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The Naked State: What the Breakdown of Normality Reveals

Giorgio Agamben shocked the world by noting that what “the epidemic has caused to appear with clarity is that the state of exception, to which governments have habituated us for some time, has truly become the normal condition.” And that “A society that lives in a perennial state of emergency cannot be a free society.” He preceded this comment by making the point that the disease had returned people to the state of nature: “Italians are disposed to sacrifice practically everything – the normal conditions of life, social relationships, work, even friendships, affections, and religious and political convictions – to the danger of getting sick. Bare life – and the danger of losing it – is not something that unites people, but blinds and separates them.”¹ His critics, for the most part, and in different ways, responded by asking for trust in experts, and implicitly cautioning him and his audience to avoid undermining their authority.

This message, to obey, was repeated over and over in the wider political culture, and especially in the press, which crowed its approval of the measures, mostly in the name of science. The “moderate” columnist for the New York Times, David Brooks, was explicit about this message:

 Aside from a few protesters and a depraved president, most of us have understood we need to suspend the old individualistic American creed. In the midst of a complex epidemiological disaster, to be anti-authority is to be ignorant. (Brooks 2020)

 The discrepancy between the “complex” character of the “disaster” and the implausibility of any complex matter being resolved by obedience to “authority” was apparently invisible to this writer and to the many commentators like him. But this response is a good opening to large questions about the relation between expertise and authority, and about the role of ordinary people in response to it. Agamben’s point about the normalization of the exception is also apt: sus-

1 Stanford University: The Bookhaven, 17 March, 2020. <https://bookhaven.stanford.edu/2020/03/giorgio-agamben-on-coronavirus-the-enemy-is-not-outside-it-is-within-us/> Published “in Italian on the blog *Quodlibet*. The essay was republished on *Medium*, and in an authorized translation by Adam Kotsko, who described it as the important European philosopher’s ‘indirect response to the controversy surrounding his article about the response to coronavirus in Italy’. It was also included in the *European Journal of Psychoanalysis*, in a round-up of thoughts on ‘Coronavirus and Philosophers’ (26 February 2020, <http://www.journal-psychoanalysis.eu/coronavirus-and-philosophers/>), and from there to Facebook.”

pending the American creed, for Brooks, is not a temporary event. It is a watershed, and the “suspension” is meant to be permanent.

Agamben’s language is taken from Carl Schmitt 2014 ([1921]; 2010 [1923]), as are his core ideas about the state. The idea that states of exception are being normalized appears misleadingly hyperbolic: what is being described is merely a set of facts that has become so familiar that we have become accustomed to them and ignore them (Higgs 1987; Scheppele 2010). Only in a state of crisis do they become apparent. And this crisis has brought together and made visible a large number of features of the present political order that have been hidden, though, like the purloined letter, hidden in plain sight. These include the following: the common phenomenon of expert failure (Koppl 2018; Turner 2010), the structure of normal accidents of expertise, the problem of assigning accountability to experts, the variation in national traditions in responding to expertise, the dependence of ordinary governance on usually faceless expert bureaucrats, the tendency of political and historical narrative to conceal the role of experts, the fact of expert disagreement and the means of suppressing and containing it, the predominance in expert-related contexts of ill-formed problem spaces in the crisis that demands the suspension of ordinary life, and that authority, rather than normal legal and political procedure, needs to be obeyed.² The expansion of powers is typically in the form of wider discretion by bureaucrats, who respond to a novel situation, one not strictly covered by explicit rules or past practice, but which is viewed under the aspect of necessity – not a formal or declared emergency, but a tacit acceptance that something must be done, after expertise-based “emergency.”

What Brooks’ comment underlines is that Agamben’s appeal to Schmitt was essentially correct: the moderate point of view is that this is a crisis, that it is a crisis that demands the suspension of ordinary life, and that authority, rather than normal legal and political procedure, needs to be obeyed, and that this topic and the use of authority is not to be subject to debate – to debate it is to be ignorant and therefore unworthy of anything but the hand of authority. But it raises another Schmittian question: what is normal? And who decides the situation is not normal or is a “disaster,” to use the language of the exception chosen by Brooks? The appeal to science is Brooks’ answer: and the easy collapse of the notion of science into the notion of authority calls to mind Schmitt’s favorite line from Hobbes: *auctoritas non veritas facit legem*. The appeal to expertise erases the distinction, and with it the possibility of criticism of authority on

² All of these are topics of chapters in my *Politics of Expertise* (2014), which contains previously published articles.

the ground of truth: truth and authority are one. Hence to be anti-authority is not merely to be rebellious, or independent, but to be ignorant.

