

COVID-19 Movement Restrictions: Individual Rights vs Collective Safety

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ABSTRACT

“Man is born free, but he is everywhere in chains.”¹ This famous phrase made by Geneva-born political philosopher, Jean-Jacques Rousseau back in 1762 is one especially relevant in this COVID-19 era of today where individuals have severely been restricted in their movements since the start of the pandemic in early 2020. In Malaysia, applications such as MySejahtera further enable the government to track and limit the movements of citizens whilst simultaneously issuing them warnings in events of breaches to restrictions posed by the government. In light of mass protests of citizens from the likes of Austria, Australia, the United States, France, Italy, the Netherlands and other liberal democracies,² a rather compelling question can be raised. Does the necessity of collective safety outweigh the rights of individual privacy and freedom? This is a question which has been at the forefront of the minds of governments and authorities in establishing standard operating procedures, rules and regulations for which there appears to be no concrete answer. In this text, we have approached the views from various schools of jurists in restricting the right of movements in Malaysia during the Movement Control Order (MCO), declared by the government in order to curb the spread of the coronavirus. A discussion is done on the necessity of tightening the basic human rights in favour of gaining collective safety in the context of jurisprudence.

Keywords: COVID-19; MCO; restrictions; jurisprudence; rights; collective safety

INTRODUCTION

Individual and collective rights have often been prioritized in jurisprudential theories which seek to argue that one is more important than the other. In the issue at hand, one argument that can be sought to be made is that due to the fact that only a small percentage of the population is at severe risk of developing complications, the total surrender of privacy and freedom of a larger subset of the population is grossly disproportionate and unsustainable, especially when the effects of ensuing lockdowns such as its psychological impact on citizens, economic repercussions and so on are taken into account. On the other hand, it is undeniable that such a lenient approach towards movement restrictions would call for a sharp increase in cases of COVID-19 related complications and fatalities as those at risk would stand a higher chance of being infected. Jurisprudence itself can be seen as an examination of the precepts, ideals and techniques of the law in the light derived from present knowledge in disciplines other than the law.³ It can also be defined as an investigation into the concepts, abstracts and philosophies of law which lay down the principles of law to tell us about the legal system.⁴ Thus, it is in this development of legal system theories and

ideas which hold their place as a foundation stone for existing systems and principles of law,⁵ where an answer to this contentious question of whether collective safety takes precedence over individual rights can be weighed up.

THE NATURE OF INDIVIDUAL RIGHTS

In jurisprudence, a unanimous definition of a right cannot be found as every legal scholar has attempted to define what amounts to a right in his or her own manner. For instance, the jurist Sir Frederick Pollock claims that a right is nothing more than the freedom and power granted to individuals by the law.⁶ As per John Austin, another English philosopher, law is a sovereign command supported by a penalty, and the people who profit from that command are said to be entrusted with a right. The various interpretations of a right seemingly imply the existence of two different notions of rights, namely moral rights and legal rights. Naturalists are of the opinion that certain natural interests and rights belong to man as a result of his initial freedom bestowed by nature, and that these rights are subsequently generated and acknowledged.⁷ Harold Laski, a prolific writer of political science, defines rights as “those conditions of social life without which no man can seek, in

general, to be himself at his best”.⁸ The English utilitarian political philosopher and lawyer Jeremy Bentham, on the other hand dismissed the notion of “natural” rights as nonsense and argued that all rights were the creation of the state and fruits of the law, without which the very existence of the national concept of a right would not exist.⁹

However, it is interesting to note that the esteemed legal scholar and jurist Sir John William Salmond describes a right as an interest safeguarded and enforced by law.¹⁰ According to Salmond, wherever there is a right, a corresponding responsibility imposed by law also exists and deviating from that responsibility is wrong. Both rights and responsibilities can be seen to clearly interconnect with each other. Thus, using Salmond’s analysis of a right as a reference point, every area of law, whether contract, tort, criminal, or other has rules, and those laws establish rights and obligations. These rights must be upheld by the court system. According to Salmond, the idea of right cannot be understood in isolation and its comprehension is dependent on two concepts which are rights and obligations. Only a study of the interrelationship of these three conceptions, can provide one with the true meaning of a right.

Certain liberal political theorists, such as John Stuart Mill have taken a more utilitarian approach to the problem of individual rights and collective interests.¹¹ Under such an approach, individual rights are ultimately drawn from a consideration of collective interests under this approach. Individuals have a right to, say, free speech because, in the long term, allowing people to speak freely benefits the society (or mankind) as a whole. Of course, such limits may provide short-term gains, but they are offset by the longer-term benefits that are expected to accrue as fruits of liberty.

THE DEVELOPMENT OF THE CONCEPT OF INDIVIDUAL RIGHTS¹²

The first sign of individual rights may be found in religious contexts. As early as 442 B.C., Sophocles dramatized about King Creon in his tragedy *Antigone* that all his strength was a weakness against the immortal unwritten laws of God. According to the poet, the laws of God had greater authority than the laws of the king or positive law. Sophocles was referring to natural law, the law of nature, as the source of man’s rights when he said “the laws of God.”¹³ At the period, there was a strong logical

relationship between the concept of natural law and the concept of human inherent rights. These natural or fundamental rights of man were thought to be those that guaranteed each individual the fullest and greatest development of his individuality, spirituality, morals, and other independence. The true law, according to Cicero, is found in the right reason, congruent with nature, and acknowledges and confers these human attributes. There was always a clear contrast between natural law and man-made law, or positive law, from the beginning. For example, although positive law permitted slavery to grow, natural law forbade it. The conflict between nobles and kings led to the expansion of natural law’s dominance to the detriment of positive law, which was thought to be subject to natural law in that the kings themselves were rendered subject to God’s law. For example, in 1188, the Cortes of Leon obtained confirmation from King Alfonso IX of a set of rights that included the right to life, honour, and property inviolability, as well as the right to a fair trial. The Golden Bull of King Andrew II of Hungary, issued in 1222, declared that no noble would be captured or imprisoned without due procedure. In 1215, King John of England agreed to his barons’ requests as outlined in the famous Magna Carta. Initially, only the aristocracy benefited from the Magna Carta, but as time passed, everyone in England desired to reap the benefits of the Magna Carta.¹⁴

