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Citizens and Populations

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Like many others who have fallen silent, I have so far not thrown my hat in the ring over the coronavirus for one simple reason - lack of competence. Having nothing of import to say about infectious diseases, virology and epidemiology, I can only listen. Of course, I get informed, I learn on the go, I read all sorts of publications about what keeps most everyone excited - yet I know these things do not make me an expert.

The second reason was that from a scientific perspective, I was not too fond of the situation with science itself. Someone, e.g. the World Health Organization, had to develop uniform standards for research, collection of statistics and principles of their analysis. And one of the most critical tasks during the pandemic was – or rather would be – to apply this single model of data collection and assay across the world if we were to achieve global comparability and thus be able to report genuine trends.

Instead, various countries around the world were "quantifying" these trends in all sorts of chaotic ways using ad hoc methodologies (with local authorities often hiding or tampering with results); hence the dubious exit data could not be compared. Experts were bickering on both the magnitude and hazard of the disease – as well as on our prospects to cope or otherwise with it.

The result, especially in the early days of the pandemic, was deplorable in societal terms: mainstream media, social networks and all sorts of other channels spewed "scientific" information daily, which was subsequently deployed in various unscientific, mythological, "magical" and conspiratorial ways. Everyone became an "expert", and the bickering filled social networks, television channels and phone conversations.

The world seemed to have split into two poles. The 'virus liberals' stood for their habit arguing that nothing so special was going on: a seasonal epidemic was being blown out of proportion spurred on by a media and digital hysteria compelling world governments to pander to the phobia and panic of their constituents; instead, we better think of the economic catastrophe that would ensue. The 'virus doomsayers' stood for their long-standing, pre-quarantine obsession of impending apocalypse portraying the pandemic as a global disaster comparable to the world wars, the most dangerous disease that can develop in unpredictable ways, almost like the old plague epidemics; therefore, nothing in the universe will be the same anymore, you better revisit your lifestyle at last!

Roughly speaking, scientific information was used selectively, with everyone cherry-picking those facts that supported their 'habitus', a physically ingrained social and cultural way of life. But the boundaries between virus-liberalism and virus-doomsaying went across social divisions and most intimate relationships; people have fallen out with their loved ones, with confrontation levels reaching public hysteria and an infodemic that threatens the mental health of millions.

I didn't know how, and I didn't think it would be useful for me to add yet one more feeble voice on top of all the shouting and gigantic information din. A situation of this kind calls for world authorities and leaders – and this goes for both its practical dimensions and its theoretical ones. Because, despite the painful urgency of so many practical medical and epidemic issues, the situation also has its philosophical and academic side, do not doubt that.

What it boils down to is a new version of an old value clash between freedom vs security, health vs rights, and biological life vs dignified life. Even the most extraordinary and practical political, social or anti-epidemic measures of a particular government task force are based on some conscious or unconscious values, e.g. "human health beats everything else" versus "we are not just living for the sake of biological survival". Unlike others, I knew that these implicit and confrontational anti-epidemic philosophies, however simple they may seem, actually go a long way. For anyone with a modicum of knowledge in the ideology of law and morality, these two open a gaping abyss. The way I felt though was that they were leading into an almost intractable forest of confusion and paradoxes, with no way out of it for me.

If I take the floor now, it is because I read the conversation between Jürgen Habermas and Klaus Günther, undisputed world authorities as far as I'm concerned. It nudged me into a contemplation mode. Their discussion is ponderous and difficult to grasp; it sails into the Sargasso Sea of the theory of law and morality, negotiating several subtle distinctions. To follow it in expert terms is the work of constitutional judges and philosophers of constitutional law. Still, with my baggage of humanitarian knowledge, I found in it a problem around which I can stake my argument. And let me admit at this early point: in fact, this short exposition will have the singular merit to pinpoint a problem, rather than solve it. The time for solving it has not come yet.

This is how it looks from my perspective: a legal framework for the practical anti-epidemiological policy needs to be found. Both Habermas and Günther set out from a

possible one, the way it was articulated by the German Bundestag President, Wolfgang Schäuble: a dignified life is a superior right vis-à-vis a biological life of survival. This is not only a German assumption: it has been consistently stood for by philosophers such as Agamben and assaulted by others, e.g. Jean-Luc Nancy. With Schäuble, however, it has much more specific legal and governance dimensions because it follows from the German fundamental law, the constitution, which makes mention of dignity before it does of the "right to life".

