UNE REVUE MULTIDISCIPLINAIRE SUR LES ENJEUX NORMATIFS
DES POLITIQUES PUBLIQUES ET DES PRATIQUES SOCIALES.

Les ateliers de l'éthique
The Ethics Forum

A MULTIDISCIPLINARY JOURNAL ON THE NORMATIVE
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L'après COVID : enjeux éthiques, politiques, économiques et sociaux dans un monde postpandémique

After COVID: Ethical, Political, Economic and Social Issues in a Post-Pandemic World

Sous la direction de Peter Dietsch, Pablo Gilabert, Naïma Hamrouni, Justin Leroux, Vardit Ravitsky, Christine Tappolet et Kristin Voigt

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PAS DE PANIQUE ?

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ORDRE ALPHABÉTIQUE. LES AUTEURS ONT CONTRIBUÉ À PART ÉGALE.

RÉSUMÉ :

Dans cet essai, nous nous attaquons à l'idée reçue selon laquelle la panique consiste simplement en un état où l'on se laisse « dépasser par sa peur ». La panique, selon nous, n'est pas une peur extrême qui pousse nécessairement la personne à des comportements dysfonctionnels, contre-productifs et irrationnels. Au contraire, comme nous allons tenter de le montrer ici, il s'agit d'une émotion à part entière qui a ses propres fonctions cognitives et motivationnelles. Nous analyserons ici la panique comme une réaction face à un danger perçu comme majeur, imminent et sans issue claire, dans le sens où le sujet n'a pas de plan d'action déterminé pour réagir face au danger. La panique implique ainsi un accès particulier à certaines informations ou certains faits – une perception ou appréhension d'un danger et de ses propriétés précises – et c'est en cela qu'elle a une fonction cognitive. Sur le plan motivationnel, nous défendrons l'idée selon laquelle la panique implique des tendances à l'action appropriées à la situation telle qu'elle est perçue. À contre-courant de l'opinion populaire et de celle des philosophes, nous proposerons donc une manière de concevoir la panique comme pouvant être fonctionnelle et ainsi, rationnelle, dans la mesure où cette émotion nous aide à atteindre nos buts étant donné les moyens dont nous disposons. Contrairement à ce nous pourrions penser, dans certaines situations il vaut la peine de paniquer.

ABSTRACT:

In this essay, we tackle the misconception that panic is simply a state of being "overwhelmed by your fear." Panic, in our view, is not an extreme fear that necessarily pushes the person into dysfunctional, counterproductive and irrational behaviors. On the contrary, as we will try to show here, it is an emotion in its own right that has its own cognitive and motivational functions. We will analyze panic here as a reaction to a danger perceived as major, imminent and without clear solution, in the sense that the subject does not have a determined action plan to react to the danger. Panic thus implies special access to certain information or certain facts - a perception or apprehension of a danger and its precise properties - and it is in this that it has a cognitive function. On the motivational level, we will defend the idea that panic involves tendencies to action appropriate to the situation as it is perceived. Contrary to popular opinion and that of philosophers, we will therefore propose a way of conceiving panic as being able to be functional and thus, rational, insofar as this emotion helps us to reach our goals given the means of which we dispose. Contrary to what we might think, in some situations it is worth panicking.

"He knew all the way back in February how serious this crisis was, he said he didn't tell us or give people a warning of it because he didn't want to panic the American people."
– Joe Biden à propos du président Trump lors du débat présidentiel américain du 29 septembre 2020.

"Une petite panique peut r'mettre les idées en place"
– Oxmo Puccino, Souvenirs

I. INTRODUCTION : UNE EMOTION DYSFONCTIONNELLE ?

Dans un article intitulé « COVID-19 and panic buying », Gayithri Kuruppu et Anura De Zoysa présentent toute une liste de comportements liés à la pandémie de COVID-19 qu'ils regroupent sous l'expression d'achats paniques (Kuruppu et De Zoysa, 2020). L'exemple paradigmatique concerne, sans surprise, la consommation immodérée de papier toilette au cours du printemps 2020, menant à des ruptures de stock un peu partout sur le globe – un phénomène « sans précédent » d'après eux. Ils rapportent même un cas de braquage au couteau à Hong Kong. D'autres exemples incluent les longues files d'attente pour l'achat d'armes à feu aux États-Unis, des réserves d'essence extrêmes et non nécessaires, ainsi que des demandes excessives de certains produits alimentaires. Selon les auteurs, ces comportements seraient hautement irrationnels. Ils les considèrent comme étant indubitablement pernicieux et causant des conséquences économiques et sociales désastreuses. L'explication principale de ce phénomène sans précédent, d'après eux, est la panique déclenchée par la menace de la COVID-19. Cette émotion serait donc la cause suffisante de comportements irrationnels.

Il semble en effet que le terme *panique* soit le plus souvent employé pour faire référence à des situations où nous avons perdu le contrôle, et où, dépassés par les événements, nous nous mettons à faire n'importe quoi. Typiquement, l'expression « être pris de panique » évoque l'idée que nos émotions ont pris le dessus sur notre raison, que nous avons ainsi « perdu les pédales » et agissons de façon peu constructive, voire dommageable. La panique est ainsi typiquement considérée comme une émotion qu'il s'agit d'éviter mais qui, malgré nos efforts, nous saisit parfois.

Cette façon de concevoir la panique apparaît également chez les philosophes. Par exemple, dans un billet de blogue sur la pandémie de COVID-19, Christine Tappolet distingue la peur de la panique à travers une irrationalité qui serait essentielle à cette dernière: « [L]a peur n'équivaut pas à la panique. Elle ne conduit pas nécessairement à un comportement irrationnel. » (Tappolet, 2020)

Robert Roberts s'accorde avec Tappolet sur ce point lorsqu'il écrit: « [L]a panique diffèr[e] de la [peur] dans la nature de ses conséquences comportementales, qui tendent à être irrationnelles. » (Roberts, 2003, p. 200, notre traduction) Gilbert Ryle quant à lui va jusqu'à qualifier les comportements motivés par la panique de non intelligents (2009, p. 33), et à les classer aux côtés de ceux liés au délire (p. 33), à l'ivresse (p. 107), à une forte fièvre (p. 58), à la distraction (p. 204), ou aux comportements d'idiots, de somnambules, et de perroquets (p. 33).