At the beginning of the 12th century, the kings’ piecemeal concessions to the barons and nobility gave way to the notion of natural law made available to all. Thinkers such as Grotius, Vattel, Pufendorf, and Wolff disseminated the concept of human rights through treaties and as required by reason through the discipline of international law. Religious freedoms and immigrant rights were among the first of these rights to be granted. Following that, the Puritans, Levellers, and Parliamentarians used natural law to fight the Kings in the quest to democratize the polity and, as a result, expand man’s rights. Writers such as Locke, Milton, Hall, and Blackstone spoke openly about the Englishman’s inalienable rights. These became an offspring of English civil rights, which eventually found their way into texts such as the Petition of Rights in 1628 and the Bill of Rights in 1689. When these radical ideas travelled to America’s colonies, they transformed people’s thinking and reshaped it to read, as in the Virginia Declaration of 1776, that all men are by nature equally free and independent and have certain inherent rights. The

American Declaration of Independence, written in 1776, also said that it is self-evident that all men are created equal, and that their Creator has endowed them with certain inherent rights, including life, liberty, and the pursuit of happiness. This idea was also present in the 1791 Bill of Rights, which included the ten amendments to the original United States Constitution. Natural law ideas were included into the French Declaration of the Rights of Man and Citizen in 1789, and shortly after, the declaration of human rights became trendy in European constitutions. These Constitutions claimed to have been inspired by natural law. As awareness of human rights expanded, States, acting alone or in partnership with other states, began to interfere in other countries, ostensibly for humanitarian reasons and through international legal processes, in order to secure human rights for the people of those countries.¹⁵

THE NATURE OF COLLECTIVE SAFETY

Unlike personal rights which are the freedom given to one through the basic rights for daily life, collective safety is some sort of measure that is collective in order to protect more than one person. In general, collective safety is applied upon a society in a colony or an entire nation, especially during war. Cambridge Dictionary defines collective as ‘...of or shared by every member of a group of people.’ One of the benefits in collective safety is that it not only protects many, but also does not require any action by any individual person and it is the government’s duty and responsibility to protect the people. On the other hand, collective safety is also termed as collective security, whereby it is a system by various States in attempting to prevent or stop wars. Under such arrangements, anyone who initiates an attack or an aggressor towards any State will be considered attacking all the States as a whole. This system allows the States to act together in order to repel the attacker.¹⁶

THE DEVELOPMENT OF THE CONCEPT OF COLLECTIVE SAFETY

The concept of this collective safety, or rather collective security, was introduced in 1629 by Cardinal Richelieu, a French Foreign Secretary and partially reflected in the 1648 Peace of Westphalia.¹⁷ The idea was and still is one of the most used approaches for peace on an international level. The

same concept was addressed by Immanuel Kant during the 18th century; however, it was not paid much attention by others.¹⁸ It was only during World War I that people took notice of Kant’s illusion of collective security. According to Thomas Hobbes, man cannot preserve peace and harmony alone.¹⁹ Hence, both the League of Nations and the United Nations (UN) came up with the assumption that some sort of international organization is needed to be formed to avoid another World War. But, just how effective was the organization in preserving peace? This is because the idea of collective safety was still not recognised by all the States. It only began to get recognition at the end of the Cold War between the United States and the Soviet Union.

What differs Kant’s theory from Cardinal’s theory is that during the Peace of Westphalia in 1648, the collective security was mainly focused on the religious conflict which happened in European states, but Kant’s approach was subtler and balanced as it involves the idea of nations acting together as one body in preventing wars and to achieve peace in each and every State. In other words, Kant contradicted his approach of collective safety with Saint Pierre’s theory,²⁰ which was based upon an attempt to create a European government that is purely independent and also superior to all the individual states in Europe. Rousseau commented on the former’s theory as an excellent theoretical approach to peace but is unrealistic to be achieved.²¹ Hence, Kant approached beyond the mere analysis of both Saint Pierre and Rousseau and examined the main problem for not achieving peace in a much broader philosophical perspective in history.

He, along with Hobbes, agreed with the assumption that the natural state is not the states living in peace among men side by side, but rather the natural state is one of war. Through this view, the concept of peace could only exist in an artificial land where it is on people’s consciousness and it was deemed valid by other philosophers at that time. Adding on, Kant further argued that in reality, there is no such thing as international peace but that does not mean that the concept of peace may be denied further on without any proper changes on international scale. This is due to the fact that international peace is necessary in keeping harmony between States as well as the people in them. It is as same as the moral imperative that had led people into a political community in order to overcome the civil war.²²

COLLECTIVE SAFETY DURING COVID-19 PANDEMIC

In the modern age, the application of collective safety would vary from the time after World War. This is mainly because of the technological advancement that mankind had achieved for the past decades. The Covid-19 pandemic had the world to be put on hold for quite a long time, which had increased the health-related equipment to curb the spread of the virus. At first, the focus was only on the development of essential individual safety equipment, such as transparent face shields, face masks and gloves. However, the results were not sufficient to defeat the coronavirus, eventually leading to the development of collective transition solutions in attempting to return the people to their daily face-to-face activities. This view had shifted the focus to collective safety equipment such as the vaccines to enhance the antibody in our body to give a boost on the immunity system, decontamination booths for both people and objects,²³ the announcement of social distancing and many other initiatives.

