

## THE CORONAVIRUS: OLD VS YOUNG

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*This paper makes a sceptical case against the way Australia's government (and most other governments) invoked lockdowns to handle the coronavirus outbreak. This governmental response amounted to one of the biggest inroads into civil liberties in this country ever. It was based on modelling that has not stood the test of time. It significantly hurt those in the small business private sector but not those in public service or the politicians themselves. And most particularly, it was a response that differentially affected those who are young considerably more than those who are old. The author considers the morality of that and argues that this has been one of the worst public policy misfires of the last century.*

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I was surprised to receive an invitation from the editors of this law journal to write a short article on the implications of the coronavirus. I was surprised because as a sceptic of bills of rights and of over-powerful judges,<sup>1</sup> this is not my natural home. I also happen to believe that any journal that puts human dignity front and centre – in its very title no less – will either struggle to avoid dealing in the anodyne, trite and unobjectionable (since, in one sense, who can be against it?) or it will be plunged into deep philosophical waters where it is far from clear what ‘dignity’ might mean,<sup>2</sup> indeed whether it can even escape the charge of being an empty concept.<sup>3</sup>

Still, the invitation was a pleasant surprise and I accepted – though not before warning the editors that my views often strike many in the lawyerly caste as heretical.<sup>4</sup> I, overwhelmingly, am on the side of free speech,<sup>5</sup> and the J.S. Mill notion that blunt

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<sup>1</sup> For a small sample of this see James Allan, ‘Bills of Rights and Judicial Power – A Liberal’s Quandary’ (1996) 16(2) *Oxford Journal of Legal Studies* 337; James Allan and Grant Huscroft, ‘Constitutional Rights Coming Home to Roost? Rights Internationalism in American Courts’ (2006) 43(1) *San Diego Law Review* 1; James Allan, ‘Portia, Bassanio or Dick the Butcher? Constraining Judges in the Twenty-First Century’ (2006) 17(1) *King’s College Law Journal* 1; James Allan and Michael Kirby, ‘A Public Conversation on Constitutionalism and the Judiciary between Professor James Allan and the Honourable Michael Kirby’ (2009) 33(3) *Melbourne University Law Review* 1032; James Allan ‘Against Written Constitutionalism’ (2015) 14(1) *Otago Law Review* 191; James Allan, ‘Why Politics Matters: A Review of Why Law Matters’ (2018) 9(1) *Jurisprudence* 132; James Allan, ‘Statutory Bills of Rights: You Read Words In, You Read Words Out, You Take Parliament’s Clear Intention and You Shake It All About – Doin’ the Sankey Hanky Panky’, in Tom Campbell, K D Ewing and Adam Tomkins (eds), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press, 2011) 108-126; James Allan, *Democracy in Decline: Steps in the Wrong Direction* (McGill-Queen’s University Press, 2014).

<sup>2</sup> The Supreme Court of Canada dabbled with the concept of dignity as a means to understand equality rights, but then abandoned this avenue. The initial dignity case was *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497. The Court there ascribed the protection of essential human dignity as the purpose of the equality right in the Canadian Charter of Rights and Freedoms, and required a demonstration that dignity was demeaned in order to succeed in establishing a Charter violation. This proved too difficult. It was abandoned about ten years later after being much criticized by academics.

<sup>3</sup> Just such a charge having been brought, convincingly to my mind, against the concept of ‘equality’. See Peter Westen, ‘The Empty Idea of Equality’ (1982) 95(3) *Harvard Law Review* 537. Westen’s core point is that for the principle of equality to have meaning, it must incorporate some external substantive values that determine which persons and treatments are alike. But, once these external values are found, the principle of equality is superfluous. Put differently, equality requires some earlier substantive value to be put in play and valued before the demand for equality, for treating X the same as Y, can make sense. On its own, not in the service of some other set of values, the demand for sameness or for equality is vacuous. It is empty. Worse, equality tends to cause confusion and logical errors. Consequently, Professor Westen concludes, the rhetoric of equality should be abandoned.

<sup>4</sup> For instance, as other past pandemics were named (accurately or inaccurately) in geographic terms, I saw (and still see) no reason to end that practice here. Were it up to me, I would not have abandoned the original label of ‘Wuhan virus’ even if that amounts to little more than an idiosyncratic protest against some of the more tangential idiocies of political correctness with their willingness to stop speaking the truth if such talk might, just might, offend others.

