



Written by [Steve Byas](#) on June 8, 2020

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## Pandemic Response Makes Liberty Sick in the States

### *From the print edition of* **The New American:**

In New York City, Mayor Bill de Blasio has threatened churches and synagogues with *permanent* closure if they dare to open their buildings of worship to hold services during the coronavirus pandemic. In March, de Blasio said, “A small number of communities, specific churches and synagogues, are unfortunately not paying attention to this guidance [to close during the pandemic] even though it’s so widespread.” One might notice that de Blasio used the word *guidance* rather than *orders*, but he clearly did not mean that he was just making some wise suggestions.



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“I want to say to all of those preparing for the potential of religious services this weekend,” de Blasio said, “if you go to your synagogue, if you go to your church and attempt to hold services after having been told so often not to, our enforcement agents will have no choice but to shut down those services.”

To make sure that neither Christians nor Jews assembled for worship, he added that law enforcement in the city “will take additional action up to the point of fines, and potentially closing the building *permanently*.” (Emphasis added.)

Later, de Blasio singled out members of the Jewish community with threats of arrest after they came together for the funeral service of Rabbi Chaim Mertz. De Blasio was agitated because he found out that not all the mourners practiced what the mayor contended was proper social distancing. “When I heard, I went there myself to ensure the crowd was dispersed,” the mayor tweeted. “And what I saw WILL NOT be tolerated so long as we are fighting the Coronavirus.”

In a follow-up tweet, de Blasio was more specific: “My message to the Jewish community and all communities, is this simple: the time for warnings has passed. I have instructed the NYPD to proceed immediately to summons or even arrest those who gather in large groups.”

It is certainly difficult to imagine that, in the United States of America, a mayor could actually believe that he has the authority to *permanently* shut down a house of worship. Of course, some might dismiss such warnings as mere hyperbolic bloviating from a mayor of New York City — which is, of course, one of the most left-wing areas of the country.

However, the maxim of 19th-century English political philosopher Lord Acton, “Power tends to corrupt, and absolute power corrupts absolutely,” is not only famous, it’s quite demonstrable in both history and current events.

Evidence that it’s true was produced by recent actions by many state and local officials in their



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response to the coronavirus pandemic. While some such officials have been mostly restrained in using their powers in an attempt to mitigate the COVID-19 situation, others have succumbed to the intoxication of power to the point of assaulting the liberties of the people they are supposed to be serving.

And such assertions of power have not been confined to liberal bastions such as New York City.

In Mississippi, undoubtedly part of the “Bible Belt,” church members were fined \$500 in Greenville for violating a curfew order promulgated by Mayor Errick Simmons. During a Thursday night service in April at the King James Bible Baptist Church, attendees were sitting in their vehicles in the church parking lot listening to a message from Charles Hamilton, the pastor, when they were surrounded by Greenville Police.

Jeremy Dys of the First Liberty Institute, who is representing Hamilton, explained what happened. “They [the congregants] park in their parking spaces, they keep their windows up, the doors closed, they never get out of their cars like the CDC [Center for Disease Control] recommends they do. There’s no exception to the United States Constitution for a pandemic. What Mayor Simmons has done is to apply an order without regard to equality and he’s singled out churches in particular.”

Another church in Greenville raided by police was the Temple Baptist Church. Temple Baptist member Lee Gordon recalled the scene. “We have everybody stay in their cars, with their windows up and go to a certain radio station, a low frequency station. The police started coming up and we said, ‘we think we’re within our rights.’ So they started issuing tickets, five hundred dollar tickets. I don’t know, it may have been twenty to thirty tickets.”

Gordon added, “Everybody got one. It wasn’t per car. Me and my wife was in a car together and both of us got tickets.”

## **De Blasio Orders No Protests Allowed**

Religious assembly has not been the only form of liberty threatened with curtailment during the pandemic. De Blasio has also threatened anyone planning a protest against his authoritarian policies: “People who want to make their voices heard, there are plenty of ways to do it without gathering in person. Use all the other tools you have to get your point across but avoid anything that might put other people in harm’s way.”

De Blasio’s police commissioner, Dermot Shea, was fully supportive of the mayor’s dictates. While conceding that the right of people to gather, the right of free speech, and the right to protest have historically been held “in the highest regard in this country,” he said he was the bearer of “bad news,” which was “we’re in a pandemic and executive orders have been issued, these are laws that have been passed down through executive order to keep people alive, while we greatly, greatly respect the right of people to protest, there should not be protests taking place in the middle of a pandemic by gathering outside and putting people at risk.”