The principles of collective safety introduced by both Cardinal and Kant were used in succumbing to the widespread of coronavirus. This is due to the loss of many innocent lives including children, from the effects of the coronavirus. Hence, a collective measurement was needed alongside the collaboration among the States in the United Nations to overcome this drastic situation. However, many of the manufactured products designed to protect from the virus were default in their functions, resulting in a chaotic situation among the people. After numerous research and development, more robust methodologies were used in identifying the essential requirements of the safety equipment, particularly in the effectiveness, safety and user comfort of the products.²⁴

MOVEMENT CONTROL ORDER (MCO) IN MALAYSIA

Next, if we look from Malaysia's perspective, there is also a collective measure taken by the Malaysian government in reducing the spread of the virus among the locals. Apart from following the guidelines provided by the World Health Organization (WHO), there were also some initiatives by the government such as the Movement Control Order (MCO), which restricted the people's freedom of movement in the country, also restricting interstate travel. But the restrictions were not fully implemented as the

declaration of emergency, where no one could leave home at all. The MCO still allowed the head of each family to go out and purchase the necessary things that were needed in each household respectively.

To summarize, the Movement Control Order (MCO) was announced and implemented by the Malaysian government on 18th March 2020 to curb the widespread of Covid-19 among the residents, while at the same time reducing the death rate of the infected patients. MCO falls within the three principles of collective safety as proposed by Woodrow Wilson, the 28th President of the United States of America.²⁵ Firstly, in the absence of international authorization, the State must abandon the possibility of coercive action, except in the circumstances involving aggression. Basically, the non-use of coercive action here means that, a State shall only impose non-violence acts in order to ease the chaotic situation in its State except in a situation involving violence, as in a counter-attack towards the attacker or terrorists in general. However, actions in the form of aggression are only allowed upon authorization on the international scale. MCO is an act to restrict the freedom of movement of the people, thus falling within the first condition of Wilson's view on collective safety. In other words, confiscating the right to move as provided in the Federal Constitution²⁶ is not an act of violence.

Furthermore, the second condition of Wilson's collective safety is that there must be no alliance or rather the involvement of a third party in imposing a collective safety measure. In short, the idea of collective safety is that it is a system of its own in order to defend a nation against any other aggressive nation. Collective safety is an abstract that is not attached to anyone or anything.²⁷ For example, MCO is an order by the Malaysian government, without the alliance of any other third party that is outside of the nation's territory, to overcome the pandemic situation within Malaysia's "four walls", therefore fulfilling the second condition.

The third and final condition is the structure of the act. However, Wilson's idea of structure is that there must be a multinational coalition under collective security in case of aggression. This means that there should be some sort of international body running the duty of the executive, in commanding support from the States to organize an international force. In the case of MCO, this has nothing to do with the coalition between States. But the principle of structure as opined by Wilson can also be applied in the sense of one State. For example, the government, collaborating with various other

governmental organizations, such as the co-operation between the Ministries and the law enforcers to further enhance the act of defeating or curbing the spread of coronavirus. Such collaboration still applies the basic concept of the structural condition proposed by the 28th President of the United States of America, but in the scope of one nation rather than on international scale.²⁸ To conclude, MCO is considered an act of collective safety, particularly in reducing the infection of Covid-19.

CONSEQUENCE OF DISOBEYMENT OF THE MCO

Once the MCO was declared, the Conditional Movement Control Order (CMCO) and the Recovery Movement Order (RMCO) were also declared by the government. CMCO is an enhanced version of MCO, the conditions were tighter and stricter than the previous one, and RMCO is post-MCO, where the rules were loosening, and more people could move but only within their respective interstates. The general view behind the imposition of rules is that there must be some sort of penalties if there are people who do not obey such rules.

In these cases, those who do not abide by the directives under the MCO shall be imposed a fine of not more than RM1,000 or jailed for not more than six months or both.²⁹ These penalties are in accordance with the Prevention and Control of Infectious Diseases (Measures within the Local Infected Areas) Regulations 2020³⁰ ³¹which is only based on a federal gazette that disallows individuals from travelling freely from a place to another which is declared as an infected area, according to the Attorney General's Chambers, which took effect on 31st March 2020. The main objective of such punishment is to curb the Covid-19 pandemic that had befallen Malaysia. But, there are also exceptions for official duties and works that provide essential services, such as Food and Beverage (F&B), health and wellness, and few other sectors.