<sup>5</sup> See, for example, academic pieces of mine such as James Allan, ‘Hate Speech Law and Disagreement’ (2013) 29(1) *Constitutional Commentary* 59; James Allan, ‘Free Speech is Far Too Important to be Left to Unelected Judges’ (2013) 4 *The Western Australian Jurist* 5; James Allan, ‘The Administration of Australian

speaking in the back-and-forth cauldron of competing views is the least-bad and most effective method of discovering truth – feelings of offence or psychic harm be damned.

Moving on to the assigned topic, I am also something of a sceptic of the worth and merits of how the vast preponderance of governments around the world have responded to this coronavirus. Put to one side the governments of Sweden and Taiwan and one or two others and I think that governments have done a very poor job. I include Australia's response to the virus in that assessment. I predict that this will go down as one of the worst public policy misfires of the century. My initial take on the efficacy of lockdowns was very sceptical,<sup>6</sup> and the accumulation of evidence since then has only reinforced my view that they do not work, certainly not in any cost-benefit sense.<sup>7</sup> Then there is the modelling that came out of Imperial College in London (the ICL model). Now clearly it is true that there is very little about this virus, not least its lethality and prevalence, that is uncontested. There is and was much uncertainty. That said, this Imperial College modelling has proven to be woefully wrong - abysmal in fact:<sup>8</sup>

The modelling by Ferguson *et al* [the Imperial College modellers] was influential in the UK and the US ... Clearly, it was also influential in Australia. It has been the subject of extensive criticisms by other scientists, including a team at Oxford. As many have pointed out, the results of the Imperial College modelling were not subjected to peer review, and nor was the code used in the model made available,

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Universities: A National Scandal? or Amiss in Funderland?' in William O. Coleman (ed), *Campus Meltdown: The Deepening Crisis in Australian Universities* (Connor Court, 2019) 23; together with many of my weekly columns in the *Spectator Australia*.

<sup>6</sup> See, eg, my contributions to the *Spectator Australia*: James Allan, 'Corona Notes', *Spectator Australia* (online, 18 April 2020) <<https://www.spectator.com.au/2020/04/corona-notes/>>; James Allan, 'Churchill in Reverse', *Spectator Australia* (online, 9 May 2020) <<https://www.spectator.com.au/2020/05/churchill-in-reverse/>>; James Allan, 'Fear Porn Panic', *Spectator Australia* (online, 23 May 2020) <<https://www.spectator.com.au/2020/05/fear-porn-panic/>>.

<sup>7</sup> See, eg, Ramesh Thakur, 'Responding to COVID-19: Are Lockdowns Doing More Harm Than Good?', *The Strategist* (online, 6 May 2020) <<https://www.aspistrategist.org.au/responding-to-covid-19-are-lockdowns-doing-more-harm-than-good/>>; Ramesh Thakur, 'Six Deadly Lockdown Sins', *The Japan Times* (online, 29 May 2020) <<https://www.japantimes.co.jp/opinion/2020/05/29/commentary/world-commentary/six-deadly-lockdown-sins/>>; Carlo Caduff, 'What Went Wrong: Corona and the World After the Full Stop' (2020) *Medical Anthropology Quarterly* (forthcoming); David Miles, Mike Stedman and Adrian Heald, 'Living with COVID 19: Balancing Costs Against Benefits in the Face of the Virus' (2020) *International Journal of Clinical Practice* (forthcoming).

<sup>8</sup> See, for just one critique of this modelling, Aynsley Kellow, 'COVID-19 and the Problem with Official Science' *Quadrant* (online, 15 June 2020) 12 <<https://quadrant.org.au/magazine/2020/06/covid-19-and-the-problem-with-official-science/>>; As for the modelling in Australia that banded about potential coronavirus deaths of between 50,000 and 150,000 – woefully wrongheaded it turns out – see Dana McCauley, Eryk Bagshaw, and Rob Harris, 'Australia Prepares For 50,000 to 150,000 Coronavirus Deaths', *Sydney Morning Herald* (online, 16 March 2020) <<https://www.smh.com.au/politics/federal/australia-prepares-for-50-000-to-150-000-coronavirus-deaths-20200316-p54amn.html>>.

so they would not have met the [US Supreme Court's] *Daubert* standard if the coronavirus was [*sic*] the subject of litigation, rather than public policy-making.<sup>9</sup>