The Normal

Schmitt's account of the state of exception depends on a distinction between the normal situation, in which legal norms apply and make sense, and abnormal situations, in which the suspension of the legal order is necessary to preserve it, or to preserve the state. It is in this moment that we see the naked state—the state in the act of being itself, without the drapery of superficial justifications and minor sanctions that normally suffice to legitimate it. When the police come to quell a riot, we see the naked state: the normal rules are suspended, orders are given and enforced by direct physical violence, and this continues until order is restored. But this suspension of the rules tells us about the normal: that the normal is the absence of riot, but the possibility of riot is nevertheless always present, and not preventable by the mere continued operation of the normal rules. The normal cannot be relied upon to perpetuate itself. Its reliable perpetuation is only possible because of the possibility of the exception. And the exception serves to do what the normal rules normally do, but have failed to do.

In a crisis the normal rules do not suffice, but the central things, that the rules normally do, such as keep order, need to be done in an exceptional way, a way beyond normal rules of enactment, typically by decree or “orders.” The exception thus reveals *what* is central, what the conditions of normality are, but also *who* is central, because the execution of the tasks performed under the state of exception has to be done by someone. Schmitt was describing a formal legal institution, Article 48 of the Weimar constitution, which was repeatedly invoked during the Weimar republic, for matters large and small. But he generalized its significance by showing its near or *de facto* universality in legal orders, and its roots in the Roman law of constitutional dictatorship. And we can generalize it further by noting the ways in which normal rules are suspended in a crisis by acquiescence to the expansion of normal bureaucratic discretionary powers. By seeing who acts and how others act in response in a crisis we see what powers that people actually possess, but are latent or unused in normal situations (Bachrach and Baratz 1962, 1975; Debnam 1975).

Agamben's warning that states use crises to expand their power perturbed his audience, which generally favored the benign expansion of state power governed by expert knowledge. The phenomenon is a staple of the specialist literature, which speaks of the ratchet effect of expanded powers (Higgs 1987). The expansion of powers is typically in the form of wider discretion by bureaucrats,

who respond to a novel situation, one not strictly covered by explicit rules or past practice which is viewed under the aspect of necessity – not a formal or declared emergency, but a tacit acceptance that something must be done, and done by the agency or official with the resources to do it. In the US, this is often done through a complicated series of indirect administrative means, such as advisory letters, which do not require, or are treated as not requiring, the normal processes for rule-making, which require public input (Turner 2020). These “little exceptions,” along with the expansion of discretionary powers they entail, become the normal – which is Agamben’s point as well, which he phrases by arguing that the exception has become normalized. This process is not as dramatic as a declaration of emergency, and does not reveal the state naked. But the extent to which the accumulation of little exceptions has altered and expanded the powers of the state can be revealed in moments of crisis.

The C-19 pandemic is such a moment. And what it revealed is the power of experts. We can think of the relation between expertise, the state, and the public as a three-legged stool, or a triangle. In this crisis, the relations were clear: governments relied on experts; the experts had legitimacy apart from their formal roles and independent of the legitimacy of the state or its representative institutions; the public accepted, or declined to accept, state authority because of their acceptance or rejection of the experts, but the experts depended on the state for its patronage and to some extent on their recognition as experts.

In normal circumstances, this three-legged stool, of state, public, and experts, is stable and invisible. The public feels secure in the idea that the discretionary powers of the state, and more generally the policies, are being carried out in accordance with expert knowledge and reflect expertise. The experts are faceless and unknown to the public. Their disagreements and the precarious nature of their expertise are not known. The relationship is one of trust. The state, Hegel-like, pretends to represent the interests of the whole people.

The *hidden* relations between these three legs are best understood as relations of non-decision: the public doesn’t revolt against the state; the experts do not denounce the state; the state does not defund the experts or restrict them; the public does not disbelieve the experts, the state, or the mass media; the experts do not directly deny what the public knows; the state does not directly assault the public or deny its competence to judge it. In a crisis, the stool becomes unstable. Each leg had its own de-stabilizing tendencies, which became apparent only in crises. Part of the stability of the expert leg was owed to the hiddenness of expertise. The “public” is a myth that gets represented to itself and the state by the media. The state, with its labyrinthine complexity, is barely intelligible, except when it acts. And its acts are themselves often inscrutable, by design. Expertise is by definition a mystery to those who do not possess it.