In addition, the National Security Council authorized the police force, as well as the Malaysian Volunteer Corps (RELA) personnel under Section 3 of the Prevention and Control of Infectious Diseases Act.³² to ensure the public follow the directives under the MCO, while also conducting checks on the food premises to make sure that the MCO is obeyed by each and every one. Referring to the Anthropology of Law by Leopold Pospisil, there are four elements of law, which are authority, universality, 'obligatio' and sanction.³³ The term 'obligatio' refers to the sense of

obliging to an obligation. These elements show that the law in general, is an authority which is applied to everyone as per the concept of universality, and equal to all. It is therefore becoming an obligation to be abided, and if it is breached, then there will be sanctions or penalties for not adhering to such obligation.³⁴ This approach to the law was supported by John Austin, who stated that law is commanded by an unseen commander, backed up by threats of sanctions,³⁵ to which Hobbes too agreed that there is no legal obligation without the sanctions.³⁶ The view behind Pospisil's approach on the law is that the law must be supported by relevant facts. This means that the theory of law should be derived from the facts, but not consort with them.³⁷ In imposing penalties for not abiding the MCO, the law would not be simply imposed on everyone who disregards the MCO. The court will, in each case, give rise to the accused to explain the reason for not following the rules and would only punish upon the evaluation of each case, as to whether the accused should be given a fine or imprisonment or both the fine and imprisonment. In a way, such procedures are applying the approach of law provided by Leopold Pospisil, which is also directly paving a way for people to obey the collective safety measures, imposed by the Malaysia government to decrease the spread of infectious Covid-19.

GRIEVANCES AND CONTROVERSIES ARISING FROM THE MCO

The impact of all of these spatial distancing strategies, as well as the uncertainty of returning to normalcy, has a direct and indirect impact on the social life and mental well-being of the community members. Interim measures such as MCOs or lockdowns, physical separation, and quarantine are said to have heightened anxieties, worry, and anxiety among people all over the world. A recent study discovered that women, younger people, those residing in rural regions, those with lower socioeconomic position, those at higher risk of COVID-19 infection, and longer media exposure were associated with higher levels of anxiety and depression.³⁸

Furthermore, in its amendments put forward for the Prevention and Control of Infectious Diseases Act 1988, or Act 342, the government can seek maximum penalties of a fine worth RM50,000 (US\$11,800) or three years' imprisonment.³⁹ This is lower than its original move to raise penalties to a fine of up to RM100,000 and jail time of seven years. The ministry also fixed its proposed penalties for

businesses to a fine of up to RM500,000 after what was once RM2 million.⁴⁰ These were widely said to be disproportionate fines which especially burdened those from lower to middle income households. This was in addition to the fact that government officials and VIPs were frequently seen violating the established SOPs with little to no repercussions.

Economically, the general public suffered greatly. For instance, during the implementation of MCO 1.0, the country lost RM2.4 billion each day.⁴¹ People began to lose their jobs as a result of downsizing and staff layoffs. Because SMEs were classed as non-essential, they were unable to operate; as a result, the majority of SMEs either closed or wound up, are closing and winding up, or are being restructured.⁴² Trade associations on the other hand were continually perplexed by government directives and ambiguous SOPs.⁴³

The government's shortcomings in controlling the pandemic also manifested themselves when they were late on decisions on the sorts of vaccines required; and challenges with pricing, volume, delivery, and vaccine storage. The wait-and-see attitude had produced uncertainty inside the government and among the populace. Vaccine procurement merely seems to be a lucrative business by those involved. What is more, soon after, the procurement's integrity was called into question. As transparency is crucial during a crisis, any deviation from the norms and regulations may result in a violation of the public procurement procedure. Here, direct negotiations with other relevant parties have been said to result in a conflict of interest with an eventual result of non-delivery of critical medical supplies. Most discussions on this controversy were removed with all allegations hastily denied by those in charge.⁴⁴ In addition, the vaccination delivery system was heavily criticized due to the fact that there was a lack of coordination, which was compounded by inefficient implementation. It was not coordinated.⁴⁵ Parliament was closed owing to the country's declaration of an emergency. There was no rigorous examination of vaccination costs, and there were no debates in Parliament over the RM530 billion stimulus program.

Beyond the health crisis, Malaysia also dealt with apparent crises of leadership, ethics, and corruption, among other things. Politics, for the most part, has continually and persistently been on the minds and the radar screens of the citizens in this country. Despite the urge to concentrate on Covid-19, political groups and politicians are still

involved up to this point in a tug-of-war over who would be the best leader for the country in the coming years. For several years now, we have been in a condition of political upheaval. The extensive lockdowns were also commonly said to be merely another tool to extend the regime's power.⁴⁶

THE COERCIVE ELEMENT IN THE IMPLEMENTATION OF LAW

Following Pospisil's elements of law, the sanctions for law are as if ordering or forcing people into following them, or else there would be consequences such as fine or imprisonment. What is the theory behind such sanctions if the freedom to live freely is a right that is given to everyone and then there are also rules of penalties for not obeying the law? It is as if the right to live a free life is controlled by the regulation of law. H.L.A Harts opposed to the coercion theory of law by stating sanctions are not conceptually necessary for the implementation of law.⁴⁷ although he did share the common view of seeing law as commands by an "uncommanded commander", which are backed by the threat of sanctions, along with Austin and Hobbes.

Hart's opinion is that a legal system is not only constituted by a set of commands backed by sanctions, which had led Austin's focus on sanctions to an insufficient understanding of the legal obligations.⁴⁸ This means that in Hart's theory of law, there is actually more behind Austin's theory of law. However, the element of coercion is still needed in order to legally bind the obligations. This is due to the fact that not only in Malaysia, but all legal systems seem to depend on the threat of sanctions in binding people to legal obligations. Michael Bayles in his work had quoted, '*Before a penal law is passed, a person can perform an action without probable punishment by the state; afterwards he cannot. Hence, an alternative choice laid been made less desirable and penal law is coercive*'.⁴⁹ Based on the understanding, it is the principle of law that no one shall be punished for a crime that was done before the act was declared as a crime. Here, when such acts become crimes in the eyes of law, it would then coerce people into not committing the said crimes.