For those who find it hard to distinguish correlation and causation – who believe that the far lower than predicted death rates were *caused by* the lockdowns – there is Sweden to prove you wrong. Sweden's government, bravely, did not lockdown. It did not intrude on civil liberties in the way almost all other Western liberal democracies did. Other than banning gatherings of more than 100, and offering its citizens advice, it left them be. The deaths per million in Sweden have come in, thus far, below the tallies in Belgium, the United Kingdom, Spain and Italy, not much above France, and within sight of the United States.<sup>10</sup> The total number of deaths so far in Sweden have been 5,420.<sup>11</sup> Or put differently, 99.95 per cent of the Swedish population has *not* died of the coronavirus.<sup>12</sup> Remember, this is in a country that did not lockdown; did not order businesses to shut; did not indulge in extraordinary inroads into people's civil liberties; but merely gave advice and banned gatherings of triple figures or more. To show the ineptitude of the above-mentioned Imperial College modelling, Sweden without lockdowns was predicted to suffer between 70,000 and 90,000 deaths, later revised somewhat down, but in reality, has not hit 6,000.<sup>13</sup> As I said, these predictions have been stupendously wrong. It was these models that played some role in the responses of many governments. Yet some studies have now put the lethality of the coronavirus, in world terms, at not all that much worse than that of a bad flu season.<sup>14</sup>

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<sup>9</sup> Kellow (n 8) 14.

<sup>10</sup> On July 6<sup>th</sup>, 2020 at 2pm the numbers of deaths per million of population were: Belgium 843; the UK 651; Spain 607; Italy 577; Sweden 537; France 458 and the US 400. See 'COVID-19 Coronavirus Pandemic', Worldometer (Web Page, 6 July 2020) <<https://www.worldometers.info/coronavirus/#countries>>.

<sup>11</sup> Ibid.

<sup>12</sup> And for those Swedes under 60 years of age, 99.998 per cent have not died, making this a negligible cause of death for them. See Ramesh Thakur, 'The Rise and Fall of Coronavirus Modelling', *Pearls and Irritations* (Web Page, 27 May 2020) <<https://johnmenadue.com/ramesh-thakur-the-rise-and-fall-of-the-coronavirus-models/>>: "The best-known example of a country bucking the model is Sweden. Without compulsory lockdowns and with much of activity as normal, 99.998% of Swedes under 60 have survived."

<sup>13</sup> See Ibid. "Applied to Sweden, the ICL-like model projected that, without a lockdown instituted by 10 April, between 70,000-90,000 people would die by mid-May. The actual total on 22 May was 3,925 – significantly higher than its Nordic neighbours but far lower than most of Europe." The predicted deaths for the US were 2.2 million and for the UK half a million. For other pieces on the ineptitude of this sort of epidemiological modelling, see (n 8); see John Ioannidis, Sally Cripps and Martin Tanner, 'Forecasting for COVID-19 has Failed' (Blog Post, 11 June 2020) <<https://forecasters.org/blog/2020/06/14/forecasting-for-covid-19-has-failed/>>.

<sup>14</sup> See United States Government, *Centers for Disease Control and Prevention* <<https://www.cdc.gov/>>. Which now estimates the rate at about 0.26 % of contracted cases; Aynsley Kellow, 'COVID-19 and the

If that is the factual side of things, there is also the moral or normative side of things. When government decides whose livelihood is, and is not, 'essential', consequences will flow from that determination. Those deemed to be 'inessential' and forced to close may well see the owners lose their business. If, as is usually the case with small businesses in the private sector, there is also a personal guarantee to finance that business then the owner may well lose the family home as well. Meanwhile, all the politicians carry on with their same pay. So do those in the public service, perhaps at worst having to put off for a few months a foreshadowed raise but possibly not, perhaps even receiving a raise. So do those whose business was able to continue trading. Likewise, many of us (not all) in the universities. On any understanding other than one couched in terms of sloganeering, or politicking, it is simply a lie to say 'we are all in this together'.<sup>15</sup> The response to this virus by governments around the world, and by Australia's too, has been one that affects some people, some citizens, some businesses, far more than it does others.