Ce bref tour d'horizon révèle que la panique est généralement considérée en dehors et au sein de la philosophie comme une émotion essentiellement irrationnelle, dysfonctionnelle, indésirable, une sorte de variante excessive de la peur. De la même manière que l'on peut voir la dépression comme une tristesse qui est si profonde qu'elle laisse le sujet qui en souffre sans ressource et impuissant face aux événements, la panique est typiquement conçue comme une peur qui est si intense qu'elle mène à une sorte de *bug* de notre système.

Contre cette doxa, nous défendrons ici l'idée selon laquelle il n'est pas toujours irrationnel de paniquer car, dans certaines circonstances, cette émotion remplit une fonction bien précise. Le raisonnement derrière cette idée repose, d'une part, sur le fait que la panique pourrait bien être une émotion à part entière, aux côtés de l'indignation, l'admiration, la tristesse, etc. D'autre part, des recherches menées ces dernières décennies nous apprennent que les émotions possèdent de multiples fonctions, des fonctions parfois cachées. Même les émotions dites « négatives », et même celles qui ont mauvaise réputation, comme la honte ou l'anxiété, peuvent être utiles, bénéfiques, rationnelles (voir Deonna, Rodogno, et Teroni, 2012; Vazard, 2019). Il convient donc de se demander sérieusement si la panique ne pourrait pas, en dépit des apparences, posséder une fonction en vertu de sa nature affective.

Les philosophes travaillant sur les émotions aujourd'hui considèrent en général que chaque type d'émotion (la peur, la honte, etc.) peut être fonctionnel étant donné certaines circonstances. Il y a deux raisons principales à cela. Premièrement, une émotion peut être conçue comme un état fonctionnel dans la mesure où elle nous procure un accès à certaines informations sur le monde qui nous entoure. En ce sens, on peut parler de la fonction cognitive des émotions (la cognition étant l'ensemble des processus mentaux qui se rapportent à la fonction de connaissance, de collecte et de traitement de l'information). Selon certains, par exemple, avoir peur permet de percevoir le danger (Tappolet, 2000, 2016; Prinz, 2004). La peur est une réaction à la présence d'un danger, et c'est par notre réaction de peur que nous sommes capables d'appréhender la présence d'un danger. En d'autres termes, selon ces théories, la peur est fonctionnelle en ceci qu'elle est une manière de percevoir ou d'appréhender qu'une certaine propriété évaluative (le dangereux) est instanciée sous une forme ou une autre dans notre environnement (d'autres théories philosophiques permettent de rendre compte de cette idée, pour une recension voir Bonard, 2021).

La seconde raison principale – laquelle est, notons-le, complémentaire à la première – qui pousse les philosophes à considérer les émotions comme étant fonctionnelles concerne la façon dont elles nous poussent à agir. On peut dès lors parler de la fonction motivationnelle des émotions. Par exemple, la peur est fonctionnelle en ceci qu'elle déclenche des réactions comportementales adaptées face au danger (Deonna et Teroni, 2012; Scarantino, 2014). En présence d'un danger, la peur nous prépare physiologiquement (p. ex. accélération du rythme cardiaque, dilatation des pupilles), mentalement (p. ex. dirige notre attention), et nous motive à réagir par des actions appropriées (p. ex. nous pousse à fuir). La peur comme type d'émotion est, en ce sens, fonctionnelle car elle constitue une réponse comportementale adaptée à la survenue d'un danger. Elle fait apparaître comme une priorité pour nous le but de gérer ce danger au plus vite, et dicte ainsi notre comportement.

Dans ce qui suit, nous allons nous demander si l'on ne pourrait pas considérer la panique comme étant fonctionnelle sur ces deux plans, soit le plan cognitif et le plan motivationnel. Nous verrons ainsi, dans un premier temps, que la panique pourrait fournir une manière particulière de percevoir ou d'appréhender un type de danger (section II). Dans un deuxième temps, nous verrons que la panique génère certaines tendances à l'action qui lui sont propres, et nous nous demanderons dans quelle mesure celles-ci constituent des réponses adaptées à la situation (section III).

II. UNE FONCTION COGNITIVE POUR LA PANIQUE

Dans cette section, nous allons voir en quoi la panique nous fait percevoir ou appréhender notre environnement d'une manière bien précise, nous donnant ainsi accès à certaines informations sur le monde qui nous entoure (fonction cognitive). Pour cela, commençons par nous demander comment le monde nous apparaît lorsque nous paniquons.

Tout d'abord, il semble évident que la panique appartient à la famille d'émotions dont fait paradigmatiquement partie la peur, et qui regroupe des états émotionnels qui sont des réactions à des dangers ou des menaces. Selon Roberts (2003), cette famille inclut également des émotions comme la terreur, l'anxiété, et l'effroi. Les émotions de la famille de la peur, avance Roberts, peuvent se distinguer par l'évaluation qu'elles fournissent quant au degré d'incertitude lié à l'avènement de la menace perçue, et par l'importance des préoccupations sous-jacentes que cette menace risque d'enfreindre. Comme nous le verrons dans la prochaine section, ces facteurs ont des conséquences importantes sur la perception qu'ont les individus quant à leur capacité à réagir face à la menace, et donc sur les types d'actions qu'ils auront tendance à déployer.