Speaking about the coercion theory in law, the common view is that coercive sanction for the violation of law, to which H.L.A. Hart is his 'The Concept of Law', argued to be erroneous.⁵⁰ Hart argued that coercion is not a feature of law, but rather

a natural necessity of the legal practices.⁵¹ This would mean that it serves as a general motivation for people to comply with the legal requirements and also the prohibitions.

The declaration of the Movement Control Order (MCO) and the implementation of the penalties do not only take away people's individual rights,⁵² but also coerce them to adhere to the directives under the MCO. The Malaysia government had made it a necessity for people to obey the MCO, so that the infectious rate of coronavirus would decrease among them. The reason behind such a decision is to also control the death rate of infected patients. Thus, Hart's concept of coercion, being the natural necessity of the legal practice, is clearly showcased in Malaysia, where those who do not comply with MCO would be imposed a fine or put in jail, or both. In addition, those who do not wear masks in public and follow the Standard Operating Procedure (SOP) as provided by the Malaysian Government would also be liable for such penalties.⁵³

ARGUMENTS FOR INDIVIDUAL RIGHTS IN THE CONTEXT OF THE PANDEMIC

As mentioned earlier, certain liberal political theorists such as John Stuart Mill have taken a utilitarian approach to the problem where individual rights are themselves ultimately derived from a consideration of collective interests.⁵⁴ The argument is that individuals who have access to a particular right are entitled to it as overall and in the long run, permitting such right redounds to the net benefit of the community as a whole. Impermissible restrictions on a right are those which, even if they offer benefits in the short run, are outweighed by the greater benefits likely to accrue over the long run as fruits of the unrestricted liberty. In this manner, said COVID-19 restrictions could be argued to be an impermissible restriction due to the fact that despite it bringing down the number of cases in the short term, most of its effects in the long run have yet to be witnessed, with a few, such as the loss of livelihood, worsened mental health, loss of jobs, economic downturn and a general tediousness in respect to day-to-day activities have taken place.

Furthermore, many contemporary liberal political philosophers are wary of any utilitarian approach with the chief concern that it does not provide a sufficiently secure foundation for individual rights. Liberal political theories based on principles of what was coined by Mill as an "abstract right"

have been developed where the notion that basic individual rights can be derived from or justified by considerations of what makes a community better off as such rights may still exist while simultaneously making a community worse off in other aspects. Here, a division exists among contemporary liberal political philosophers. Orthodox liberals such as John Rawls, Robert Nozick, Ronald Dworkin and David Richards all argue against the inclusion of 'perfectionist' principles in political theory where it has been maintained that individual rights and other principles of justice must be identified with political institutions designed, without employing controversial ideas about human nature or conceptions of the human good.⁵⁵

Moreover, as espoused by the active and prolific scholar, Ronald Dworkin,⁵⁶ it is undeniable that individual rights constrain the government's pursuit of collective interests. Thus, Dworkin portrays individual rights and collective interests as potentially in conflict, especially when the interests of the community are ordinarily trumped when they come in conflict with individual rights. He further holds that rights are derived not from considerations of what is truly good for human beings, but from an abstract general right to equality, namely the right to be treated by the government as an equal with concern and respect.⁵⁷ In this manner, an argument could be made where politicians and bureaucrats of the sort do not seem to have an established set of guidelines and have numerous times been seen breaching SOPs with little concern or regard for public safety. Outrageous fines being imposed on citizens, which are particularly burdensome to those from low-income to middle-income groups, are also a form of inequality where it is as if the rich and privileged have free reign to buy their way out of such SOPs due to their wealth.

CONCLUSION

After gathering all the necessary findings for the purpose of this journal that we had gotten through the nature of individual rights and collective safety, individual rights are the power and freedom granted by law towards individuals so that they could live their respective life freely. On the other hand, collective safety refers to the government's measure to prevent something terrible from happening to the society. In the international scale, it is also referred to as collective security, a collaboration between two or more States to stop or prevent a war.

Generally speaking, the difference between both individual rights and collective safety is that rights are naturally bestowed upon man as a result of his initial freedom. In other words, rights are the profit that each and everyone obtains from the command of law. Collective safety, although does not require an individual's action, however the individual rights are still restricted when it comes to a measure to protect mankind from any kind of danger. One way or another, this is actually a debate between naturalism and positivism. This is because individual rights are basic human rights that law should abide by and thus granting them to the people, which is natural in its own way, meanwhile collective safety is a concept created by man in order to make sure the survivability of the mankind in times of danger, though the concept of survivability is also a natural reflect that is bestowed upon all flora and fauna.

To conclude the analysis between both individual rights and collective safety on the implementation of the Movement Control Order (MCO), it was an act of government in order to subdue the spread of coronavirus within the nation, to which they had to control the movements of people as well. This is because the ways of the virus spreading among people could be decreased severely when the virus has no living organisms to attack. This was in fact an act of desperate measure to ensure the survivability of people in Malaysia.

Like the declaration of emergency during a crisis or war in a nation, the implementation of MCO indicates that when it comes to a situation where there is a conflict between individual rights and collective safety, the second would prevail over the first. In other contexts, it is in line with the saying, no pain, no gain. To be able to return to our normal norm of living, we must be ready to sacrifice a bit of our rights in order to overcome this pandemic. Nevertheless, a revision still needs to be made to the guidelines and enforcement measures in place in order to ensure equality among citizens and politicians from all classes of society in respect to the restrictions and repercussions set in place.

NOTES

¹ J.J. Rousseau, *The Social Contract*, Penguin Books, London, 2004.