Or perhaps, one could consider this virus through the prism of how the media and press have in general behaved, given that from my point of view they have been woefully lacking in scepticism about many aspects of this pandemic, and at times have come close to becoming purveyors of 'fear porn'.<sup>16</sup>

Or, again, one might look at how this lockdown response has devastated the developing world, where far more deaths are likely to be due to the governmental responses to the virus than from the virus itself. The mooted figures here are staggering. Professor Ramesh Thakur quotes Oxfam as warning that an extra half billion could be pushed into poverty due to the virus and governments' responses to it, while also citing the UN as estimating

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Problem with Official Science' *Quadrant* (online, 15 June 2020)

<<https://quadrant.org.au/magazine/2020/06/covid-19-and-the-problem-with-official-science/>>. 'There are at the time of writing fifty-one studies based upon the polymerase chain reaction or seriological studies that give a mean IFR [Infection Fatality Rate] of 0.27 per cent'. Death rates from the flu in developed Western countries range between 0.1 and 0.2 per cent.

<sup>15</sup> One might even point out that as the private sector implodes, and has to sell off assets, those with a guaranteed public sector pay will actually improve their comparative positions. Their purchasing power will grow as so many in the private sector lose their jobs.

<sup>16</sup> As it happens, this is one of the topics I consider more fully in another article of mine that was solicited (at about the same time this one was) by a different law review – *the Western Australian Jurist* – also for a special issue on the theme of the coronavirus. It should appear more or less when this issue appears. See too Allan (n 6), 'Fear Porn Panic', *Spectator Australia* (online, 23 May 2020)

<<https://www.spectator.com.au/2020/05/fear-porn-panic/>>; For a critique of the press that extends to the actions of the government regulator, Toby Young, 'Who Watches the Broadcast Watchdog?' *Spectator Australia* (online, 27 June 2020) <<https://www.spectator.com.au/2020/06/who-watches-the-watchdog/>>.

that the resultant economic downturn could cause hundreds of thousands of additional child deaths, in 2020 alone.<sup>17</sup> Professor Jayanta Bhattacharya (Stanford Medical School) and Professor Mikko Packalen (University of Waterloo in Canada) note that a) the governmental responses to the virus sees the UN forecasting an economic downturn that will increase the world's numbers in extreme poverty from 84 million to 132 million; b) the lockdown may cost two years' economic growth, which 'would end up taking nearly six million young lives in the coming decade'; and c) the 'World Bank has calculated [the] countries [that] will be hit hardest, and how many more are about to end up in poverty. In Congo, 2 million. In Nigeria, 5 million. In India, 12 million'.<sup>18</sup>

Any or all of those issues touching on the implications of the coronavirus would have made fitting themes to fill out the remainder of this short article. In the end though, I opted for another topic to consider in slightly more depth. This is the topic of how these governmental responses (ours and other non-Swedish democracies) have differentially affected those who are old and those who are not. You see, it is plain that the young – those in university, those just out of university, those in the first few years of their careers, those still in high school, those missing early years in school, even chunks of those in their 30s and 40s – are paying a much heftier price for the heavy-handed governmental lockdown response than are the old (by which I mean not just the elderly, but those at the tail end of their careers). I want to look at the morality of that. I want to consider the trade-offs involved, whether governments actually took the time to consider them or not. I want to argue that the young have been very hard done by indeed.

To start though, readers must remember that this coronavirus does not kill the young at anywhere near the percentage levels at which it kills the old. In fact, those under 65 years of age who catch the coronavirus have pretty much the same chance of dying as they do from the flu or from driving to work.<sup>19</sup> In this sense, the coronavirus is nothing like the

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<sup>17</sup> See Ramesh Thakur, 'Responding to COVID-19: Can We Save Lives and Preserve our Quality of Life at the Same Time?', *The Strategist* (online, 5 May 2020)

<<https://www.aspistrategist.org.au/author/ramesh-thakur>>; Emeritus Professor Ramesh Thakur was Director of the Centre for Nuclear Non-Proliferation and Disarmament (CNND) in the Crawford School, The Australian National University and Vice Rector and Senior Vice Rector of the United Nations University (and Assistant Secretary-General of the United Nations) from 1998–2007.

<sup>18</sup> Jayanta Bhattacharya and Mikko Packalen, 'Lives vs Lives – The Global Cost of Lockdown', *The Spectator* (online, 16 May 2020) <<https://www.spectator.co.uk/article/lives-vs-lives-the-global-cost-of-lockdown>>.

