHO) of Victoria similarly abused his position when he labelled protestors 'whacky', 'not rational', and 'anti-science' (Clench, 2021). Most of this was little more than schoolyard name-calling conducted through the media. Indeed, it is entirely *irrational* to have a medical procedure for non-medical reasons (such as wanting to go to a café, sports venue, or to keep one's job). Moreover, the CHO makes it clear that he has never studied even the most rudimentary science philosophy because if he had then he would know that science demands

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association for justification. Second, wearing a seatbelt is unlikely to cause any harm to a person, and doesn't involve taking a thing into one's body. Third, seat belts are a long-proven technology that have a good deal of longitudinal data that might be used to evaluate efficacy. Fourth, the effects of wearing a seat belt are generally only felt whilst the belt is worn (but vaccines have the potential to exert effects that go well beyond the moment when it is first injected). Fifth, refusal to wear a seatbelt leads to the prohibition of an activity that has a close nexus to the omission – however, refusal to be vaccinated results in the prohibition of a multitude of activities that do not have a close nexus to the omission.

<sup>4</sup>One line of argument is that vaccination prevents transmission to the vulnerable (see Chap. 6). However, this uses the vaccinated as merely a means to achieve the ends of other people.

rational assent not mere belief (the latter would consign science to the status of a religion). It is not simply a matter of doing as others wish in response to a blind belief in science – instead people need to carefully assess the evidence and make reasoned decisions.

The President of the Australian Medical Association of Western Australia also displayed his arrogance, and preparedness to deliberately misrepresent matters by claiming that protestors were ‘pro-disease’. A few fringe protestors might have believed that natural immunity was a better way forward (as did many in Sweden it seems) but the majority of protestors kept social distance protocols, and even wore masks. Indeed, it would be irrational for most people to seek out a disease that causes death in around 2.1% of cases (WHO, 2021) and it beggars belief that the AMA President really believed what he said.

A spokesman for the Chamber of Minerals and Energy stated that the protestors were wrong because ‘freedom doesn’t come with the right to impose your illness on other people’, but this statement also conveys heavily flawed reasoning. As the literature attests, vaccination simply does not prevent transmission – it might limit it, but there is no good reason to assert more than this (see Chap. 6). Furthermore, an unvaccinated person that doesn’t have the virus clearly isn’t going to transmit it to anyone. Somehow this spokesman has managed to convince himself (like many political leaders) that all unvaccinated people have COVID, and that no vaccinated people do. Thought processes of this kind defy logic and are therefore inconsistent with the excellence of humans.

Thus, it seems that much of the rhetoric on both sides of the debate fails to stand the test of reason. In the work that follows I will seek to shine a light on matters by applying reason to the task of determining whether it is indeed possible to have both government and human flourishing. Accordingly, in the next section I set out my reasons for believing that government has become Leviathan. Thereafter, I describe what a moral and competent public policy response to the coronavirus might have instead looked like. Following this I explore the implications of the pandemic response for the future of human flourishing. I conclude with my thoughts about what we can all do to observe the natural law, put Leviathan firmly back into its cage, and flourish as humans.

## 9.1 Has Government Become Leviathan?

I commenced this book by recounting the ancient prophecy of Samuel, as recorded by the historian Josephus Flavius, who foresaw that government ‘w[ould] use their subjects as beasts according to the violence of their own wills and inclinations, and other passions, as wholly carried away with the lust of power’ (Whiston 1987, p. 156). This is the earliest articulation of what has since become known in economics and politics as the Leviathan hypothesis. The question that I seek to answer now is whether COVID-19 has indeed ushered in this time of Leviathan.

To do so, I believe that we need to focus on the key markers that the prophet identified: (i) the denigration of citizen dignity to a level consistent with mere beasts, (ii) an insistence that the will of government always be observed, and (iii) the evidence of an insatiable desire for power. I think that it is more than clear that the first of these markers has been completely satisfied – people have been denied expression of their capacity to function according to practical reason (plan, abstract, choose, and reflect) and thus have been relegated to the same moral consideration as mere beasts. Similarly, the second criteria has also been met with the accompaniment of much violence and coercion – people have been forced to bend to the will of government on a number of matters (vaccination, mask wearing, staying at home) even when it was completely contrary to practical reason (see Chap. 6). As to the third criteria of the prophet, we need only to look at the demeanour of politicians making their daily televised announcements of case numbers and deaths, arguing for extension of emergency powers, or issuing new decrees to know that Messner (1952, p. 573) spoke truly when he asserted that ‘power always strives to extend itself’.