² Anon, 'Protests erupt over Covid restrictions in Austria, Italy, Croatia', *Al-Jazeera*, 21 November 2021, <https://www.aljazeera.com/gallery/2021/11/21/photos-pandemic-protests-erupt-over-covid-restrictions-in-austria-italy-croatia> [1 July 2022].

³ J.R. Stone, *Legal System and Lawyer's Reasonings*, Universal Law Publishing, Delhi, 2004, p 16.

⁴ J.W. Salmond & P.J. Fitzgerald, *Salmond on Jurisprudence*, 12th Edn, Sweet and Maxwell, London, 1966, p 1.

⁵ H. Kelsen, *Pure Theory of Law*, Lawbook Exchange, Clark, 2005.

⁶ F. Pollock, 'The history of the law of nature: A preliminary study', (1900) 2(3) *Journal of the Society of Comparative Legislation*, p 418–433.

⁷ H. Chand, *Modern Jurisprudence*, 7th Edn, International Law Book Services, Kuala Lumpur, 2019, p 33.

⁸ H.J. Laski, *Democracy in Crisis*, George Allen and Unwin, London, 1933.

⁹ J. Bentham & J. Bowring, *The Works of Jeremy Bentham*, Russell and Russell, New York, 1962.

¹⁰ J.W. Salmond & P.J. Fitzgerald, *Salmond on Jurisprudence*, p 2017.

¹¹ J.S. Mill, 'On liberty', in M. Warnock (ed.), J.S. Mill & J. Bentham, *Utilitarianism, On Liberty, Essay on Bentham*, Signet, New York, 1974, p 136.

¹² P. Herrmann & F.Ó. Hadhmaill, The historical development of the concept of rights, in G. McCann & F.Ó. Hadhmaill (eds.), *International Human Rights, Social Policy and Global Development: Critical Perspectives*, Bristol University Press, 2020.

¹³ P. Herrmann & F.Ó. Hadhmaill, The historical development of the concept of rights, in G. McCann & F.Ó. Hadhmaill (eds.), *International Human Rights, Social Policy and Global Development: Critical Perspectives*, Bristol University Press, 2020.

¹⁴ P. Herrmann & F.Ó. Hadhmaill, The historical development of the concept of rights.

¹⁵ P. Herrmann & F.Ó. Hadhmaill, The historical development of the concept of rights.

¹⁶ S. Aleksovski, O. Bakreski & B. Avramovska, 'Collective Security – The Role of International Organizations – Implications in International Security Order', (2014) 5(27) *Mediterranean Journal of Social Sciences*, p 274–282.

¹⁷ D. Kennedy, 'Primitive legal scholarship', (1986) 27 *Harv. Int'l L.J.*, p 97.

¹⁸ I. Kant, *Perpetual Peace on History*, Bobbs Merrill, New York, 1963, p 92.

¹⁹ T. Hobbes & J.P. Plamenatz, *Leviathan*, Collins, London, 1968, p 196.

²⁰ S. Pierre & J.J. Rousseau, *A Project for Perpetual Peace*, Garland, New York, 1974.

²¹ J.J. Rousseau, *Judgment on Perpetual Peace*, Garland, New York, 1974.

²² I. Kant, *Perpetual Peace: A Philosophical Sketch*, in M.J. Gregor (ed.), *Practical Philosophy*, Cambridge University Press, Cambridge, 1996, p 93.

²³ S.I. Kim & J.Y. Lee, 'Walk-through Screening Center for COVID-19: An accessible and efficient screening system in a pandemic situation', (2020) 35(15) *Journal of Korean Medical Science*.

²⁴ D. Hitchcock, 'Third age usability and safety - An ergonomics contribution to design', (2001) 55(4) *International Journal of Human-Computer Studies*, p 635–643.

²⁵ W. Woodrow, 'A league of peace', in D.L. Larson (ed.), *The Puritan Ethics in the United States Foreign Policy*, Van Nostrand, New York, 1966, p 183.

²⁶ Article 5 Federal Constitution.