<sup>19</sup> See The Editorial Board, 'The Covid Age Penalty', *The Wall Street Journal* (online, 12 June 2020) <<https://www.wsj.com/articles/the-covid-age-penalty-11592003287>> – 'For most people under the age of 65, the [Stanford Ioannidis] study found, the risk of dying from COVID-19 isn't much higher than from

Spanish Flu of a century ago that was a good deal more lethal to the young.<sup>20</sup> As time goes on, even fewer young are dying of coronavirus – and I mean fewer in comparative terms, in terms of the percentage of overall deaths.<sup>21</sup> Or, to take just one representative US State of Pennsylvania, more people over the age of 100 have died of the coronavirus than under 45; more over 95 years of age than under 65, and more over 85 than under 80.<sup>22</sup> For those under 15 in Britain, there is a greater chance of dying from being hit by lightning.<sup>23</sup> The evidence on this is clear. It follows that government lockdowns are for the benefit of the old, not the young – since the risks the coronavirus poses for young people are ones, as I noted, even lower than those posed by the flu.

Put more bluntly, the steps taken to combat the effects of the virus have been taken to benefit the old, the ones who face out-of-the-ordinary and real risks from it. Yet, the costs of these steps taken by governments around the world (leaving aside Sweden and Taiwan and possibly Japan) have been borne overwhelmingly by the young. They do not face much risks, if any, and yet they pay the costs of the measures imposed.<sup>24</sup>

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getting in a car accident driving to work'. Many people seem to have forgotten that Australians die of the flu. The yearly death rate from the flu is between 0.1 and 0.2 per cent.

<sup>20</sup> Even the regular flu is more lethal to the young. See *Ibid.* 'Fatality rate comparisons between COVID-19 and the flu are inapt because they affect populations differently. Children under age 14 are between 6.8 and 17 times less likely to die of COVID-19 than the seasonal flu or pneumonia, assuming 150,000 coronavirus deaths this year'.

<sup>21</sup> 'The Covid Age Penalty' (n 19) – 'In late March, Americans over age 75 made up about half of all weekly deaths [accompanying chart omitted] while those under 45 made up between four and five percent. Now those over 75 make up about two-thirds of deaths while those younger than 45 make up less than 2%'.

<sup>22</sup> See Pennsylvania Department of Health Bureau of Health Statistics and Registries *Weekly Report for Deaths Attributed to COVID-19* (Report, 17 May 2020).

<sup>23</sup> Or so says Professor David Spiegelhalter of the University of Cambridge's Winton Centre for Risk. This was widely reported, including in Sarah Knapton and Christopher Hope 'School Age Children More Likely to be Hit by Lightning than Die of The Coronavirus', *The Telegraph* (online, 9 June 2020) <<https://www.telegraph.co.uk/politics/2020/06/09/school-age-children-likely-hit-lightning-die-coronavirus-oxbridge/>>.

<sup>24</sup> This general claim, that how governments are fighting the virus has been with an eye to benefitting the old, not the young, is not meant to rule out the plausible and real possibility that older people are on net also being hurt by lockdowns (as opposed to a policymaking 'best case scenario' of targeted protection for the vulnerable). It is just that they are being less hurt by them than are younger people. Essentially, the possibility here is that while the lockdowns have been taken in the name of the older and more vulnerable, in fact this group, just like the young, may be better off without them. This can be argued in myriad ways. For example, the old are more likely than the young to live alone and hence to have suffered damage from the social isolation produced by lockdown restrictions; the old are more likely to suffer from non-COVID-related illnesses and disabilities for which care and attention have been crowded out in this COVID fanaticism; and, in the longer run, countries that have attempted to slow the spread of the virus have delayed the building up of immunity amongst the healthy population, which in the long run is most protective of the old and otherwise vulnerable. There is no evidence that wholesale lockdowns save lives on net, but also no evidence that they save lives on net even of those vulnerable to the virus, relative to a best-case alternative policy. I thank one of the anonymous referees for this insight.