Selon Roberts, l'intensité d'une émotion est fonction de la force de la préoccupation sous-jacente à l'émotion. C'est ainsi qu'il explique la plus grande intensité de la terreur et de la panique par rapport à une peur ordinaire. Les cas typiques de panique ou de terreur sont généralement liés à des préoccupations

très fortes, comme se maintenir en vie, ou le bien-être de ses enfants. En somme, la panique est constituée d'une évaluation selon laquelle il y a une forte probabilité pour qu'une de nos préoccupations fondamentales soit fortement enfreinte. Et cette évaluation ne se manifeste pas sous la forme d'une vague intuition, mais plutôt d'une impression très vive. Roberts affirme ainsi que la proposition qui définit le mieux le contenu de la panique est la suivante: « X présente de façon frappante une possibilité extrêmement aversive d'un très haut degré de probabilité. » (Roberts, 2003, p. 201, notre traduction)

Jusque-là, nous trouvons la description de Roberts convaincante – nous verrons par la suite d'autres points sur lesquels nous tomberons en désaccord (section III). La panique semble donc bien signaler la présence d'un danger – du moins dans les cas où elle n'est pas déclenchée par une fausse alarme. Elle implique qui plus est une évaluation de certaines propriétés de ce danger : il représente une possibilité particulièrement aversive pour nous, et il est très probable qu'il se présente. Nous pourrions ajouter, à la suite de Frijda (2007, p. 103) et de Bouton (2005), que cette probabilité est liée à une imminence du danger et donc à une urgence. Maintenant, dans quelle mesure l'évaluation fournie par un état de panique se distingue-t-elle donc concrètement de celle fournie par d'autres états similaires, par exemple l'anxiété ?

Dans une situation où il nous manque des informations sur l'ampleur du danger en question, il semble que la panique nous pousse à tirer la conclusion que le danger est quasi certain, comme l'affirme Roberts mais aussi Frijda (2007, p. 204). L'anxiété, quant à elle, nous mène généralement à penser que la menace en question a une certaine probabilité de se réaliser, mais pas une probabilité très haute. Concernant l'attitude doxastique liée à l'anxiété quant à la probabilité de réalisation de la menace, il semble que la suspension de jugement lui corresponde le mieux (Vazard, 2019). En revanche, lorsque nous paniquons, nous appréhendons cette probabilité comme équivalente à de la certitude, sur le plan subjectif. Si on nous interrogeait alors, nous dirions que la menace va certainement advenir. Néanmoins, il convient de préciser que la personne paniquée n'évalue pas ce degré de probabilité comme étant une certitude absolue que le danger va l'atteindre. Si c'était le cas, elle ne serait pas dans un état de panique, mais plutôt dans un état de désespoir ou de résignation. Comme l'écrit Frijda: « La panique apparaît lorsqu'il y a une menace sérieuse et que les portes de sortie se referment; le désespoir, lorsqu'elles sont définitivement fermées. » (Frijda, 2007, p. 165, notre traduction) Paniquer, c'est appréhender un danger comme risquant fortement de nous atteindre si nous n'agissons pas immédiatement. La panique, et il est important de le préciser, comporte donc encore une composante d'espoir que nous échappions au danger.

Qui plus est, la panique semble impliquer une évaluation quant à notre capacité à agir face à cette menace. On peut concevoir ce type d'évaluation comme le fait la théorie des émotions dite *appraisal theory* (pour une recension par des auteurs majeurs de cette théorie, voir Moors *et al*., 2013). Selon une version répandue de cette dernière, nos différentes émotions (peur, colère, joie, etc.) sont en partie

constituées par une évaluation du stimulus émotionnel sur plusieurs dimensions. Dans les cas typiques (par opposition aux cas où il y a une manipulation artificielle du cerveau, une prise de drogue, une lésion cérébrale, etc.), cette évaluation détermine causalement les autres parties constitutives des émotions : tendances à l'action, changements physiologiques, expressions moteur et ressentis subjectifs (Sander, 2013, p. 38). Trois des dimensions principales selon lesquelles le stimulus est évalué sont : le stimulus est-il (dé)favorable à nos buts ? est-il probable qu'il nous atteigne ? est-on capable de le gérer (par exemple en le modifiant ou en s'en éloignant) ? Dans les termes de l'*appraisal theory*, ce que nous avons vu jusqu'ici pourrait se formuler ainsi : la panique implique une évaluation du stimulus comme étant hautement défavorable à l'un de nos buts (le but de se maintenir en sécurité), comme ayant une très haute probabilité de nous atteindre, et comme étant très difficile à gérer.

Concernant ce dernier point, il semble en effet que la panique soit incompatible avec la capacité à envisager un plan d'action précis pour s'en sortir, une suite ou séquence d'actions déterminées que nous aurions l'intention de réaliser afin d'échapper à la menace (sur les plans d'action, voir Bratman, 1987). Nous paniquons parce que nous ne voyons pas d'issue. Mais nous croyons tout de même qu'il doit y en avoir une, sinon nous serions plutôt dans un état de désespoir ou de résignation. Prenons un exemple. Dans une maison en flammes, on panique lorsqu'on ne sait pas comment s'en sortir. Si cet incendie nous apeure mais que l'on sait très bien qu'il y a un moyen sûr de s'en tirer – qu'il suffit par exemple de courir vers la sortie de secours qui se trouve au bout du couloir à droite, sachant que l'incendie se trouve pour l'instant dans la direction opposée –, cette peur ne sera normalement pas une peur panique. Au contraire, si nous espérons pouvoir nous en tirer mais que nous n'avons aucune idée de la façon de s'y prendre, alors nous aurons tendance à paniquer. Enfin, si nous sommes absolument persuadés qu'il n'y a aucun moyen de s'en sortir, la panique cédera le pas au désespoir.

Il semble donc que trois composantes essentielles à l'émotion de panique soient : l'appréhension d'une forte menace, la certitude que cette menace est bien réelle et imminente, et une indétermination quant à la manière de l'éviter. Du point de vue du sujet, ces éléments constitutifs de la panique peuvent être résumés ainsi : « si je n'agis pas immédiatement, alors il est certain que le danger va m'atteindre ; or je ne vois pas quoi faire exactement en vue d'éviter ce danger ». Cela fait de la panique une manière bien précise d'appréhender le monde qui, à l'instar d'autres émotions, constitue un accès particulier à certains types d'informations (en particulier, certaines propriétés d'une menace donnée), des informations auxquelles nous n'aurions peut-être pas accès si nous ne pouvions pas ressentir la panique.

Ainsi, une première manière de défendre la thèse selon laquelle la panique peut être fonctionnelle est de dire, comme nous l'avons fait, que la panique nous permet d'appréhender certaines propriétés d'un danger ainsi que de notre relation à celui-ci[1] (notamment notre capacité à le gérer).