Of course, there are many objections that could be made to what has happened in localities as diverse as rural Mississippi and New York City. For one, Commissioner Shea should know that executive officials such as the mayor cannot make laws via executive orders. The purpose of an executive order is to make sure that laws that already exist are enforced, not to create new laws *ex nihilo*.



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And, of course, the fundamental laws by which we are governed are found in constitutions, such as the U.S. Constitution and in the respective state constitutions. Any action taken by a mayor, governor, president, or any other executive official must conform to existing law. And legislative bodies, whether at the federal, state, or local level, cannot delegate legislative power to executives, as Congress has purported to do by delegating war powers and trade agreement powers to the president in recent years.

Writing in the *Second Treatise of Government*, English natural-rights scholar John Locke explained, “Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government.... It cannot be supposed that they should intend, had they a power so to do, to give to any one, or more, an absolute arbitrary power over their persons and estates, and put a force into the magistrate’s hand to execute his unlimited will arbitrarily upon them.”

Even legislators are bound by oaths they take to the U.S. Constitution and the various state constitutions. So are judges.

In Texas, another state with a reputation for individualism, Dallas Civil District Judge Eric Moyer ordered the jailing of salon owner Shelley Luther for ignoring a temporary restraining order, which prohibited her from operating her business, A La Mode hair studio. In addition to seven days in jail, he fined her \$500 for every day the salon remained open for business.

However, in a supposed display of leniency, Moyer told Luther, “If you would like to take this opportunity to acknowledge that your actions were selfish, putting your own interest ahead of those in the community in which you live,” he would drop the jail time.

Luther responded, “I have to disagree with you, sir, when you say that I’m selfish because feeding my kids is not selfish. I have hairstylists that are going hungry because they’d rather feed their kids. So, sir, if you think the law is more important than kids being fed, then please go ahead with your decision, but I’m not going to shut the salon.”

Interestingly, those shutting down businesses such as Luther’s have called business owners selfish if they object to being closed — and their income cut off — but that is easy to say if one is like Moyer or Mayor de Blasio, and one’s income continues in the midst of the shutdown orders.

Senator Ted Cruz (R-Texas) responded in a tweet, “Seven days in jail for cutting hair?? This is NUTS. And government officials don’t get to order citizens to apologize to them for daring to earn a living.”

## **The Purpose of Constitutions**

This is the crux of the matter. At least in America, we expect government officials to keep us safe by punishing evildoers in society, and to protect our liberties. It is not a proper role of government to destroy a person’s business enterprise.

That is why we have constitutions — to limit government to its legitimate purposes. Constitutions exist not to restrict the people, but to restrict the governments that they have established. Theoretically, governments can only do what their constitution allows them to do, and if they are not held to those constitutional restrictions, at all times, there will always be a pretext by those who are intoxicated by power over people to circumvent any restrictions. James Madison discussed this in *The Federalist*, No. 48, when he compared democracies, in which majorities are unrestrained, and our representative republic, which he contended the Constitution of the United States was establishing. “In a democracy,”



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Madison explained, “tyranny” will inevitably be imposed “on some favorable emergency.”

*Photo: AP Images*

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How state governments are presently responding to the pandemic is instructive. The argument has been made that the majority of the population favors the restrictions being imposed by power-hungry governors and mayors on businesses, individuals, and liberty in general. But liberty trumps democracy, regardless of what the majority wants to be done. Individuals should be allowed to conduct their own lives as they wish.

The precedent for our present situation, in which state and local governments have restricted the liberty of the individual — ignoring the clear wording found in the bills of rights of the respective states — in the name of protecting the common good, was established years ago, in various and sundry ways. Those advocating stricter gun laws always use this argument, regardless of what the Constitution clearly states about the right to self-defense.

But liberties do not come from the benevolence of government — hence government cannot undo them. As Judge Andrew Napolitano explains in his book *Constitutional Chaos*, “Natural Law theory teaches that the law extends from human nature, which is created by God. Thus, the Natural Law theory states that because all human beings desire freedom from artificial restraint and because all human beings yearn to be free, our freedoms stem from nature — from our very humanity — and ultimately from God.”