The fact that "dignity and a good life are more important than biological life" seemed evident enough. I would immediately subscribe to it, thus jumping on the virus liberals' bandwagon, albeit in a moderate form (not in the least do I deny that there is a dangerous pandemic underway). However, the talk between Habermas and Günther Shook me off these certainties and made me study my tenets.

Habermas clearly states: the only one who has the right to decide and choose between a dignified life and a life of survival is the individual himself: "A decision of this kind can only be made in the first person, that is, by the participant him/herself. No one else, much less any state power bound by fundamental rights, should take this decision away from the citizens." So, this is a sovereign decision of the individual citizen. It cannot be taken away from citizens because this would amount to an infringement on sovereign citizenship and, consequently, on dignity. Habermas and Günther clarified another significant thing: both the category of "dignity" and the right to life and bodily integrity are designed to prevent the state's intrusion into the sovereign territory of the individual, who alone has the right to decide and make choices between mere survival and dignified life. Here the lawmaker had in mind the prevention of intrusions similar to those of the Nazi totalitarian state into everybody's life, bodily integrity and individual rights – a grave German legacy. The situation is different now: the government is *mandated* to protect both the dignified life and the right to life and bodily integrity: how is it supposed to do this – does it even have the authority to try?

In a pan-epidemiological situation, the government, with its medical institutions, must decide instead of individuals whether to ensure more survival or more dignified life. Is it entitled to loosen its measures and protect dignity at the expense of a larger statistical number of people who are going to die? This sacrifice in the name of a "dignified life" is no longer self-sacrifice, which is within the powers of a sovereign individual. It has morphed into a state policy affecting the masses. Instead of being made by the citizen him/herself, it is now made by an administrator-cum-expert authorised by the emergency.

Note, however, that this is neither about the lust for power of this administrator nor the authorities' secret desire to expand their sphere of intervention and dictatorship. The epidemiological situation is the one that deprives the citizen of the sovereign choice of an essential individual weal, passing it over into the hands of state experts. The state here is not in a situation of an aggressive expansion of its power: it is under coercion, being burdened with the responsibility to protect the health and the right to life of its citizens. In other words, even if unwilling to grab more power, the policymaker is forced to do so. Thus policymakers shoulder the responsibility for other people's dignified or undignified lives.

Here I will gradually digress from the legal matters that concern Habermas and Günther. It seems to me that, framed as a paradox, this problem ("a dignified life can only be stood for in an "undignified" way, by stripping citizens from their sovereignty by those who are bound to do so as they bear the responsibility for the complex biosocial machine and its hazards") has been lurking in the shadows for a long time. Now becoming outstandingly virulent, its philosophical virus has spun out of control in the current situation to become a philosophical epidemic. And I will try to articulate it in a way that departs from Habermas's line and comes closer to that of Foucault and Agamben.

As is well known, Foucault is the author of a fundamental critique of the traditional European conception of power: apart from sovereign power built on the Leviathan model, he has described the networks of power microphysics and their manageability. While democratic sovereignty assumes that what sits at the top of the pyramid is no longer a monarch, but the ordinary citizen will, a democratic sovereign Leviathan, the management of microphysics does not invoke citizens who form such a sovereign will, but a population in the biological sense. The authorities cater to this colony of organisms in a pastoral way, managing it precisely as a multitude, using management techniques underpinned by a normalising, statistical knowledge. In other words, ideally, the powers that be practice paternal care over the happiness, health, safety and well-being of the body politic. Thus, according to Foucault, modern powers that be are dramatically divided between the figure of the citizen and common civic will as the single source of power and the other figure, that of the statistical manageability of biological colonies and the paternal or pastoral care for them. The limit of this paternal-pastoral care for the species is epitomised by biopolitics whereby the government even no longer cares for its subjects, but for their bodies: it measures and manages these bodies from the vantage point of a general concept of health and normalcy,

identifies deviant bodies to normalise or hide them from view if necessary – or even remove them just like any parasite.