- ²⁷ I. Claude, *Swords into Plow Shares*, Random House, New York, 1971, p 160.
- ²⁸ W. Wilson, 'The Study of Administration', (1887) 2(2) *Political Science Quarterly*, p 197.
- ²⁹ Farik Zolkepli, M. Carvalho, T. Tan, Zakiah Koya & Mazwin Nik Anis, 'Disobey order and risk penalty', *The Star*, 19 March 2020. <https://www.thestar.com.my/news/nation/2020/03/19/disobey-order-and-risk-penalty> [1 July 2022].
- ³⁰ Prevention and Control of Infectious Diseases Act (Measures within the Infected Local Areas) Regulations 2020.
- ³¹ Section 24 Prevention and Control of Infectious Diseases Act 1988 (Act 342).
- ³² Section 3 Prevention and Control of Infectious Diseases Act 1988 (Act 342).
- ³³ L. Pospisil, *The Anthropology of Law: A Comparative Theory*, Harper & Row, New York, 1971.
- ³⁴ L. Pospisil, *The Anthropology of Law: A Comparative Theory*.
- ³⁵ J. Austin, *The Province of Jurisprudence Determined*, Hackett Pub., Indianapolis, 1995, p 21.
- ³⁶ T. Hobbes & J.P. Plamenatz, *Leviathan*, p 196.
- ³⁷ L. Pospisil, *The Anthropology of Law: A Comparative Theory*.
- ³⁸ Y. Wang, M.P. Kala & T.H. Jafar, 'Factors associated with psychological distress during the coronavirus disease 2019 (COVID-19) pandemic on the predominantly general population: A systematic review and meta-analysis', (2020) 15(12) *PLoS One*, <https://doi.org/10.1371/journal.pone.0244630>.
- ³⁹ Prevention and Control of Infectious Diseases Act 1988 (Act 342).
- ⁴⁰ Nuradzimmah Daim & D. Chan, 'Up to RM1m compound for organisations, RM10k fine for individuals for SOP violations proposed', *New Straits Times*, 15 December 2021, <https://www.nst.com.my/news/nation/2021/12/754303/rm1m-compound-organisations-rm10k-fine-individuals-sop-violations>, [8 January 2023].
- ⁴¹ J. Timbuong, 'Our economy loses RM2.4bil every day MCO is active, says PM', *The Star*, 25 April 2020, <https://www.thestar.com.my/news/nation/2020/04/25/our-economy-loses-rm24bil-every-day-mco-is-active-says-pm>, [8 January 2023].
- ⁴² Anon, 'BizPulse51', *SME Bank*, 2020, <https://www.smebank.com.my/images/2020/12/BizPulse51.pdf>, [8 January 2023].
- ⁴³ Nur Hanani Azman, 'Businesses want clear and fair SOPs', *The Malaysian Reserve*, 11 December 2020, <https://themalaysianreserve.com/2020/12/11/businesses-want-clear-and-fair-sops/>, [8 January 2023].
- ⁴⁴ Bernama, 'Vaccine procurement corruption allegations baseless: MOH', *Astro Awani*, 5 August 2021, <https://www.astroawani.com/berita-malaysia/vaccine-procurement-corruption-allegations-baseless-moh-312477>, [8 January 2023].
- ⁴⁵ C. Chung, 'Coordinate vaccine procurement, govt urged', *The Star*, 2 April 2021, <https://www.thestar.com.my/news/nation/2021/04/02/coordinate-vaccine-procurement-govt-urged>, [8 January 2023].
- ⁴⁶ B. Welsh, 'COMMENT | No 'darurat' needed', *Malaysiakini*, 24 October 2020, <https://www.malaysiakini.com/columns/547920>, [8 January 2023].
- ⁴⁷ H.L.A. Hart, *Law, Liberty, and Morality*, Oxford University Press, Oxford, 1963.
- ⁴⁸ H.L.A. Hart, *Law, Liberty, and Morality*.
- ⁴⁹ M.D. Bayles, 'Coercive offers and public benefits', (1974) 55(2) *The Personalist*, p 139-141.
- ⁵⁰ H.L.A. Hart, *The Concept of Law*, Oxford University Press, Oxford, 2012.
- ⁵¹ E.N. Yankah, 'The force of law: The role of coercion in legal norms', (2008) 42(5) *U. Rich. L. Rev.*, p 1216-1217.
- ⁵² Part II Federal Constitution.
- ⁵³ Anon, Standard Operating Procedure (SOP) #ReopeningSafely, *Malaysia Ministry of Health*, 1 April 2022, https://www.kln.gov.my/documents/8390448/8392184/b.+MKN+SOP_%28%23ReopeningSafely%29_vF+-+ENG_Clean.pdf/4b6c23ab-5960-4504-854b-3cc4761b8755 [15 May 2022].
- ⁵⁴ J.S. Mill, 'On liberty', p 136.
- ⁵⁵ S. Wall, 'Perfectionism in moral and political philosophy', in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, Stanford University, 2021, <https://plato.stanford.edu/archives/fall2021/entries/perfectionism-moral/>, [8 January 2023].
- ⁵⁶ R. Dworkin, *Taking Rights Seriously*, Harvard University Press, Cambridge, 1977, p 198.
- ⁵⁷ R. Dworkin, *Taking Rights Seriously*.

REFERENCES

- Aleksovski, S., Bakreski, O. & Avramovska, B. 2014. Collective security – The role of international organizations – Implications in international security order. *Mediterranean Journal of Social Sciences* 5(27): 274–282.
- Anon. 2021. BizPulse51. *SME Bank*. <https://www.smebank.com.my/images/2020/12/BizPulse51.pdf> [8 January 2023].
- Anon. 2021. Protests erupt over Covid restrictions in Austria, Italy, Croatia. *Al-Jazeera*, 21 November. <https://www.aljazeera.com/gallery/2021/11/21/photos-pandemic-protests-erupt-over-covid-restrictions-in-austria-italy-croatia> [1 July 2022].
- Anon. 2022. Standard Operating Procedure (SOP) #ReopeningSafely. *Malaysia Ministry of Health*, 1 April 2022. https://www.kln.gov.my/documents/8390448/8392184/b.+MKN+SOP_%28%23ReopeningSafely%29_vF+-+ENG_Clean.pdf/4b6c23ab-5960-4504-854b-3cc4761b8755 [15 May 2022].
- Austin, J. 1995. *The Province of Jurisprudence Determined*. Indianapolis: Hackett Pub.
- Bayles, M.D. 1974. Coercive offers and public benefits. *The Personalist* 55(2): 139-141.
- Bentham, J. & J. Bowring. 1962. *The Works of Jeremy Bentham*. New York: Russell and Russell.
- Bernama. 2021. Vaccine procurement corruption allegations baseless: MOH. *Astro Awani*, 5 August. <https://www.astroawani.com/berita-malaysia/vaccine-procurement-corruption-allegations-baseless-moh-312477> [8 January 2023].