III. UNE FONCTION MOTIVATIONNELLE POUR LA PANIQUE

Une deuxième manière, comme nous l'avons dit plus haut, de défendre la thèse selon laquelle les émotions sont fonctionnelles, consiste à dire qu'elles nous motivent à agir favorablement à l'accomplissement de nos buts. Dans ce qui suit, nous tenterons ainsi de défendre l'idée selon laquelle la panique génère des réactions comportementales adaptées au type de danger qu'on appréhende en paniquant. Encore une fois, nous commencerons par considérer les remarques de Roberts, mais nous en éloignerons par la suite et les contredirons en partie.

La terreur et la panique, écrit Roberts, sont des variantes très intenses de la peur et de l'effroi. Si on peut remarquer une différence entre ces deux états, elle se trouve selon lui dans la nature des tendances comportementales qu'ils génèrent. La terreur semble être davantage une forme « paralysante » de l'effroi, alors que la panique « engendre une activité précipitée et non délibérée, telle que courir sans but, se débattre ou crier » (Roberts, 2003, p. 200, notre traduction). Du point de vue du sujet, la panique générerait selon lui ce désir : « laissez-moi faire quelque chose, n'importe quoi » (p. 201, notre traduction). Roberts ajoute que les tendances à l'action générées par la terreur et la panique sont en général irrationnelles. Selon lui, la panique est donc un état de peur extrême, mais qui n'est pas paralysant en ce sens que nous produisons des actions, même si celles-ci ne semblent ni contrôlées ni efficaces.

Nous sommes d'accord avec Roberts sur le fait que la panique engendre typiquement des actions expressives d'une part – telles que hurler et agiter les bras – et des actions de repli d'autre part – comme prendre ses jambes à son cou et se débattre. Contrairement à lui toutefois, nous ne pensons pas que ces tendances à l'action soient forcément irrationnelles. Au contraire, comme nous allons le voir, elles semblent tout à fait fonctionnelles étant donné ce que nous avons établi dans la partie précédente, à savoir que la panique est une réaction à un danger qui apparaît comme étant à la fois majeur, très probable et sans issue claire. Avant cela toutefois, il vaut la peine de faire un détour pour rejeter une autre idée de Roberts, soit l'idée que la panique est simplement une peur poussée à l'extrême.

Il nous semble en effet que, contrairement aux idées reçues, la panique ne soit pas un état de peur extrême ou « limite ». Roberts, entre autres, conçoit la panique comme un état où notre réaction émotionnelle est poussée à bout, où nous perdons en quelque sorte les pédales parce que nous sommes tout à fait submergés par une menace qui nous apparaît comme inéluctable. Cet état extrême nous pousserait à des comportements contre-productifs, un peu comme une machine peut se déglinguer, notamment lorsqu'elle surchauffe. Un comportement panique serait-il donc une sorte de surchauffe de notre système ? Selon nous, cette vision de la panique n'est pas seulement simpliste, elle est sans doute carrément fausse.

D'une part, il arrive certes que la panique nous pousse à des gestes quelque peu brutaux et soudains, comme s'enfuir en bousculant tout le monde, jeter ou détruire des objets, ou passer des coups de téléphone alarmants. Une fois l'urgence de la menace passée, si on nous demande « Qu'est-ce qui t'as pris de faire ça ? », on répondra généralement « J'ai paniqué. » Mais cela ne veut pas dire qu'on a fait strictement n'importe quoi. D'ailleurs la panique mène souvent au même type d'actions, comme nous allons le voir.

D'autre part, dans les cas où, face à une menace insurmontable, nous sommes poussés à des actions extrêmes ou autodestructrices (comme sauter du 10e étage d'une tour en feu), nous soutenons que ces réactions ne sont pas le produit de la panique à proprement parler, contrairement à ce que l'on pourrait penser. En effet, lorsque plus aucune issue ne semble envisageable, d'autres états affectifs peuvent succéder à la panique, comme le désespoir ou la résignation, qui eux présentent la situation comme sans issue et peuvent mener à un passage à l'action. Dans la panique, même si l'heure est grave, tout n'est pas perdu et un élément d'espoir persiste.

Ainsi, la panique n'est pas une peur poussée à l'extrême, dans le sens où nous serions submergés par une menace qui nous ferait disjoncter. Comme noté plus haut, même au cœur de la panique, le sujet conçoit d'une certaine manière qu'il y a des types d'actions à même de le sortir d'affaire, même si le plan lié à ces actions est très vague. Penchons-nous maintenant sur les types d'actions précis typiquement générés par la panique.

Comme dit plus haut, un premier type d'actions auquel la panique semble très souvent mener est expressif : agiter les bras au-dessus de sa tête, crier ou hurler, souvent sans contenu sémantique précis. À quoi cela pourrait-il servir ? Frijda explique que les types d'actions qu'une émotion génère dépendent en grande partie des comportements qui sont disponibles à l'agent à un moment donné – les actions présumées profitables qu'il est possible à la fois physiquement et mentalement pour lui d'entreprendre. Il écrit:

> Le répertoire des actions dont nous disposons et qui sont pertinentes pour les contingences émotionnelles comprend des actions qui sont plus discrètes que les actions distinctement instrumentales, mais qui sont pourtant d'une importance sociale considérable. Il existe plusieurs types d'actions à faible risque et à faible effort qui sont généralement disponibles lorsque des actions plus exigeantes ne le sont pas. Elles peuvent être facilement négligées en tant qu'actions. L'une d'entre elles comprend les actions « expressives » involontaires et primitives telles que pleurer, donner des coups de pied, crier, tirer, embrasser et toucher, les expressions faciales, se taire et s'enfuir. (2004, p. 166, notre traduction)