The Three Legs

Experts

What is normal for experts in a pandemic? Pandemics and epidemics are relatively frequent occurrences, and there are normal procedures for dealing with them. In the US, responsibility devolved to the CDC, the Centers for Disease Control and Prevention (Bennington 2014: 12). The processes developed as a result of several bad experiences, but the H1N1 flu response of 2009 was generally regarded as a success. It featured good interorganizational relations with different parts of the US government and the WHO, and acceptance and approval by the public.

What worked in this earlier case was a system in which a key team integrated the ideas of a large number of contributors – there were over 200 within agency comments on a preliminary report (Bennington 2014: 186) – in the agency itself to address as many aspects of the situation as could be contained in a reasonably short and clear set of messages. This was an act of social construction: the team made up the message out of disparate material, selecting for relevance and importance, with an eye to influencing behavior in order to reduce the impact of the disease. This was not “science” in the raw sense – research results fresh from the lab or field, or the product of a long process of sorting out these results through peer-review and scientific competition – but a carefully refined consensus message produced through bureaucratic methods.

The agency is well funded – over \$4 billion annually. It does not have a monopoly on research in this area, but its presence is overwhelming. The production of advisories and policies during a pandemic uses medical science – medical being an important qualifier – but is a product of multiple bureaucratic and value judgments, and founded to a significant degree on guesswork based on past experience. Medical knowledge is short of scientific knowledge in the normally understood sense: it needs to be adapted to individual circumstances to be applied, and is almost always short of full understanding of a complex biological process. In the case of so-called “observational epidemiology,” matters are even more difficult: this is essentially standard social science causal modelling and statistics, with the usual problems of confounding and multiple causes. The field has been in crisis for decades (Grimes and Schulz 2012).

To speak of these public statements as “the science” is thus wildly inaccurate. They are boundary objects, carefully constructed for public consumption, but also to synthesize a great deal of knowledge, judgment, guesswork, and uncertainties that are hard to estimate. And they are purposive: they are written to change behavior, and also to protect the agency in the event of failure. Preserv-

ing trust is an important value. Disagreement is aired privately, and dealt with; bureaucratic infighting is always in the background, and some voices get a larger say than others. Nevertheless, the process is, in normal circumstances, effective at crowding out other expert voices, or accommodating them. So there is not, if the system works, significant expert dissent.

But the realities of patronage lie behind these organizational niceties. A court case after the Katrina disaster gives some indication of the power of the state to coerce consensus. An obscure engineering researcher at Louisiana State University criticized the Army Corps of Engineers, which was responsible for the levee that failed and flooded much of the city of New Orleans, for its errors. The university, apparently encouraged by its own professors, had the researcher fired. The case went to court and eventually was settled without a trial with a payment to the researcher.³ The issue, however, was important: it was believed that the criticisms would affect the relationship between the university and the federal government, on which it depended for research grants, even though the Army Corps was not itself a source of funds. The situation with the CDC is precisely parallel. The main source of funds in the area of infectious disease was the National Institute of Allergy and Infectious disease (NIAID) which received \$5.89 billion in the 2020 budget. The total NIH budget is over \$40 billion. These funds are a matter of scientific life or death for researchers in this area.

NIAID did not have responsibility for pandemics – but it did have responsibility for funding the vast research apparatus of academic medicine on these diseases. This in itself raises fundamental questions about science policy: was the money spent on the wrong topics? But for our purposes the issue is latent power. The unusual feature of this pandemic was that the CDC was sidelined early, and a new body, The White House Coronavirus Task Force, operated under the Department of State, was established on January 29, 2020.⁴ On February 26, 2020, Vice President Mike Pence was named to chair the task force. Deborah Birx was named the response coordinator. Anthony Fauci, the head of the NIAID, and Deborah Birx, became the key representatives of “science” in the public pronouncements of the national government and stood beside Trump and spoke with and after him on the crisis as it unfolded.