- Chand, H. 2019. *Modern Jurisprudence*. 7th Edn. Kuala Lumpur: International Law Book Services.
- Chung, C. 2021. Coordinate vaccine procurement, govt urged. *The Star*, 2 April, <https://www.thestar.com.my/news/nation/2021/04/02/coordinate-vaccine-procurement-govt-urged> [8 January 2023].
- Claude, I. 1971. *Swords into Plow Shares*. New York: Random House.
- Clive, William. "Pamphleteers, libel awards, and free speech." (2006) 41(2) *Help Law Review*, p 50.
- Dworkin, R. 1977. *Taking Rights Seriously*. Cambridge: Harvard University Press.
- Farik Zolkepli, Carvalho, M., Tan, T., Zakiah Koya & Mazwin Nik Anis. 2020. Disobey order and risk penalty. *The Star*, 19 March. <https://www.thestar.com.my/news/nation/2020/03/19/disobey-order-and-risk-penalty> [1 July 2022].
- Federal Constitution.
- Hart, H.L.A. 1963. *Law, Liberty, and Morality*. Oxford: Oxford University Press.
- Hart, H.L.A. 2012. *The Concept of Law*. Oxford: Oxford University Press.
- Herrmann, P. & Hadhmaill, F.Ó. 2020. The historical development of the concept of rights. In McCann, G. & Hadhmaill, F.Ó. (eds.). *International Human Rights, Social Policy and Global Development: Critical Perspectives*. Bristol University Press.
- Hitchcock, D. 2001. Third age usability and safety - An ergonomics contribution to design. *International Journal of Human-Computer Studies* 55(4): 635-643.
- Hobbes, T. & Plamenatz, J.P. 1968. *Leviathan* London: Collins.
- Kant, I. 1963. *Perpetual Peace on History*. New York: Bobbs Merrill.
- Kant, I. 1996. Perpetual peace: A philosophical sketch. In Gregor, M.J. (ed.), *Practical Philosophy*. P 93. Cambridge: Cambridge University Press.
- Kelsen, H. 2005. *Pure Theory of Law*. Clark: Lawbook Exchange.
- Kennedy, D. 1986. Primitive legal scholarship. *Harv. Int'l L.J.* 27: 97.
- Kim, S.I. & Lee, J.Y. 2020. Walk-through Screening Center for COVID-19: An accessible and efficient screening system in a pandemic situation. *Journal of Korean Medical Science* 35(15).
- Laski, H.J. 1933. *Democracy in Crisis*. London: George Allen and Unwin.
- Mill, J.S. 1974. On liberty. In Warnock, M. (ed.), Mill, J.S. & Bentham, J. *Utilitarianism, On Liberty, Essay on Bentham*. P 136. New York: Signet.
- Nuradzimmah Daim & Chan, D. 2021. Up to RM1m compound for organisations, RM10k fine for individuals for SOP violations proposed. *New Straits Times*, 15 December. <https://www.nst.com.my/news/nation/2021/12/754303/rm1m-compound-organisations-rm10k-fine-individuals-sop-violations> [8 January 2023].
- Nur Hanani Azman. 2020. Businesses want clear and fair SOPs. *The Malaysian Reserve*, 11 December. <https://themalaysianreserve.com/2020/12/11/businesses-want-clear-and-fair-sops/> [8 January 2023].
- Pollock, F. 1900. The history of the law of nature: A preliminary study. *Journal of the Society of Comparative Legislation* 2(3): 418-433.
- Pospisil, L. 1971. *The Anthropology of Law: A Comparative Theory*. New York: Harper & Row.
- Prevention and Control of Infectious Diseases Act (Measures within the Infected Local Areas) Regulations 2020.
- Prevention and Control of Infectious Diseases Act 1988 (Act 342).
- Rousseau, J.J. 2004. *The Social Contract*. Penguin Books.
- Rousseau, J.J. 1974. *Judgment on Perpetual Peace*. New York: Garland.
- Rousseau, J.J. 2004. *The Social Contract*. London: Penguin Books.
- Pierre, S. & Rousseau, J.J. 1974. *A Project of Perpetual Peace: Rousseau's Essay*. New York: Garland.
- Salmond, J.W. & P.J. Fitzgerald. 1966. *Salmond on Jurisprudence*. 12th Edn. London: Sweet and Maxwell.
- Stone, J.R. 2004. *Legal System and Lawyer's Reasonings*. Delhi: Universal Law Publishing.
- Timbuong, J. 2020. Our economy loses RM2.4bil every day MCO is active, says PM. *The Star*, 25 April. <https://www.thestar.com.my/news/nation/2020/04/25/our-economy-loses-rm24bil-every-day-mco-is-active-says-pm> [8 January 2023].
- Wall, S. 2021. Perfectionism in moral and political philosophy. In Zalta, E.N. (ed.). *The Stanford Encyclopedia of Philosophy*. Stanford University. <https://plato.stanford.edu/archives/fall2021/entries/perfectionism-moral/> [8 January 2023].
- Wang, Y., Kala M.P. & Jafar, T.H. 2020. Factors associated with psychological distress during the coronavirus disease 2019 (COVID-19) pandemic on the predominantly general population: A systematic review and meta-analysis. *PLoS One* 15(12). <https://doi.org/10.1371/journal.pone.0244630>.
- Welsh, B. 2020. COMMENT | No 'darurat' needed. *Malaysiakini*, 24 October. <https://www.malaysiakini.com/columns/547920> [8 January 2023].
- Wilson, W. 1887. The study of administration. *Political Science Quarterly* 2(2): 197.
- Wilson, W. 1966. A league of peace. In *The Puritan Ethics in the United States Foreign Policy*, edited by Larson, D.L., 183. New York: Van Nostrand.
- Yankah, E.N. 2008. The force of law: The role of coercion in legal norms. *U. Rich. L. Rev.* 42(5): 1216-1217.

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