Thus, the prophecy appears to have been realised and it now seems impossible to deny that Leviathan runs rampant.

And why did this happen?

Once again, we would do well to look at the prophetic words of others, this time the prediction of Novak (1999, p. 50; also cited in the first chapter) that ‘despotism would arrive among them quietly bearing sweet promises to care for them in the intimate details of their lives, so long as they agree to live once more as serfs’.

COVID-19 posed a threat to life and the actions of public policymakers further threatened both livelihoods and stored wealth. In these desperate times people looked, not to themselves or to their lesser associations, but to government for succour who responded with promises of health and state income in exchange for giving up all manner of behaviours that had once been considered inalienable. Truly many people have allowed themselves by degrees to become serfs and act accordingly – like serfs many no longer choose or reflect but instead blindly follow the orders of their masters. Like serfs, some have been prepared to give up their individual identity by covering up their faces and scanning their every movement. Indeed, many people now allow others to dictate when and where they go, who they spend time with, and have also for the most part entirely dispensed with long cherished rights of assembly. It therefore seems that the bulk of the population now do indeed act as serfs once did because they have cast aside both prudence and fortitude in favour of the sweet promises of the state. Indeed, our human dignity has been ignored and participation in many of our associations criminalised which means that the future is likely to involve even greater concentration of power and competence in the state.

I suspect that most people feel that they had no choice other than to act like this at a time of a global pandemic – desperate times are said to call for desperate measures – in the section that follows I explore whether this thinking is indeed valid.

## 9.2 A Moral and Competent Approach to Coronavirus Policy

It is one thing to criticise and an entirely different matter to articulate a better plan. In this section I outline what a moral and competent response to the coronavirus pandemic might have instead looked like. My focus, of course, is on morally defensible and efficacious measures and I start first with what I consider to be the most important ingredient of any government intervention.

### 9.2.1 *Critical Moral Considerations for Public Policy Intervention*

The key task for any public policy architect is to balance human dignity with the common good in such a way that people are able to flourish. There may be times when it is reasonable to interfere with the pursuit of existential ends, but these should be the exception rather than the rule and also extremely carefully managed. In similar vein, it is sometimes necessary to encourage and even compel others to co-operate so that people can better pursue their ends, but there must be firm limits put in place regarding how far government is allowed to intrude. ‘The critical point to acknowledge, to ensure compatibility with the principle of subsidiarity [and natural law more broadly] is that any significant impact on human dignity should only have occurred after good reasons had been given to prove both its efficacy and need, and then only with consent (except for grave cases such as known infection)’ (Drew, 2021, p. 13).

Indeed, good reasons are the key to community compliance and also effective policy. Over the years I have had the honour to conduct a number of community consultations on various difficult public policy questions and I have always been heartened by the willingness of most people to listen to good reasons and make good choices. Moreover, sometimes when we lay out our good reasons for recommending a policy intervention people are able to see ways that matters and plans might be further improved and this feedback can be critical in ensuring that damage is minimised and full benefits realised. However, it seems that our politicians have been reticent to take the public into their confidence, lay out the good reasons for each proposed intervention, and honestly listen to feedback with a view to improving policy wherever possible. The result has probably been lower rates of compliance and reduced efficacy.

Indeed, in a free democracy intrusive measures such as those implemented in response to COVID-19 ought to be vigorously debated. However, most people who sought to express an opinion contrary to media and political narratives were censored, labelled, or criminalised. Moreover, opposition political parties just didn’t seem willing to hold government to account for any of the policies associated with the virus – indeed, a prominent feature of the last twenty-odd months has been the suspension of parliaments and reduced numbers even when it sat. Without debate

and interrogation voice of the kind written about by Hirschman (1970) has been inaudible and human dignity left without any champion (for a better alternative see Chap. 4).