What costs are those one might ask? Well, there are quite a few. Schools have closed. For all but the brightest children or those from the wealthiest backgrounds (who can afford top private schools) this affects their life prospects. Australia's schools already do badly in international comparisons.<sup>25</sup> Children who in substance miss out on a year or even half-year of proper schooling suffer greatly. Classes delivered by Zoom or other technology are no substitute for face-to-face teaching, as many students and most teachers know. Much the same goes for those in university. A year with ersatz classes delivered electronically is a substandard year. Some students will drop out who otherwise would not. More than a few first-year students, isolated at home, will fail to make the new friends they otherwise would have made and will miss out on one of the great years of their life. There is even this claim from author Lionel Shriver that:

... isolating schoolchildren within chalk circles may have a negligible epidemiological effect, but a profound psychological one. We are inculcating chronic fearfulness in our kids, who will skip from the helplessness of infancy to the neurotic hyper-caution of old age with no moon landings in between.<sup>26</sup>

Then there are the economic costs. It seems clear that these too, will be overwhelmingly borne by the young. If, because of the lockdowns and other governmental restrictions, the economy contracts as much as many predict, then we can expect it to be much harder for newly graduated university students to get jobs. We can expect young people in work to be laid off first, on seniority grounds. We can expect those young people who took chances – who did what any believer in a thriving, productive free-market economy would hope many would do – and shunned safe jobs in the public sector in favour of working for start-ups, or starting their own businesses, or taking on a risky job, or even just choosing the private sector will lose those jobs at a far higher rate than those who opted for a public sector job. We can expect those in their 30's with a business of their

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<sup>25</sup> For one example, we score below Kazakhstan in the Trends in International Mathematics and Science Study. See Dan Conifer, 'Australia Crashing Down International Leaderboard for Education, Falling Behind Kazakhstan', *ABC News* (online, 30 November 2016) <<https://www.abc.net.au/news/2016-11-30/australia-declines-in-global-education-report/8077474>>.

<sup>26</sup> Lionel Shriver, 'Is Living Without Risk Really Living At All?', *The Spectator* (online, 30 May 2020) <<https://www.spectator.com.au/2020/05/is-living-without-risk-really-living-at-all/>>. Shriver's point is that the 'group most inclined to elevate safety to the highest virtue is the elderly' and that this obsession with safety at all costs is not a self-evidently good thing. No country shut down its economy for the Spanish Flu, which was far more lethal. But this pandemic around 'the whole western world has clung to safety above all else. We've willingly traded prosperity, functionality, joy, good company and the productive futures of upcoming generations for short-term security'.



own that had taken off but now has collapsed to suffer, maybe even losing the family home. Maybe even seeing that family break up. In the meantime, we can expect the old, with seniority, with a comparatively healthy superannuation account, and with a paid-off home to suffer less – a lot less.

There is also this. The Australian government, like those of other Western democracies, has spent huge amounts of money propping up – or trying to prop up – businesses so that fewer will go bust and fewer will lay off workers.<sup>27</sup> The costs of this spending has basically doubled the Commonwealth government's debt. It will have to be repaid. In the short term, there are three options for the government: 1) raise taxes; 2) borrow money; or 3) monetise the debt. The latter of those, under which governments in effect print money, is the easiest one politically. Yet, it will almost certainly be accompanied by asset inflation; those with assets will find them rising in value, possibly significantly, while those without will miss out. Or put in the terms of this discussion and generalising, the old will win and the young will lose.

Early on in this pandemic, there was much criticism of sceptics, like me, on the basis that we were characterised as comparing lives with the economy – the critics suggesting that no monetary value ought ever to be placed on a life. Yet, this is just a sophomoric response, even if 200-odd Australian economists signed a letter to that effect.<sup>28</sup> Society puts an implicit price on life when it sets speed limits (at a maximum of 5 km/h there would be many lives saved in terms of foregone traffic accidents, but at a huge cost to the

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<sup>27</sup> Here is just one example, the government announcement of the hundreds of billions to be spent on Jobkeeper: Prime Minister of Australia, '\$130 Billion Jobkeeper Payment to Keep Australians in a Job' (Media Release, 30 March 2020) <<https://www.pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job>>.

<sup>28</sup> A link to that open letter can be found at Ramesh Thakur, 'Responding to COVID-19: Can We Save Lives and Preserve our Quality of Life at the Same Time?', *The Strategist* (online, 5 May 2020) <<https://www.aspistrategist.org.au/author/ramesh-thakur>>. Thakur, there, disagrees with those economists. And, of course, by no means all Australian economists agreed with these 200-odd signatories (though sceptical economists did face some severe public criticism). Gigi Foster, Peter Swan, Paul Frijters and others signed a counter open letter; See Graham Young, 'Open Up Our Country – Sign The Open Letter', *Australian Institute of Progress* (online, 8 June 2020) <<https://aip.asn.au/2020/06/open-up-our-country-sign-the-open-letter/>>; and Gigi Foster made her sceptical views clear on the ABC. See Economist Gigi Foster Questions Lockdown Decision on Q+A *ABC News* (online, 21 April 2020) <<https://www.abc.net.au/news/2020-04-21/economist-gigi-foster-questions-lockdown-decision/12168436?nw=0>>. What the 200-odd signatories overlook, or ignore, is that there is always an opportunity cost, and in the case of coronavirus that includes the medical interventions foregone, diagnostic and surgical, that will produce a reduction in life-years. The 200 simply ignored these costs, measured even in deaths. I thank a second anonymous referee for this insight which could be translated into one about the misallocation of resources.