³ Mark Schleifstein, 2013, LSU Spent Nearly \$1 Million on Legal Fight over Firing of Coastal Researcher Ivor van Heerden. *The Times-Picayune*, 3 April. https://www.nola.com/news/environment/article_6851241d-1c3b-5b5e-ac50-b4db0ddcf0b0.html

⁴ Statement from the Press Secretary Regarding the President’s Coronavirus Task Force, 29 January 2020. <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>

This was a departure from the normal. And it was a result of a breakdown in the normal processes themselves. The CDC and Anthony Fauci had failed to recognize the severity of the virus, in large part for reasons intrinsic to the problem of detection, the limitations of the scientific knowledge available, and the need to make judgements about it. Not for nothing did one of the founders of public health medicine declare that it was part science, part art. These issues have been discussed extensively elsewhere, and as this is written continue to unfold. From the point of view of the problem of normalcy, however, one issue is crucial. The CDC asserted exclusive power over the provision of detection kits at the beginning of the crisis, and developed kits which turned out to be faulty as a result of contamination in manufacturing. The kits were found to be faulty by another powerful agency, the Food and Drug Administration. This embarrassing failure led to the loss of control of the CDC over the process, and to an open expression of distrust of the work of the agency by Deborah Birx.

With this failure the possibility of public dispute between experts opened up, and, in contrast to past pandemics, and as a result of different policy choices by other countries, the façade of unified expert agreement – that there was such a thing as “the science” that could be simply obeyed – was ripped off. Diverse expert opinions were aired. Different policies were adopted, both in different countries and in different states in the US, where public health, under a federal system, is primarily a responsibility of states. Private foundations entered the fray, with their own programs and research agendas (Morcillo 2020). Recommendations, such as for masking, were given and withdrawn, and given again. And most visibly, projections were made and failed to be fulfilled. These included the most politically volatile ones, which revolved around the availability of ventilators, which were thought at the early stages of the crisis to be crucial for care, but which turned out to be sufficient and not uniformly helpful as it became clear that the disease was not simply a respiratory problem.

But there were more departures from the normal. The pandemic demanded immediate answers – not something that the science system normally delivers, and this was especially true for the medical science system. Science has, and is, an elaborate system of social control, which operates with multiple redundant mechanisms, all designed to produce conformity in results. The peer review system for grants is one; it is closely connected with the status hierarchy, which is another, along with the degree system, the certification and licensing system, and several other bureaucratic systems, including Institutional Research Boards which approve research and privacy protocols for human subjects, and most powerful of all, drug approval agencies, which normally demand years of testing and an encyclopedia length application for approvals. The system of publication itself of course depends on peer-review and is often slow.

All of these systems were challenged in the crisis. Preprints and unreviewed papers appeared, and clinicians and outsiders to the medical research hierarchy were able to present research results without the usual barriers. Issues immediately arose. Retractions became common, and important figures, such as John Ioannides, the medical statistician, who promoted certain pieces of research and warned against taking seriously much of the research that was being presented, were savaged in the elite press (Heer 2020) for taking funding from “right-wing” sources. This was a sign of system failure: the dirty linen of science was exposed to public view, along with the opinions and claims of many different scientists. The effort to suppress views that were unwelcome, of course, also became visible, rather than being hidden in confidential referees’ reports.

The “science” became nakedly political when two studies appeared in major journals, *The Lancet* and the *New England Journal of Medicine*, that had already editorialized against. The articles supported the contention that the familiar and notably safe anti-malarial drug Trump had touted was in fact both unsafe and useless. They had immediate effect: research into them was halted and public statements were made by official agencies. In a short time, however, the articles, which had been rushed into print without the usual slow review and without availability of the data, which were proprietary and kept secret, in one case, had to be embarrassingly retracted. As some of the commentators on these retractions noted, while these retractions were presented as exceptions, this too was a case which merely revealed what was normal: retractions, shoddy research, and the use of research to advance interests were all commonplace in science (Marcus and Oransky 2020).

The expert leg failed. What it needed was to keep the façade: to hide or prevent behind the scenes disagreements, which are normal both in science and bureaucracies, from becoming public and therefore an object of political side-taking. What happened instead was that the choice of policies drove the choice of experts: governors who imposed draconian lock-downs appealed to the experts with the most dire predictions, and when these predictions failed, to the experts who predicted a second wave. The governors who opted to reopen their state appealed to the experts who rejected the predictions, who typically did so on the basis that there was insufficient high-quality evidence to support the interpretation of the disease that they depended on. The differences between states also reflected the severity of the outbreak and their localization. At this point, two-thirds of the deaths have occurred in a geographically small portion of the country, most heavily in New York City and environs, and in a few urban centers. In the rest of the country a large proportion of the deaths have been in nursing homes.