Moreover, people must be given choice. As I stated earlier my experience is that most people do make good decisions when provided with good reasons for doing so, and this is consistent with the literature on COVID-19 (Haug et al., 2020). A failure to provide good reasons suggest that our politicians either: (i) didn't have good reasons for their decrees, (ii) didn't feel the need to share their reasons with others, (iii) were incapable of articulating their good reasons, or (iv) didn't believe citizens were competent to hear and process good reasons. Whatever the case may be, it confirms that our democracy has some serious flaws that need to be addressed (by measures such as those covered in this book) so that we can avoid future evils.

The principle of subsidiarity and natural law philosophy more generally has a decisive preference for the dispersion of power and competence in multiple associations. Indeed, key proponents such as Johannes Messner (1952) knew first-hand the danger to human dignity posed by concentrations of power and competence as a result of living through the Second World War.<sup>5</sup> It seems that in the developed world people have become rather complacent about the risks, but I suspect that by the end of the coronavirus pandemic most will realise the threat posed when power and competence is not appropriately dispersed. However, preference for a plurality of associations is not just about protecting human dignity because lesser associations are also invariably better at enlisting co-operation and delivering efficacious solutions tailored to the particular needs of their members. This generally occurs because lesser associations are closer to the problem and therefore have a better knowledge of the issues and keener understanding of what might be expected to work. In addition, lesser associations also have greater moral proximity and hence a greater stake in seeing efficacious solutions realised.

For much the same reasons, decentralised government generally stands a better chance of delivering outcomes consistent with the flourishing of people. Moreover, as I described in Chap. 5, well designed decentralised government will be one of human proportions where people are able to know one another, extend moral empathy, and hence better co-operate for the good of all. Thus, a moral approach to responding to the coronavirus would have made much use of both lesser associations and decentralised governments (Drew, 2021) to deliver tailored interventions as well as receive and incorporate important feedback.

A moral approach to responding to the pandemic would have also been centred on encouraging the habitual orientation of behaviour to reason (virtue). Doing so, of course would start with the articulation of good reasons for acting that I spoke of earlier. It is clear that changes to some behaviours – such as better hand hygiene, social distancing, and care for the vulnerable – are not only important to deal with this pandemic, but also could be expected to save lives every influenza season. Thus,

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<sup>5</sup>Messner was advisor to Dollfuss prior to his assassination by the national socialists.

education and incentives to encourage people to incorporate prudent actions into their everyday lives were clearly warranted.

Indeed, public virtue generally has been in decline over recent decades and it is pretty clear that this regression contributed to *ineffective* policy and *unhelpful* behaviours. In particular, there seems to be few who practice fortitude in either politics or the general population. Panicked responses to the virus resulted in mixed messaging, lack of co-ordination, needless expense and avoidable angst. Fear achieves nothing and is the response that ought to be associated with animals, not humans. Instead, we would all have been better served if we had displayed some prudence, – resisted the fear impulse, then collected and weighed up appropriate evidence, prior to using reason to propose efficacious measures that preserved the capacity of people to flourish.

Moreover, a feature of a moral response to the pandemic would have displayed particular concern for the vulnerable followed-up by carefully directed *subsidium* which acknowledged the key principles of same (response to *bona fide* need, orientated towards making it superfluous as quickly as possible) the practical implications of which I will describe in the next section.

### ***9.2.2 Some Practical and Competent Interventions***

A competent and moral approach to COVID-19 would have provided people with good reasons for suggested changes to behaviour, ensured that the vulnerable were identified and offered protection, and also helped to secure adequate stock and choice of medical supplies. Coercion, threats, police beatings, tracking, inflation, and lockdown were all avoidable as well as inconsistent with human flourishing. In the following material I provide an example of each of the kinds of efficacious interventions that could have been chosen – for full details my readers can either apply their own reasoning or consult Drew (2021).