Alors que d'autres actions ne sont pas disponibles pour faire face à la menace qui semble dépasser les capacités de l'individu, ces actions de type « expressif » sont disponibles et, bien souvent, comme l'a remarqué Roberts, le sujet

paniqué en fait usage. En revanche, comme le souligne Frijda, ces actions ne sont pas sans effet et peuvent recouvrir une fonction sociale, quand bien même cette fonction serait vague. Crier sert à alerter d'autres personnes alentour – n'importe qui – d'un danger imminent. Cela permet à la fois qu'elles se prémunissent du danger (sachant que celles qui nous entourent sont souvent des personnes alliées plutôt qu'ennemies), mais aussi, si cela est possible, qu'elles viennent à notre secours. Ainsi, le cri de panique peut vouloir dire à la fois « Sauve qui peut! » et « À l'aide! ». Il n'a pas besoin d'être dirigé vers une personne en particulier ni d'avoir un contenu sémantique clair – par ailleurs le cri de panique est souvent non verbal. On ne sait pas forcément qui pourrait nous entendre, si ces personnes pourraient nous aider, s'aider elles-mêmes et comment – c'est en ce sens que la fonction du cri est très vague. Néanmoins, c'est une manière de réagir qui correspond au type de danger que nous avons associé à la panique, à savoir un danger très important, très probable, et contre lequel nous n'avons nous-mêmes pas (encore) de plan d'action détaillé. Les mêmes remarques s'appliquent à d'autres comportements expressifs liés à la panique, comme le fait d'agiter les bras au-dessus de sa tête. À la suite de Frijda, nous pouvons également considérer les expressions faciales de la panique comme des actions ayant cette même fonction d'alerte.

Un autre type d'actions liées à la panique est ce que nous appelons des actions de repli, dont la fonction est de réduire son exposition au danger. En dehors des actions expressives, il y a principalement deux façons de réduire son exposition au danger : a) aller l'éteindre à sa source, faire qu'il disparaisse ; ou b) se protéger, s'en éloigner, se replier. La panique déclenche typiquement des comportements de ce second type : quand on panique, on considère en général qu'on est impuissant à modifier le danger à la source, alors on se replie, on fuit, on se calfeutre, on se cache. Notons d'ailleurs que la volonté de faire des stocks est tout à fait cohérente avec cette tendance au repli : on amasse de la nourriture, de l'essence, ou du papier toilette afin de se cacher, de se replier plus efficacement et pour plus longtemps. Nous reviendrons aux cas d'achats paniques dans la conclusion.

La tendance au repli que génère la panique peut encore une fois être expliquée et rationalisée par le type de danger auquel nous faisons face (ou avons l'impression de faire face) dans un état de panique. En effet, contrairement à d'autres types de peur où le danger apparaît comme étant majeur, très probable et imminent, mais où nous pensons savoir comment l'« éteindre » en s'attaquant à sa source, la panique implique une absence de plan d'action défini, et donc une incapacité à savoir comment s'attaquer à la source du danger pour réduire notre exposition à celui-ci. Par ailleurs, le repli typiquement lié à la panique peut apparaître comme incontrôlé car, encore une fois, aucun plan d'action précis ne définit comment s'en protéger exactement. On a un espoir de s'en sortir, mais on ne sait pas très bien comment, alors on prend ses jambes à son cou, on se débat ou encore on essaie de se cacher sans trop savoir avec qui ou pour combien de temps (d'où le fait de faire des stocks qui peuvent sembler disproportionnés).

En un certain sens, nous pensons donc que Roberts a raison de dire que la panique est étroitement liée au désir de « faire quelque chose, n'importe quoi » (2003, p. 201). Mais ce « n'importe quoi » est plus précis et restreint qu'on l'imagine : il recouvre des actions qui ont pour but d'échapper à un danger imminent, très probable, majeur, et contre lequel on ne sait pas très bien comment réagir. On peut aussi accorder à Roberts que la panique « engendre une activité précipitée et non délibérée » (p. 200), dans le sens où l'on n'a (l'impression d'avoir) ni le temps ni les moyens d'élaborer un plan d'action précis pour s'extirper du danger. Mais ce n'est pas vrai que la panique fait « courir sans but » comme le prétend Roberts (2003, p. 200) : le but est évidemment de s'en sortir au mieux et le plus vite possible, quand bien même on ne saurait pas exactement comment (par exemple, on ne sait pas quelle direction de fuite est la plus optimale).

On voit donc qu'il n'est pas généralement irrationnel d'agir de façon paniquée car, dans certains cas, étant donné l'importance et l'imminence du danger, et l'absence de plan d'action défini, les tendances à l'action de la panique maximisent nos chances de nous prémunir du danger (ou maximisent les chances des personnes qui nous entourent de s'en tirer). En ce sens, les tendances à l'action de la panique peuvent être rationnelles en cela qu'elles correspondent aux exigences de la raison pratique – soit atteindre ses fins étant donné ses moyens –, du moins dans les cas où la fonction cognitive de la panique a été correctement remplie, c'est-à-dire que le danger est tel qu'il est perçu : majeur, imminent et sans issue évidente.

Si ce que nous avons dit est correct, cela signifie que, contrairement à l'avis général, la panique peut également être considérée comme fonctionnelle et rationnelle d'un point de vue de la motivation à l'action.

IV. CONCLUSION

Dans cet article, nous avons soutenu que la panique a une fonction cognitive (section II), car elle nous permet d'appréhender la menace présente comme ayant des propriétés particulières. Nous avons aussi vu que la panique recouvre une fonction motivationnelle (section III) à travers des tendances à l'action expressives (crier, agiter les bras, etc.) et de repli (prendre ses jambes à son cou, se débattre, etc.) – des actions qui sont adaptées aux situations où la menace est telle qu'elle est perçue. Ainsi, contrairement aux idées reçues, la panique peut être une réaction rationnelle (du point de vue de la raison pratique) et adaptée.

Revenons maintenant aux exemples d'achats paniques liés à l'arrivée de la COVID-19. Compte tenu de ce que nous venons de dire, doit-on penser que tous ces comportements soient rationnels et adaptés à la situation ? On peut classifier ce type de réaction comme faisant partie des actions de repli typiquement générées par la panique et qui peuvent nous être utiles en cas de menace majeure, imminente et sans issue claire. C'est particulièrement l'incapacité d'établir un plan d'action clair qui permet d'expliquer ces actes. Au printemps 2020, nous manquions cruellement d'information quant aux conditions dans lesquelles cette

crise sans précédent allait nous laisser. Allait-on devoir se réfugier chez nous pendant de longues périodes sans accès à la nourriture ? Allait-on arriver, à terme, à devoir défendre sa maison à l'aide de ses propres armes ?