The expert resolution to the issues raised by the pandemic, if there ever is one, is far in the future. Even the basic mechanisms of mortality are not understood. The crucial problem of transmission is still poorly understood and debated. Whether infection confers immunity in the future is not sure. ~~The issue of the second wave, or whether reopening will produce a massive increase in infections, is unknown.~~ The effects of the vaccine are unknown. Yet these are the questions that policy depends on. ~~So at this stage, when the pandemic seems to be abating, there is no expert resolution.~~ In real time, this was a case of expert failure. And this meant that the expert leg of the stool could not bear the weight and it shifted to the other two legs. The illusion of apoliticality was nevertheless destroyed. The experts chose sides, and the public and politicians chose experts that fit their preferences. The failures of prediction and inconsistencies in the claims made by experts and politicians were instantly recorded and monitored on the web.

The State

The use of emergency powers in response to riots or insurrections, is the state in its pure form: using violence to defend itself. This was Schmitt's model, and it can be seen today in the many uses of emergency powers that litter the globe. The absolutist states of early modern Europe operated, in effect, using these powers all the time: they recognized no limits on the sovereign's power. Schmitt modelled his general account of these powers on the Roman institution of temporary dictatorship, in which the temporary character of the powers was regulated *de jure*, to one year. But there is a similar *de facto* limit on emergency powers that is especially relevant to nominally democratic states: they cannot go on too long or seem too ineffective without producing enough non-co-operation to delegitimize the state or leader employing them. Dictatorships can succeed, and people acquiesce in them. But if they do not, they will be temporary, and replaced by other political options, such as revolution or invasion.

In the case of pandemics the same principles apply, but because the pretext for the state of emergency is expert claims, the experts become entangled with the legitimacy of the rulers assuming dictatorial powers themselves. This strengthens the rulers, but binds the experts to them. Experts become part of the legitimation of the powers, but also become subject to de-legitimation if they fail to produce the results that justified the state of emergency.

One of the striking features of this crisis is the resemblance between it and the cholera epidemics of the nineteenth century, and with the differences between national state traditions in responding to it. States responded to this crisis

in much the same way as they had before: bureaucratic traditions are astonishingly robust and long lived. In Britain, the task was given to a single great man, who headed the statistics office, and was challenged, unsuccessfully, by an outsider of lower social rank, until, as the result of a crucial experiment, even he had to admit to being wrong; interestingly enough on the relative importance of water and air as a means of transmission. The Germans worked on a bureaucracy led stakeholders model, and listened to the experts they wanted to listen to. The Americans, with their federal system, had state and local governments with bodies which were pressured by voluntary organizations, in the case of New York a body of physicians, and established best practices which were copied by other jurisdictions. The history was littered with reports of committees and councils (G. F. Pyle 1969). The fact that a commission was created for C-19 was another use of this political method. The current oddity of the Swedish response also ran true to form: the bureaucracy, legally insulated from ministerial interference, made its own decisions by consulting the experts of its choosing.

Each of these solutions to the problem of assimilating expert knowledge had their own problems, and critics. But they also illustrate the gap between good science and successful policy. In London, adherence to the miasmatic theory of transmission prevented the improvement of the water system, though it did occur but for other reasons. In the US, the policy, sanitary reform, worked despite being wedded to the miasmatic theory. In Hamburg, scene of the most horrific and last great European outbreak of the disease in 1892, the best science was available, but the city leaders chose the wrong expert, and rejected the national leader on the subject.

States, to a greater or lesser degree, generated internal conflicts. This was especially true in the United States, where doctrines of the separation of powers and limited government were foundational for the political system, and in which the federal government had, under the constitution, only a short list of “enumerated powers,” with “police” powers in the hands of the states alone. These divisions of powers were made even more complicated by the creation of independent agencies with their own rules for public participation, one of which, the Food and Drug Administration, played a large role in the C-19 crisis, first by rejecting the test kits of the CDC, then stopping research projects, and regulating testing.