From the outset messaging needed to be far more consistent. For instance, government advice changed markedly on a number of important matters such as mask wearing (initial advice was that masks were unnecessary, then they were encouraged in certain situations, and later mandated). Providing advice that is later contradicted confuses people and tends to reduce confidence going forward. I have always found that if one doesn't know the answer for certain, then the best policy is to exhibit humility and admit that a clear answer is not yet to hand. Most people understand that it is human to not always know the answers and prudent to investigate matters carefully before providing information that others will rely on. Moreover, it also seems crucial to get reliable information into the hands of citizens in a timely fashion once it is known so that people can make good decisions. For instance, from the very earliest times we have known that the most important co-morbidities for COVID-19 were being over 70, or suffering hypertension, diabetes or heart disease (in that order; Zhou et al., 2020). Most people I encounter still don't know this – which both causes unnecessary panic and also doesn't guide people on acts that they



might reasonably take to protect themselves (such as losing weight,<sup>6</sup> exercising, reducing blood pressure and the like). Indeed, articulating (and if necessary repeating) the risk factors and providing some suitable statistics would alert people to their vulnerability and allow them to take steps that they might deem reasonable to deal with their particular risk. Moreover, it would have been useful to give people reliable advice regarding simple measures that they could take – for example, explaining how to fit a mask properly, or detailing the high efficacy of good hand hygiene (relative to other things such as masks; Haug et al., 2020).

A competent policy intervention would also have involved identifying the vulnerable early on and taking effective measures to protect them. Indeed, in Australia the only people who don't appear to have been carefully protected are the ones who needed it most. For instance, my local hospital still hasn't established effective protocols for separating potential COVID-19 patients, still hasn't installed automatic hand sanitisers in multiple locations throughout the wards, hasn't stockpiled adequate protective equipment, and still doesn't have in place a robust scheme to discourage casual health staff from working multiple jobs<sup>7</sup> or going to work with potential symptoms.<sup>8</sup>

Vulnerable persons choosing to remain in their home ought to have been offered subsidised access to services such as home delivery of food and medicines, as well as video communication tools (so they could stay in contact with family and friends). This would have clearly been more efficient than locking down everyone (the vast majority of which had little to fear) and far more likely to be effective (because it would have reduced the need for the vulnerable to go out and hence expose themselves to risk). Indeed, it might have been useful for government to have provided assistance in designing guidelines to ensure that goods were delivered with the lowest risk possible (for example, by regularly testing drivers and establishing safe hand-over protocols).

Moreover, the common good would have been served well by ensuring that there were adequate supplies of key medical items available to citizens at reasonable prices.

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<sup>6</sup>It is hard not to be bemused by people who mask up – even when in a vehicle alone – but don't consume healthy food and exercise regularly. The latter measures would yield far better results and also help reduce the likelihood of much more deadly conditions such as cancer and heart disease which in Australia annually kill as many as 16 times more people than have died from COVID-19 in the last 20 months.

<sup>7</sup>Casuals tend to also work in other related fields such as aged and disability care to ensure they get sufficient money to meet their needs. Changing casuals to permanent part time or banning (and compensating) them from working in related fields would be an obvious step to take given both their higher likelihood of exposure and the more significant consequences for the vulnerable that they care for. In addition, casuals needed to be provided with sufficient sick leave during the pandemic to encourage compliance with testing and isolating. Our family has lost well over 10,000 dollars in income because my wife has had to miss work and get tested on multiple occasions for what transpired to be hay fever and the like. Most people simply can't afford to do so and would be disinclined to take precautions especially for very mild potential symptoms.

<sup>8</sup>My wife is a nurse at the hospital but these are my own observations that I made whilst visiting my mother who was dying from cancer over an extended period.

Much effort went into securing sufficient supplies of vaccines at zero cost for citizens (which failed to send a price signal and also subsidised those who did not need financial help), but it seems far less attention was paid to ensuring that the vaccines *desired* by citizens were actually approved in a timely fashion. In late November 2021 several promising vaccines used overseas still have not been approved in Australia, such as Novavax that many people hesitant to take up new mRNA technology seem to prefer. Ensuring maximum choice would not only have shown a respect for human dignity but also likely have translated into higher uptake without recourse to threats and coercion. {I absolutely support vaccination and believe that it should be encouraged and even subsidised – but it must involve choice and ought to be based on medical reasons}. A similar story sadly occurred with respect to home-use rapid antigen test kits whereby approval was granted in March 2020, for the USA, but only in November 2021 for Australia (FDA, 2021; TGA, 2021). Moreover, no effort seems to have been made to either ensure adequate supply of home test kits, nor subsidise the costs of these supplies (as at the time of writing)<sup>9</sup> despite the important role that they could clearly have played in reducing transmission rates.