From what we said about Habermas and Günther and also about Foucault and Agamben, the following conclusion can be drawn about the current situation. The pandemic did not simply compel governments to restrict certain civil rights of their citizens; it forced them to adopt the logic of the virus, which attacks not citizens, not even communities, but mere populations, sets of biological units (the term "herd immunity" is quite literal). This is where the paradox sets in. According to politicians like Schäuble, the chosen government policies are bound to prioritise a dignified life over physical survival. The whole conversation between Habermas and Günther is a critique of this easy choice - they show how the entitlement to one's life and bodily integrity is not just one right among many others, but a basis and prerequisite for all rights: it acts as a universal deterrent weighing out the dilemma between health and freedom.

But the crux is not even in the special status of this fundamental right, of its being a "precondition". We are talking about another issue: can the state, is the state authorised to take the risk of overburdening the health system for the sake of slackening measures and safeguarding dignified life or any other fundamental right – and thus doom a certain number of people to death? Is it entitled to decide for them? Can it expect from those who will be statistically sacrificed that they will succumb to their lot? The policymaker, Günther says, will then have to go to the first one to be denied intubation and ask him, "Do you accept to die for the rights and freedoms of others?" We remember this, don't we: such a decision lies solely in the powers of the individual. Can that particular individual who is denied treatment welcome death for the sake of a dignified life – but someone else's, not his own?

The onus of the powers that be to make such decisions on their own seems terrifying: it is not, in principle, empowered to make them, but now it has to. And for Günther and Habermas, the solution to the problem lies in a sovereign, joint decision of the citizenry as to the extent of restricting other fundamental rights for the sake of "flattening the curve" and statistically reducing risk while taking into account this deterrent, fundamental right to life, which enjoys such a special place among other rights.

This seems to me as an asking too much from the citizenry. Sitting in front of the virus, it is no longer a citizenry, but a biological colony; therefore, decisions to reduce the risk of infection should be made expertly, according to some relevant epidemiological

dynamic. The majority's preferences are irrelevant vis-a-vis expert decisions; the latter are either good or bad, regardless of democratic will. Therefore, a medical administrator would make decisions about an epidemiological situation not by the logic of civic sovereignty, but by the logic of medically protecting a species from a virus: in short, by the logic of the virus. Populations do not contain the institute of "we, the people"; they are mere ecosystems and statistical sets of individuals: they have no bearing on sovereignty and will.

And if we agree that decisions cannot be made with the democratic-sovereign will of everybody, but must instead be made expertly, we fall into the core of this paradox. A physician or a medical administrator is coerced by the situation to make decisions not only about the health but also about the dignity, even the dignified form of life and death, of those in treatment. But the physician's very act of decision-making will indispensably "take away sovereignty," even if the physician chooses the side of dignity. Deciding in favour of dignified life at the expense of mere survival and health security, the physician must again implement this decision by the method of shielding populations against diseases – i.e. in a way profoundly alien and incomprehensible to the "logic of dignity." In short, the doctor would protect the dignity of citizens in an unworthy and non-civil way: by equating citizens with a population (this being the only way to have them covered in a medical, science-based way). In other words, whatever decisions our physician/administrator makes, he/she will treat the citizenry not as autonomous individuals, but as non-autonomous organisms, even sets of organisms, biological colonies - and what they possess is not rights, but counts, density, birth rate, mortality and the dynamics of these or other indicators.

So what Habermas and Günther offer seems impossible to me unless we imagine the impossible situation where all citizens become medical experts and decisions about life - and its dignity - are made by dint of a sovereign expert will: a fictional absurdity. The implication is that the pandemic has made us aware of the massive clash between politics and biopolitics we are living in. And that biopolitics are not something we can shrug off with any degree of disdain. In today's situation, they qualify as the prerequisite for a dignified life. Yet their very application deprives life of its dignity.

This is how far I got, and this is the issue I'd like us to ponder further on together. Is it possible to take good care of populations and, at the same time, preserve human dignity; where does the thin red line between the two modes pass; and how could a reasonable compromise between these incompatible but equally important requirements be achieved?