Du point de vue macro-économique – celui des auteurs de l'article cité en introduction – l'achat de kilos de papier toilette, d'innombrables boîtes de conserve, ou d'armes était certes sous-optimal, mais cela ne veut pas dire que ça l'était étant donné l'accès aux informations des personnes concernées. Nous tenons en particulier à insister sur le fait que, même si ces actions étaient en effet irrationnelles – et si ce que nous avons soutenu est correct –, cela ne peut pas être expliqué simplement par le fait qu'elles soient des produits de la panique. Quelquefois, comme nous avons tenté de le montrer ici, nous avons de bonnes raisons de paniquer.

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NOTES

[1] Notons que nous avons considéré dans cette section que, dans les cas typiques, l'*appraisal* et, de façon plus générale, l'évaluation cognitive constituaient une composante des émotions, qui peut déterminer causalement les autres composantes, mais qui n'en est pas une cause antérieure et extrinsèque. Ce postulat est devenu un consensus dans la recherche sur les émotions (Scherer et Moors, 2019). Néanmoins, certains auteurs (p. ex. Whiting, 2011 en philosophie, ou LeDoux, 1996 en psychologie) refusent ce postulat et considèrent que les émotions ne possèdent pas d'aspect cognitif.

BIBLIOGRAPHIE

Bonard, Constant, « Émotions et sensibilité aux valeurs : Quatre conceptions philosophiques contemporaines », Revue de Métaphysique et de Morale, 2021.

Bouton, Mark. E., « Behavior systems and the contextual control of anxiety, fear, and panic », *in* Lisa Barrett, Paula M. Niedenthal et Piotr Winkielman (dir.), *Emotion: Conscious and unconscious*, Guilford, 2005, p. 205-230.

Bratman, Michael, *Intention, plans, and practical reason*, Harvard University Press, 1987.

Deonna, Julien, Raffaelle Rodogno et Fabrice Teroni, *In defense of shame: The faces of an emotion*, Oxford University Press, 2012.

Deonna, Julien et Fabrice Teroni, *The emotions: A philosophical introduction*, Routledge, 2012.

Frijda, Nico H., « Emotions and action », *in Feelings and emotions*: *The Amsterdam symposium*, 2004, p. 158-173.

———, *The laws of emotion*, Routledge, 2007.

Kuruppu, Gayithri N. et Anura De Zoysa, « COVID-19 and Panic Buying: An Examination of the Impact of Behavioural Biases », 2020. Working paper SS-HO-D-20-00393. https://doi.org /10.2139/ssrn.3596101 (accessed July 7, 2020)

LeDoux, Joseph E., *The emotional brain*, Simon & Schuster, 1996.

Moors, Agnes, Phoebe Ellsworth, Klaus Scherer et Nico Frijda, « Appraisal Theories of Emotion: State of the Art and Future Development », *Emotion Review*, vol. 5, 2013, p. 119-124. 10.1177/ 1754073912468165.

Roberts, Robert C., *Emotions: An essay in aid of moral psychology*, Cambridge University Press, 2003.

Ryle, Gilbert, *The concept of mind*, Routledge, 2009.

Prinz, Jesse, *Gut reactions: A perceptual theory of emotion*, Oxford University Press, 2004.

Sander, David, « Models of Emotion: The Affective Neuroscience Approach », *in* Jorge Armony et Patrick Vuilleumier (dir.), *The Cambridge Handbook of Human Affective Neuroscience*, Cambridge University Press, 2013, p. 5–54.

Scarantino, Andrea, « The motivational theory of emotions », *in* Daniel Jacobson et Justin D'Arms (dir.), *Moral Psychology and Human Agency*, Cambridge University Press, 2014, p. 156–185.

Scherer, Klaus R. et Agnes Moors, « The Emotion Process: Event Appraisal and Component Differentiation », *Annual Review of Psychology*, vol. 70, no. 1, 2019, p. 719–745.

Tappolet, Christine (2000), *Émotions et valeurs*, Presses Universitaires de France, 2000.

———, *Emotions, values, and agency*, Oxford University Press, 2016.

———, « La peur au temps de la pandémie de Covid-19 », *Les billets de la pandémie*, site-web du Centre de Recherche en Ethique, 2020, url=<http://www.lecre.umontreal.ca/fear-in-the-time-of-the-covid-19-pandemic/>

Vazard, Juliette, « (Un)reasonable doubt as affective experience: obsessive-compulsive disorder, epistemic anxiety and the feeling of uncertainty », *Synthese*, 2019, p. 1-18.

Whiting, Demian, « The Feeling Theory of Emotion and the Object- Directed Emotions », *European Journal of Philosophy*, vol. 19, no. 2, 2011, p. 281–303.

ÉTHIQUE ET PANDÉMIE : LA COVID-19 DANS UNE PERSPECTIVE DE PHILOSOPHIE PRATIQUE

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RÉSUMÉ :

L'actualité et le quotidien ont été progressivement monopolisés par la pandémie qui a fait surface à la fin de l'année 2019, en raison de son urgence et de sa gravité. L'on commencera par se demander comment les sciences nous permettent de la comprendre et pourquoi ce sont certaines sciences en particulier qui ont pris l'avant-plan. En réfléchissant aux questions relevant de la biodiversité et des rapports entre les humains et leurs divers contextes écosystémiques, il devient possible de reposer le problème en termes politiques et économiques, dans une approche qui met la prévention au cœur des attitudes requises. Une gouvernance polycentrique – faisant intervenir plusieurs pôles (Ostrom, 2005) – peut aider à renouveler notre façon de poser les problèmes de pandémie d'un point de vue éthique.

ABSTRACT:

The pandemic is front page news every day and everywhere since 2020, because of the emergency of the crisis affecting everyone's lives seriously. Division of the scientific work has first to be interrogated here. What is the scientific treatment of these issues, and should we not also consider these questions at the source, by not staying focused on a curative only approach? Looking at biodiversity issues and human societies' relationships with ecosystem contexts, it becomes possible to consider the pandemic in political and economic terms, aiming at a preventive approach and attitude. A polycentric governance perspective (Ostrom, 2005) is posited as a practical way to renew our problematization of the issue, from an ethical perspective.