A competent response to the coronavirus pandemic would also have involved improving the capacity of hospitals and other medical providers. From the early days it was clear that this virus was likely to become endemic. Moreover, a large part of the reason for the initial lockdowns was to buy time to make improvements to the capacity of the medical system. However, almost 2 years later it seems things have not improved – new hospitals have not been built, sufficient staff have not been recruited, and systems are still sub-standard (Sas, 2021). Indeed, it was notable that the first full pandemic budget in Australia totalled \$AUD311B (15.7% of GDP) but contained just \$AUD20B (1% of GDP) on actual health spending (Commonwealth of Australia, 2021)! Rather than indiscriminate fiscal stimulus<sup>10</sup> for pensioners and low-income earners (as well as job keeper that often ultimately benefitted shareholders) it might have been more prudent to invest the money into medical facilities and medical staff that could provide enduring benefits to all (see Chap. 7).

Thus, it can be seen that sensible alternatives to panicked cash splashes and draconian suppression of human dignity did exist. Indeed, some countries employed versions of what I have described above (see Drew, 2021). It was simply a matter of exhibiting virtue, providing good reasons, seeking co-operation, and offering *subsidiium* where appropriate. Because we failed to do so we are now faced with some serious challenges for the future that I will relate forthwith.

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<sup>9</sup>Of course, home antigen test kits should have been provided to the vulnerable and all people who work with the vulnerable, to encourage frequent testing and hence reduce the spread to those most at risk.

<sup>10</sup>It is not morally licit to borrow money from future generations to gift it to others for immediate consumption (see Chap. 7). Moreover, most governments were unable to even give money away in a competent manner. For instance in Australia money was deposited directly into bank accounts during the lockdown period. Accordingly, some of the money was saved or used to pay down debt, and the rest spent online with multinational companies thus ensuring little benefit to the local economy. Given that the desirability of issuing spending vouchers was an important lesson learned during the GFC, it is hard to understand how government managed to yet again make such an obvious blunder.

### 9.3 Long-COVID

Some people who contract and suffer from COVID-19 report persistent symptoms that are referred to as long-COVID. I believe that as a society we will also experience persistent and profound social and economic symptoms arising from the mis-handling of public policy.

For instance, a precedent has now been set with respect to lockdowns, travel restrictions, border closures, freedom of association, and what was once considered an inalienable right to protest in a democracy. People have tolerated these measures and government has demonstrated that they have the willingness to ruthlessly enforce them. In addition, many people now assist in the tracing of their every movement and have capitulated to mandates for medical treatments for non-medical reasons. These behaviours, which would have been unimaginable just 2 years ago, are now commonplace and accepted by most people.

Indeed, many people appear to no longer bother to subject new decrees to the dictates of practical reason, probably because they have learned that resistance can be forcefully crushed and also tends to prove ultimately fruitless.<sup>11</sup> It is true that some still follow practical reason, but these people now find themselves placed into new categories of humans, ostracised, criminalised, and punished for attempting to exercise virtue. Moreover, I would not be surprised to find that trust in government, authority, medical science and democracy is now far lower in this repressed cohort. Indeed, it is hard to understand how this group might be integrated again into society, if we later choose to bring them back to the fold.

Notably, dissenting voices have, for the most part, been removed from public discourse entirely – censored, arrested, or punished by government, media, social media, and business (BBC, 2020; Samios & Visentin, 2021). This is a particularly disturbing development with respect to the scholarly community – the people who are supposed to be free-thinkers and masters of the intellectual virtues (see Chap. 8) are either gagged or singing from the officially endorsed song sheet.

Virtues – prudence, justice, fortitude, and temperance – are now suppressed, reviled, or made redundant. For example, people who resist the impulse to act immediately in order to weigh up all options (prudence) are punished (as in the case of people wishing to see longitudinal data prior to making important medical decisions). Those who demand to have their human dignity respected, as is their rightful due (justice), are criminalised (for instance, those who insist on freedom of association). Others, who remain steadfast in the face of government or business coercion and threats (fortitude) are ostracised (for instance, those who can no longer enter business premises because they haven't acquiesced to the prescribed medical

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<sup>11</sup> Indeed, I was shocked to find that a good friend of mine – and one of the greats of academia – submitted to vaccination, not for medical reasons, but because he felt he would not be allowed to do anything until he had done so. I absolutely support vaccination when chosen for medical reasons but am surprised at how many people have been prepared to deny their human dignity and receive medical treatment for reasons other than health ones.

treatment). Moreover, people who practice temperance are forced into behavioural decrees in order to try to minimise the risks for those who choose not to do so (as in the case of people who eat well and exercise who are forced into compliance with COVID-19 measures in order to reduce the risk to those who choose not to live healthy lives).