economy and to lives otherwise saved by having such a flourishing economy). Likewise, not all life-saving drugs are listed on the Pharmaceutical Benefits Scheme, meaning those left off will cost the lives of some people, and will do so because of the cost of such drugs.<sup>29</sup> In courtrooms, an implicit price is put on life all the time.

It gets worse. Thus far, I have been treating the life of a 90-year-old as equivalent to that of the 20-year-old. In some moral senses, that is a correct assumption. However, in others, it is not. Epidemiologists talk, somewhat bizarrely, of ‘quality-adjusted life years’. A 20-year-old might be expected, today, to have 60 or more years in front of him (more for a her). A 90-year-old’s expectations would be massively less than that. Concomitantly, the ruined life of a 20-year-old will strike many – not just utilitarian consequentialists like me<sup>30</sup> – as a far worse prospect than a ruined 90-year-old’s future prospects moving forward. On this (though I am three years younger than she), I am with Lionel Shriver who, in relation to the British government’s response to the coronavirus, wrote ‘that protecting the lives and livelihoods of young people is socially, economically and morally more important than protecting lives of people like me’.<sup>31</sup> It is a morally noteworthy factor, or so I say, that the old have already lived long-ish lives and hence, that policies related to dealing with the coronavirus ought to have taken that difference into account. Instead, those policies did pretty much the opposite. They favoured the old at the expense of the young.

The morality of that sort of ‘safety at all costs, even if it is only really needed for that subset of society that is old’ is not self-evident – especially as it is the case that when, as in Sweden, people are left to make calls on their own, and governments limit themselves to giving regular advice and urging the vulnerable and old to take special care, the death

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<sup>29</sup> For a discussion of the cost of new hepatitis treatments, and justifying costly drugs for rare diseases more generally, see Charles Denaro and Jennifer Martin, ‘The Challenge of Costly Drugs’ (2016) 39(3) *Australian Prescriber* 72.

<sup>30</sup> See James Allan, *Sympathy and Antipathy: Essays Legal and Philosophical* (Ashgate, 2002), And note that philosopher Peter Singer is reported to worry about the generational dimension to all this too; See Adam Creighton, ‘Lockdowns Could Eventually Be Seen As An Over-Reaction’, *The Australian* (online, 13 August 2020) <<https://www.theaustralian.com.au/nation/lockdowns-could-eventually-be-seen-as-an-overreaction-says-philosopher-peter-singer/news-story/f5e9ede7faca62182f4ebddf1aee0e68>>.

<sup>31</sup> Lionel Shriver, ‘If This is a War, Let’s Fight it Like One’, *The Spectator* (online, 9 June 2020) <<https://www.spectator.co.uk/article/if-this-is-a-war-let-s-fight-it-like-one>>.

rate is simply not high. Indeed, it is about 0.026 percent or lower – not much worse than that of a very bad flu season.<sup>32</sup>

I finish by quoting Lionel Shriver again because her views on this strike me as spot on:

We've prioritised the preservation of life in a literal, short-term sense – possibly losing more lives than we've saved, once the collateral damage totals are in – while giving no priority to everything that makes life worth living, like the experience of bravery that young man leaping a gap in the wall relished last week. Worse, we've thrown the future of a generation under the bus. Safety is fine as far as it goes, but it's not the driver of a vibrant culture. Safety is about stasis. If all you care about is safety, you never leave the house, lockdown or no lockdown. Obsession with safety is the very opposite of ambition.<sup>33</sup>

Everything Shriver said in that quote is wholly compatible with a whole-hearted commitment to human dignity. That is why I believe the Australian government's response to this coronavirus, in time, will come to be seen as having been a public policy disaster (or fiasco, you pick).

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<sup>32</sup> See (n 14).

<sup>33</sup> Shriver, 'Is Living Without Risk Really Living at all?' (n 26).

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