This view is clearly expressed by Thomas Jefferson in the Declaration of Independence, and it was a view shared by the Founders, in general. While Jefferson borrowed heavily from the ideas of Locke, such a position was not original with him, either. “St. Thomas Aquinas, the principal modern interpreter of Natural Law, directly contends that because God is perfectly free and humans are created in His image and likeness, our freedoms come from God,” Napolitano added. “The Founders held this same basic view.”

## **The Purpose of a Bill of Rights**

As such, near the end of the Constitutional Convention, George Mason — who had been the chief architect of the Virginia Declaration of Rights — insisted that a bill of rights be added to the U.S. Constitution. He faced stiff opposition from most of the other delegates, including Alexander Hamilton, James Madison, and Roger Sherman. Sherman lectured Mason that his fears were unfounded, as the rights of the people were well protected by the states themselves, eight of which had included a bill of rights in their own state constitutions. As the Constitution that had been crafted by the convention gave the new national government no power to address these rights, the new common or national government created by the convention could not restrict or add to them. They certainly could not endanger them.

But under pressure from the Constitution’s opponents, such as Mason and Patrick Henry, it was finally promised to multiple state ratifying conventions that a bill of rights would be added to the federal Constitution via the amendment process provided for in the document itself. The Bill of Rights, largely written by Madison, was adopted by Congress and ratified by the states by 1791.

Many today are not aware that a majority of the states, such as Virginia and Massachusetts, had already adopted their own listing of guaranteed rights — all restricting the power of their state governments.



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States added since the original 13 have also adopted their own bill of rights, or as some call them, “a declaration of rights.” In other words, they were “declaring” rights; they were not granting them.

Yet in Wisconsin in past weeks, the state enacted an order to citizens to stay at home, banning all “public and private gatherings” and crowds of more than 10. Wisconsin even mandated that individuals keep a distance of at least six feet from each other. So-called non-essential businesses were closed, with anyone daring to violate that order by illegally working facing a \$250 fine and up to 30 days in jail.

This would appear to be a direct violation of Article I, Section 4 of the Wisconsin Constitution: “The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall *never* be abridged.” (Emphasis added.) Apparently, *never* has arrived in the Badger State and in several other states.

While Wisconsin did not become a state until well into the 19th century, the original states had similar statements in their own constitutions. The Massachusetts Constitution, adopted in 1780 and the world’s oldest functioning written constitution — drafted by John Adams — was actually a model for the U.S. Constitution written nearly a decade later. Adams stated the purpose of government in its preamble: “The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their *natural rights*.” (Emphasis added.)

In its “Declaration of Rights,” the Massachusetts Constitution stated, “No subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience.” It also stated, “The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good.”

Perhaps most relevant to our present situation, the Massachusetts Declaration of Rights added, “The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it.” But as has already been stated earlier in this article, executive officials, including mayors and governors, believe they can make laws via executive orders. “The executive shall never exercise the legislative or judicial powers,” the Massachusetts Constitution adds, with the further stipulation that “the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.”

Another power commonly prohibited in state constitutions is the power to take private property without just compensation. It could be reasonably argued that ordering private businesses to close (supposedly for the common good of society during a pandemic) is, in effect, the state taking private property, at least temporarily. Sadly, forced closures of business by government, ostensibly on a temporary basis, may as well be permanent in many cases, as the business owners cannot survive being out of business for weeks — and months — on end. Thousands of businesses across the land — created and grown over decades in some cases — have been destroyed by the heavy hand of government in a mere few weeks.

### **What Is Temporary Tyranny?**

Of course, all of this is supposed to be “temporary.” When the German parliament gave Adolf Hitler dictatorial powers under the German Constitution’s Article 48, that was supposed to be “temporary,” as well. But now, as then, a slippery slope to despotism could begin at any time — there is always someone ready to rationalize away rights. And arguments claiming that religious liberty or the freedom to assemble are subject to “reasonable regulations” are the same arguments ordinarily made to justify





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circumventing the Second Amendment, a right that many liberals today would end in a heartbeat. What is next? How long will it be until someone argues that the permanent ending of religious services is needed to protect the public from the spread of disease? After all, congregants can watch services on the Internet.

The words in the Bill of Rights of the U.S. Constitution are comforting to those who value liberty — as are the words found in the constitutions of the states. But as the great statesman John Randolph of Roanoke said, “I have no faith in parchment sir, I have no faith in the abracadabra of the Constitution.”

What he meant was that if we are not prepared to stand up and oppose those who blatantly disregard the words written down in our beloved constitutions — federal or state — those words become meaningless scribbles found on a piece of paper.

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