It is hard to see how most people could flourish in the post-COVID world. For some, it might still be possible to achieve the lower orders of the hierarchy – accrue and keep possessions, or achieve some measure of health despite restrictions on exercise and the like (see Chap. 2). However, the higher excellences seem more remote than ever – virtue, as I have just detailed, is difficult to practice, whilst the contemplation of earthly truth seems elusive in a world where ‘truth’ is sometimes reviled and often extremely relativistic and forced. Moreover, the pursuit of true opinions – the ultimate perfection – is hampered by both the universal demand to put aside Popperian conceptions of science in favour of a reason-free faith (in science) and also the concentrated attacks on religions and their rites (especially those that require the gathering together of adherents).

In economic terms it has been evident to me since at least March 2020, when I wrote to my Prime Minister, that the unnecessary constraints on human dignity would have profound effects on the economy – especially in terms of inflation and ultimate long-run economic growth. I note with some satisfaction that the television economic commentators in the last few months have finally remembered the Friedman<sup>12</sup> that they learned at high school and now realise that the transitory inflation myth does not warrant assent. With respect to economic growth things have, in fact, bounced back from the deepest lows, but the idea that growth will continue at record highs into the future is just fanciful. Obviously if you lock people out of the market for many months they will come back and spend money when they are finally able to do so. Moreover, having people move their workplaces into their homes is going to result in a surge to purchases for home office equipment and the like. But to think that these economic behaviours are sustainable is to argue that the vast majority of people will continue to consume more than they did pre-COVID, despite rising inflation (and lower real wages for most), lower job security, pronounced policy uncertainty, and higher underemployment rates. I suspect, that when the redundancy money and stimulus cheques are finally spent, we will see a significant drop to consumption.

Indeed, it just beggars belief that anyone could seriously think that the way to achieve enduring surges to economic growth is to lock people up in their homes for months on end, destroy small business, execute draconian and chaotic policy interventions, as well as rack up trillions of dollars in debt.

On a personal level, the whole COVID-19 experience has caused me to reflect on my own reasoning process and its consistency with my philosophical framework. I am not yet vaccinated and don’t intend to get vaccinated until I am both provided

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<sup>12</sup>I think specifically of his famous dictum that inflation is always and everywhere a monetary problem.

with compelling medical reasons for doing so (backed up by robust longitudinal data) and also given a choice of vaccine that is consistent with my religious beliefs (the vaccines exist, but my government is yet to approve them). I am prepared to be discriminated against (many shops will not let me into their premises) and even lose my job and freedom if necessary (a reasonably likely proposition). To do otherwise would be to deny reason and thereby cast aside my human dignity. However, I am by no means an anti-vaxer<sup>13</sup> or an extremist – simply a person that has looked closely at the data, trial protocols, and results, and made a decision based on my low risk profile (I reside in a low density area, am not obese, nor over 70, nor diabetic, and I do not suffer from cardio-pulmonary disease). I am prepared to keep mostly to my farm, will continue to teach and work from my home office as I have done for almost 6 years, and am also willing to take a rapid antigen or other COVID-19 test if I do need to go near others who are free of the virus and misjudge the connection between vaccination status and capacity to transmit. Thus, there is no good cause for me to act contrary to reason at this time.

Moreover, the coronavirus policy response has made it clear to me exactly how few protections my dignity has under the law, Constitution and democracy. I was most surprised to find out that I really was not protected at all as an Australian. Freedom of religion might be interpreted to apply to a Commonwealth employee, but not a university professor. Discrimination legislation would not protect me unless only a certain gender, sexual orientation, or ethnicity was being targeted with measures. The worst that my employer is likely to face (should they dismiss me for using practical reason) is a wrongful dismissal case which won't yield as much as an additional 17 years of work would have done. Moreover, if mandatory vaccination legislation is introduced – as it has been elsewhere – then my rational choice will criminalise me. Nevertheless I, like others, refuse to capitulate and ignore the dictates of practical reason because doing so would essentially place me on the same moral plane as my farm animals.