INTRODUCTION

En date du 28 juin 2021, le SRAS-CoV-2 est la cause avérée de plus de 3 920 463 décès directs sur le globe; il a infecté au moins 181 millions de personnes, et il a aussi produit une quantité encore non précisée de décès indirects (WHO, 2020). Certaines estimations évoquent soit un tiers supplémentaire, soit le passage du simple au double; chose certaine ce n'est pas mineur.[1] À l'heure d'écrire ces lignes, malgré l'inquiétude pour le variant Delta, la vaccination semble bien engagée dans plusieurs pays, où l'on observe de fortes diminutions des taux d'infection, d'hospitalisation et de décès directs. C'est le cas du moins pour les pays fortunés, car la distribution des vaccins dans les pays les plus pauvres échoue à respecter une conception même minimale de l'équité.[2]

Bien des spécialistes sont d'accord pour dire que les mois à venir seront cruciaux et que ce n'est aucunement le moment de baisser la garde. Cela étant dit, et au-delà de tout blâme ou de tout propos culpabilisant visant les uns et/ou les autres, la pandémie de COVID-19 livre une terrible leçon sur plusieurs plans. Son avancée subite et décisive a montré l'*impréparation* de nos sociétés, dévoilant aussi l'absence presque totale de *considération préventive*. Encore une fois (on le sait déjà avec le cas des changements climatiques), il a bien fallu constater de manière répétée la prise en compte insuffisante, le manque de prise au sérieux des *avis des scientifiques* par les décideurs de la grande partie des pays touchés, y compris, bien entendu, au Québec et au Canada.[3] Ultérieurement, des ouvrages d'histoire seront écrits à ce sujet (ce qui échappe au présent propos); ce serait requis pour les divers pays, restera à voir quelles leçons concrètes on en tirera. Il ne faut pas non plus oublier comment la très grande vulnérabilité des sociétés notamment occidentales s'est dévoilée devant la COVID-19, qui n'est ni la première ni la dernière pandémie à frapper notre espèce. Ce texte se veut une contribution philosophique à la discussion sur cela, au croisement de l'éthique environnementale et de la philosophie pratique; mais l'on commencera par se mettre autant que possible à l'écoute des sciences dont c'est le travail propre.

1. SUR LES LIENS DE LA PHILOSOPHIE AUX SCIENCES ET SUR LES DIFFÉRENTS ASPECTS DU QUESTIONNEMENT

Admettons d'entrée de jeu que pour pouvoir se déployer, une réflexion éthique qui concerne le rapport au monde qui nous entoure (appelons-le « environnement ») a besoin des savoirs et des approches développés par les sciences qui s'en occupent. Souvenons-nous aussi du fait que les connaissances en sciences ont très souvent des liens avec des pratiques professionnelles en relation avec des enjeux sur le terrain : médecine, mais aussi remédiation environnementale, gestion concrète de l'environnement. C'est d'ailleurs le cas dans tous les domaines où la réflexion éthique se confronte à des questions qui ont besoin d'être traitées par les sciences; par exemple, quelle bioéthique serait envisageable sans les sciences du vivant, sans la médecine et les disciplines liées ? C'est le cas aussi en éthique environnementale. Et n'oublions pas qu'au sein même des

disciplines comme la biologie de la conservation, l'écologie ou la chimie de l'environnement, de même que dans les disciplines visant à préserver la santé publique, de la médecine spécialisée à la virologie, les enjeux normatifs sont présents dans la mesure où les dangers et les pertes deviennent trop évidents et trop sérieux pour être passés sous silence. La médecine a des engagements axiologiques, il en va de même pour les disciplines de l'environnement.

De ce point de vue, comme nous voulons discuter du SRAS-CoV-2 et de la maladie qu'il provoque, la COVID-19, voyons ce que les sciences nous disent sur les pandémies; il y a certes des débats, des incertitudes, on le voit bien depuis le printemps 2020, mais sur le fond il n'y a pas de doutes sérieux. Si nous admettons qu'il y a un étroit rapport entre la croyance et les habitudes d'action, l'on constate qu'en l'absence de certitude, l'on ne sait plus bien comment agir (Peirce, 2002; 1877; Misak, 2016); on a pu le voir avec les fluctuations dans les mesures proposées, les changements de décisions politiques à tel et tel moment. Que pouvons-nous donc savoir sur les pandémies, pour fixer nos croyances et générer de meilleures actions ?

La question de la pandémie est fort complexe puisque les connaissances requises pour simplement comprendre la discussion se développent dans une pluralité de disciplines. Les philosophies ne peuvent pas plus que les autres en faire la synthèse; les unes et les autres n'ont pas accès à des certitudes particulières qui les mettraient au-dessus d'autres praticiens de diverses disciplines. Nous sommes aidés par le fait qu'un certain nombre de recoupements ont déjà été effectués entre plusieurs secteurs de recherche sur ces questions (pensons aux éléments partagés entre épidémiologistes et virologues). Les connaissances de base ne sont tout de même pas récentes puisque les épidémies et les pandémies sont documentées depuis plus d'un siècle et donnent lieu à des stratégies de lutte elles aussi connues.

Les pandémies sont-elles un problème médical? Bien sûr que oui en un sens, mais est-ce la cadre scientifique qui convient le mieux pour les comprendre? Il est évident que dans le feu de la crise que nous vivons depuis plus d'une année, les disciplines d'avant plan furent la biomédecine, la médecine d'urgence, la virologie, avec les enjeux de création puis de validation et de distribution des vaccins, avec le secours d'une épidémiologie liée aux recensements de cas. Le caractère massif de cette présence d'un cadrage avant tout médical et statistique de la discussion est d'autant plus fort qu'il est très lié aux états de situation dans telle et telle région : au Québec, un centre hospitalier de soins de longue durée (CHSLD); en France, les établissements d'hébergement pour les personnes âgées dépendantes (EHPAD); etc. Chaque fois, c'est tel groupe de professionnelles ou professionnels (préposés, infirmières, urgentologues, spécialistes, etc.) qui semble concerné. Il est clair qu'alors on ne travaille pas en amont, mais en aval des problèmes; on panse les plaies, on soigne les malades, on critique l'inefficience et les retards, on discute de solutions possibles, etc. Sans doute est-ce une réaction normale, notamment puisque nous avons du moins quelques prises sur les effets directs de la pandémie sur des gens concrets; certaines et certains d'en-

tre nous sont sur le front, d'autres ont pris des décisions, l'une et l'autre peuvent commenter ou exprimer un avis. Mais à la base, les problèmes de pandémie ne relèvent pas seulement des sciences biomédicales, ils relèvent plus largement des sciences du vivant et de l'étude de la biodiversité. Or, une simple lecture régulière des journaux combinée avec l'écoute des médias courants montre que c'est le volet biomédical qui occupe le plus d'espace dans la discussion publique sur la pandémie, et non les enjeux de préservation de la biodiversité. Est-ce en raison du fait que nous avons l'impression de ne pas avoir de pouvoir sur ces questions, liées apparemment ou bien au marché de Yuhan ou à l'élevage de visons dans les pays scandinaves ou en Colombie-Britannique?