In normal circumstances, conflicts between units of the state are rare, but only because practices and judicial doctrines have developed to avoid them. A fundamental political feature of modern states, also noted by Schmitt, is that they combine within themselves conflicting constitutional principles. Sometimes this is by design, as with the doctrine of separation of powers and the creation of independent agencies in the US; in Europe more often a result of historical con-

tinuities in which parliamentary institutions were imposed alongside a monarchical bureaucratic and advisory system which was never abolished, or in Britain, where the monarchical, aristocratic, and parliamentary system have a formal role and relation, but the civil service has continuity, self-selection, and thus considerable *de facto* autonomy. One even has odd cases, such as Iran, in which rule by jurists is the fundamental principle, but there are nevertheless parliamentary institutions and an executive with a president. Quangos, quasi-nongovernmental organizations, are among the many hybrid innovations that have replaced privy councils and similar bodies.

In the normal situation, these do not conflict: they are designed to have separate domains. In a crisis, they are prone to conflict, and the point of emergency declarations is to override them, if they do not function. Expertise, and rule by experts, is its own constitutional principle, one which the people who say “listen to the science” are embracing. But expert rule has its own institutional forms, of committees and commissions, or independent agencies, which are, by design, separate from democratic accountability and influence. And it also has its own claims to legitimacy and public support.

The US lacks a constitutional emergency power, a problem that concerned some important political thinkers in the past. States, however, have “police” powers that by custom include emergency powers. But emergency decrees are reviewable by courts, can be nullified by legislators, and can be held to violate the federal constitution. The major conflicts so far have been in the courts, and there have been multiple cases. Most of them involve the reasonableness of emergency decrees. They indicate how problematic normal legal standards of equivalence, reasonableness, and so forth are in the face of expert claims, and therefore how difficult it is to draw legal limits on the state or its agencies. The simplest conflicts involve rights which are absolute, on paper, but subject to interpretation and “balancing” in the courts, and in which the courts are likely to “defer” to the supposed expertise of the executive branch, usually of a state government, but also to federal agencies, where there are a plethora of doctrines which courts appeal to in order to limit their responsibility for enforcing constitutional rights (Turner 2020).

These patterns embody Agamben’s concept of normalizing the exception, for each of these cases creates an exception to the plain text of the law, and from what people expect of the legal order. And there is a crucial background to this. The great triumph of continental liberalism was the *Rechtsstaat*, the state of laws, not men, superseding the *Obrigkeitsstaat*, the magistrate state, in which judges acted according their sense of right, or less creditable motives. Schmitt regarded the *Rechtsstaat*, with its pretension to neutrality and rule following, to be a fraud: there was no such thing as neutrality, and rule-following

still depended on the arbitrary interpretations of judges. Discretionary power for Schmitt was visible throughout the legal and bureaucratic system, and especially at the top, where the power to decide to suspend the law – to declare a state of exception—was located.

In the common law world, ruled by precedent, and with courts which can appeal to non-democratically created judicial doctrines that articulate precedent in congealed form, the self-limitation of the courts amounts to the normalization of discretionary power. Normalizing this power amounts to hiding it in plain sight: deferring to agencies and executives citing experts, and refusing to object to it on the grounds of judicial doctrines designed to keep the courts free of conflicts with other parts of the state. In the Civil Code world, courts, especially constitutional courts, have this role, and are more open in principle to being used by ordinary citizens. In practice, however, they run into difficulties in cases involving expert knowledge. A recent German constitutional court decision against the money creating powers of the European Central Bank, for example, failed to grasp the relevant economic principles. But these are exceptions. Normally courts avoid this kind of conflict.

Parliamentary systems, in their own way, normally suppress conflicts with the bureaucracy: party discipline limits the topics the party addresses, so the public is allowed to express itself only on this small menu. In Sweden, the elected ministers are forbidden to interfere in the work of the bureaucracies. In much of the rest of Europe, this is the *de facto* situation. In the pandemic, this discipline breaks down: the bureaucracies are scrutinized for their actions; parties cannot control the menu of topics allowed to be public concerns, and the press cannot ignore the crisis. The public comes into its own. But the public itself is exposed as something less than it was taken to be.