Indeed, the choice seems stark – to continue to live like beasts as prophesised some 3000 years ago, or to cling to the remnants of our human dignity. Doing the later need not lead one into conflict and certainly should never involve putting others at risk. Accordingly, in the section that follows I outline some of the things we can all do to preserve dignity and play our part in trying to restrain Leviathan.

## 9.4 What to Do?

St Thomas Aquinas (2018, p. 4999) famously remarked '*lex iniusta non est lex*' – that is, an unjust law is no law at all (but rather a violence perpetrated on the people). Indeed, Aquinas (2018) asserted that any human law which is inconsistent with the natural law – the latter which can be known by reason – cannot be considered as

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<sup>13</sup>I am vaccinated against most diseases that pose a real risk to me, as are my children.

morally binding. To Catholics, Aquinas is a saint; to scholars he is one of the towering figures of jurisprudence: but, whatever one thinks about Aquinas it is hard to dismiss his argument that we ought to always be guided in our actions by reason.

Indeed, as I related towards the end of the last section, my choice has been consistent with the advice of Aquinas – to obey the dictates of reason rather than decrees that are not intellectually sound. Doing so has thus far cost me my freedom of movement (I am banned from quite a few retail and other establishments), as well as my long-planned family pilgrimage to the Holy Land. It may well cost me my job and criminalise me in due course. Accordingly, I did not take this decision lightly but instead spent a good deal of time investigating the scholarly literature regarding things such as the virus, its vaccines and other treatments, as well as human dignity. I decided to make a stand and bear the costs, but I also realised that my decision did not require me to meekly accept these punishments.

Indeed, there is a lot I can do to push back against these offenses to the natural law. For instance, I have become far more politically active and have redirected money that I annually budget for donations to minor political parties that have policies consistent with reason. I will also cast my vote accordingly. Moreover, I now take great pains to spend my money with retailers and manufacturers that haven't imposed unreasonable mandates on their staff or customers, whenever possible. Indeed, it has only recently hit home to me that concentrations of power and competence in retail are also a dangerous thing to human dignity.

In addition, I have decided to invest more effort into teaching my postgraduate students and writing scholarly papers on the natural law, as well as reaching out to the wider community. The former activities have taken the form of a new public management paradigm that I and other scholars are rather passionate about – Creating Human Flourishing – that seeks to chart a middle path between the roll back the government new public management paradigm, on the one hand, and the expansionary public value paradigm, on the other (see Chap. 8). The latter activities are reflected in my fledging YouTube site 'Creating Human Flourishing' as well as my plans to retire in a few years' time to write fiction books and teacher resources on natural law so that a new generation might receive at least a little exposure to this philosophy.

Moreover, I have become increasingly vigilant regarding my own health. As the scholarly literature shows, diet and exercise are clearly as relevant to one's capacity to withstand COVID as they are to any number of other medical risks. I thus take great pains to optimise my diet, exercise regularly, monitor my vital signs and minimise my risks (reducing exposure, taking care with hand hygiene, and distancing where appropriate). Even if one is double-masked and triple vaccinated these are all reasonable precautions that should not be neglected (see my discussion of adverse compensatory behaviours in Chap. 6).

It has also become more important to me to pursue the excellences of a human. My stand regarding the vaccination and other COVID-19 measures responds to the peculiarly human faculty of reason. It is not reasonable to sacrifice so much, without also aggressively pursuing the excellences of humans – especially virtue, contemplation of earthly truth, and the holding of true opinions. Unlike my liberty, these

things can never be denied to me as a result of COVID-19 inspired government decrees, so it makes sense to invest heavily in the higher excellences.

I have also reaffirmed my commitment to reject human laws that are in conflict with the natural law in every aspect of my life. I don't accept that there are categories of humans and refuse to treat the vaccinated, old, or unborn differently to how I expect to be treated myself (irrespective of whether this respect is reciprocated). Otherwise stated, I insist on using reason even if it results in a fine. However, I would never put another person at risk or unnecessarily provoke the authorities because this would be completely unreasonable. In many instances, I can refuse to be treated like a beast by simply withdrawing from activities that are subject to unreasonable decrees – and this path of least resistance is one I often tread (that is, I do my shopping online, and invest the time and money I used to spend on entertainment and recreation on the development of my intellect and farm<sup>14</sup>).

### ***9.4.1 Everyday Things We Can All Do to Usher in Government Consistent with the Natural Law***

Indeed, we all have a role to play if we wish to finally enjoy government consistent with the natural law, and hence human flourishing. It is often said that citizens receive the government that they deserve, and it is probably true that a citizenry which has spurned virtue and neglected the political sphere is now reaping what they sowed.

We can all strive for the excellences of humanity and we should all do so if we want to live good lives in a good society (Chaps. 2 and 8).

We can all demand good reasons for acting – we can ask questions and we should expect reasonable answers (Chap. 2).

We all ought to reject categories of humans – because unless we do so, we will ultimately undermine our own claim to dignity (see Chaps. 2, 4, 5, and 6).

We all should also be more politically active and willing to critique the performance of those who rule on our behalf (Chaps. 4 and 6).

Indeed we ought to refuse to be punished as beasts – instead we should choose to view the unreasonable constraints on our liberty as devices that save us money and time that we can more profitably invest into acquiring the excellences of humans and living a good life.

Thus, we need not necessarily wait for others or hope for some sort of epiphany amongst the ruling class – we can all do our part with small gestures right now to help usher in government amenable to human flourishing.

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<sup>14</sup>Indeed, I probably should thank the authorities for their unreasonable decrees because it has resulted in my having a better understanding of the things that are truly important in life as well as additional discretionary funds and time to more fully pursue them!



## 9.5 Parting Words

As humans we all have the potential to achieve the excellences, outlined by the ancient philosophers. To do so we need the help of others which is best obtained through the steering and co-ordinating actions of government. However, the coronavirus pandemic has instead ushered in a time of Leviathan, whereby government policy has aggressively come into conflict with human dignity and largely obscured the path to flourishing.

This book has explained how government can be reformed in a way that connects more faithfully to its teleological mission and also becomes more human-sized. Perhaps it will take a revolution to bring this about and maybe this revolution starts with each one of us committing to follow human reason and tightly cling to the remnants of human dignity. Alternatively, an enlightened one may come to earth to restore human dignity and usher in a time of peace and prosperity.

Whatever the path taken, it is clear to me that significant changes will be required to bring about government that is consistent with the natural law and hence human flourishing. I therefore humbly offer this book as a potential guide to my brothers and sisters who also wish to live good lives in a good society.

B”H

Professor Joseph Drew  
1st December, 2021  
Moonbi, Australia.

## 9.6 PostScript

It is now January 2022 and a lot of things have transpired since I first set pen to paper just over 1 year ago. For instance, many more people have lost their lives and the aggressive vaccination and zero-covid policies practiced in Australia have failed to prevent significant numbers of community infections (as I write we are detecting many tens of thousands of cases daily in one of the highest vaccination rate countries in the world). In addition, my predictions that inflation would not be transitory have sadly been confirmed and there is clearly a lot of economic pain on the horizon.

I also contracted COVID-19 – presumably from my wife who works at a hospital. I spent a miserable week in bed and still don’t feel too clever. However, I can’t say that it is the worst bout of communicable flu-like disease that I have ever suffered.

Indeed, my experience of COVID-19, and those of many close friends (some who were very vulnerable), confirms that it is as serious a disease as I stated at the outset of the book. However, I still do not believe that it warranted many of the draconian measures introduced to fight its transmission and regret that it has been used to usher in an era of Leviathan-like government.

In fact, if I had to choose between getting COVID-19 and the last 2 years of economic, personal and workplace misery I think that I would choose the former. But that is entirely the point of this book – people ought to be able to choose and reflect on their choices (and hence practice the excellences of humans)! It is my hope that this tome will cause others to reflect on what has happened over the last few years and set them on a path to advocating a return to much more decentralised and smaller government – something that seems to be a necessary pre-requisite to creating human flourishing.

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