The Public

What is the public? In normal times, it is represented by the media. What the public thinks, feels, wants, emotes about, is recreated into an image. The image is created by elites, who tend to remake the public in its own image. But the history of Western thought from Plato forward is replete with dualisms about the public; the good public is the one which acquiesces. The bad public is the one which does not. The good public accepts the myth of the metals. The bad public, the mob, follows demagogues, silver tongued orators, and today “rejects science.” Jürgen Habermas spent much of his career attacking the actual public in favor of an ideal public. But he made his peace with a certain picture of public discourse, which we can treat as a representation of the

normal: the important public discussions are undertaken in the high-class press, by worthy discussants; the people gain access to this higher order of public thought through the press; they can then choose between the worthies (Habermas 2006). Social media, such as Facebook and Twitter, and blogs circulated through these media, as well as open comments sections on mainstream digital news media, have undermined this model, and the response has treated this “wild” form of public exchange as the embodiment of the bad public, which needs to be controlled and the content it produces and consumes policed.

The old normal and the new digital mob coexisted for a time. But in the crisis they diverged. The old form, of elite discourse played out as a drama for the public, failed, because the opinions of experts were so divergent, changed so often, they could not be gravely endorsed by people like Brooks for the masses to consume. By a familiar process of interest-detection, the public seized on the political motivations of the experts, the policy makers, and the pundits. Much of this resembled conspiracy theorizing. The *bien pensants* were horrified by this commentary. For them it proved that the unrestricted flow of actual public engagement spread falsehoods, and did not lead, as the theatre of elite discussion did, to consensus. It becomes a Gladiatorial arena, as some social science commentators put it (Costa and Murphy 2020).

This, however, was the actual public, which was now able to express itself, focus on the facts that it understood best or could understand best, and make inferences from these facts, without deferring to correct opinions paraded before them. The inferences were not flattering to the major sources of information, which exposed themselves as partisan and wrong on many matters that could be readily assessed through a variety of sources. The vast explosion of cases that was supposed to follow the students’ spring break was never mentioned again. When protests broke out over the death of George Floyd, the advice to avoid large crowds and the restrictions on gathering not only disappeared, but the people most adamant that public events and churches should be shut down for months suddenly approved of the protests and encouraged participation. These inconsistencies exposed the partisanship of the “expertise” on offer. The information the public worked with was not the best. But neither was the information held by the experts, or the state. And it was the only domain in which self-interest and agenda-driven policies could be openly debated for what they were.

The End Game

One of the many internet commentators invoked the ghost of Karl Popper in the course of the discussion, and asked what had happened to “falsifiability,” which for Popper had marked the line between science and non-science. It did not go away. The pandemic controversy evolved into two sides. Each side made a large epistemic bet on the outcome. The exponents of shutting down insisted that the worst was yet to come, that nothing should be allowed to happen until there was a vaccine, and that the most stringent state measures should remain in force indefinitely. For them it was important that many people, especially the people they disliked, who had resisted the measures, should suffer. The price of what they regarded as science denial should be death. It was an embarrassment to them that in the US after three months of crisis, two-thirds of the deaths were in the communities controlled by their kind of leader, who had imposed their kind of policy. Having others die would confirm the correctness of their opinions. They eagerly relayed any information suggesting that there was a “spike” in the number of cases in places that had re-opened to normal business and life. Having poor and Black people die would confirm their moral evaluations of the politicians who resisted the measures. It would show that they valued profits over people. The proponents of re-opening had their own bet: that the effects would not be severe, and that the effects of shutting down, not only on people’s financial well-being but on their health, were likely to be worse than the results of re-opening.

Agambem’s question remains. Is the pandemic the exceptional event, after which a new normal will emerge? Or is it the normalization of the exception, the making permanent of a state of affairs in which the state expands its powers of surveillance and control, and extends its substitution of the legitimation of the expert for democratic legitimacy? Is it the result of a long process of expansion and substitution which was merely revealed by the pandemic? Tocqueville, in his *Ancien Regime*, treated the French Revolution in this way: as a visible episode in the centuries-long workings of the secret force of equality. But it reveals more. The illusion of the liberal democratic order, in which state policy emerged from reasoned discussion and in which experts merely stated truths was stripped away. The yawning gap between the messiness of conflicting experiments and lab notebooks and a coherent, accountable policy that balanced interests in the face of a wicked problem was revealed. Brooks’ collapse of expertise into authority erased the illusion of the non-politicality of expertise. The demonization of the public by the trope of science vs. anti-science dispelled the illusion of a public that participated in its own governance vanished. And the eagerness of

politicians to use emergency powers despite the confusion showed how much latent power was already there.

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