2. QUELQUES RÉSULTATS ET POSITIONS D'UN GROUPE DE CHERCHEURS MANDATÉS ET VALIDÉS PAR L'ONU

Pour constater l'état des lieux en ce qui concerne notre interrogation dans les chantiers des sciences de l'environnement et du vivant, on peut se référer aux documents récents de l'organisation soutenue par l'ONU et qui se veut le pendant du Groupe d'experts intergouvernemental sur l'évolution du climat (GIEC) sur les questions de la biodiversité, soit l'IPBES (International Science-Policy Platform on Biodiversity and Ecosystem Services) ainsi qu'aux textes qui sont à l'appui dans les publications spécialisées, notamment les revues de recherche. Quelques citations nous conduiront bientôt au cœur du sujet.

> Pandemics have their origins in diverse microbes carried by animal reservoirs, but their emergence is entirely driven by human activities. The underlying causes of pandemics are the same global environmental changes that drive biodiversity loss and climate change. These include land-use change, agricultural expansion and intensification, and wildlife trade and consumption. (IPBES, 2020, p. 2)

Il y a une claire connexion entre les empiètements des humains sur la biodiversité et le développement des pandémies. Ces empiètements incluent une déforestation qui sert non seulement à fournir du bois et des aliments de consommation immédiate, mais aussi à élargir les espaces disponibles pour les cultures et l'élevage. Toutefois, comme les virus possèdent des niches écologiques et utilisent des vecteurs vivants qui en ont également, et en raison des changements climatiques, certains vecteurs épidémiques sont également mobiles.[4] L'on aura noté que le cumul des activités humaines nous fait perdre certaines composantes de la diversité biologique et qu'à la fois il atteint gravement la stabilité du système climatique dont nous dépendons.[5] L'utilisation des sols est une catégorie englobant plusieurs actions; l'ensemble concerné produit d'importants effets.

> Land-use change includes deforestation, human settlement in primarily wildlife habitat, the growth of crop and livestock production, and urbanization. (IPBES, 2020, p. 3)

> Land-use change creates synergistic effects with climate change (forest loss, heat island effects, burning of forest to clear land) and biodiversity loss that in turn has led to important emerging diseases. (IPBES, 2020, p. 3)

Ajoutons que les manifestations d'une pauvreté intense recoupent étroitement de nouveaux empiétements sur les territoires chauds de la biodiversité, ce qui se voit notamment au Brésil (autour de la forêt amazonienne) et ailleurs. La citation qui suit souligne en particulier un autre élément, le lien avec la croissance populationnelle et ses usages : plus de gens entraîne plus de besoins, et donc plus de sollicitations et d'empiètements, même à supposer (avec optimisme?) une proportion relativement constante de populations pauvres.

> EIDs [Emerging infectious diseases] tend to originate first in rural regions of tropical or subtropical countries with high wildlife diversity (and therefore likely high viral diversity), human populations that are growing rapidly, and where land use change is driving closer contact among people and wildlife. Therefore, rural communities in developing countries are often on the frontline of disease emergence. (IPBES, 2020, p. 8)

C'est à l'occasion de la crise récente provoquée par la COVID-19 que les liens des pandémies avec la biodiversité ressortent de nouveau. L'extinction massive d'espèces à notre époque est bien attestée dans les recherches, et ce, depuis un certain temps.[6] Il faut rappeler que les pandémies passées ou encore actuelles sont des zoonoses, soit des maladies qui ont pour vecteurs des vivants non humains, des animaux parmi lesquels des insectes, mais aussi des mammifères : les plus connues sont le Zika, l'Ebola, le virus du Sida, la maladie de Lyme, le H1N1, le SRAS et finalement le SRAS-CoV-2, deux formes de coronavirus. L'affaiblissement général de l'efficacité des antibiotiques, rappelé récemment dans un texte de Boucar Diouf, ne peut qu'aggraver le cas (IPBES, 2019; Diouf, 2020).

Nous avons tendance à isoler les questions pour mieux les analyser, mais il faut conserver en vue les combinatoires de problèmes. Ainsi, la perte de biodiversité et les changements climatiques viennent augmenter le processus d'empiètement qui est lui-même à la source des pertes en biodiversité, un véritable cercle vicieux. Pertes et changements rendent plus difficile l'accès au bois et aux aliments, alors que les besoins humains ne diminuent pas; en conséquence, plus de démarches de sollicitation des « ressources » deviennent requises. De plus, cet ensemble de facteurs n'est pas sans liens avec les usages de pesticides et la perte de capacité productive des sols, pour les mêmes raisons : la lutte chimique pour la protection des cultures continuent d'apparaître comme la solution la plus évidente, surtout en contexte d'absence de conseil agronomique adéquat (Schiesari, 2013). Les bouleversements du climat et les pertes de biodiversité ont une même série de causes : l'agentivité humaine poursuivant ses buts usuels. De surcroît, la pollution plus intense de l'atmosphère, qui cause une prévalence plus

élevée des maladies pulmonaires et cardiaques (Hoek *et al*., 2013), est étroitement liée à l'usage des combustibles fossiles, lesquels produisent aussi des GES, facteur central des bouleversements climatiques; et n'oublions pas les données récentes qui montrent que les maladies pulmonaires aggravent la réaction à la COVID-19 (Münzel, 2017). La notion du « One Health », qui rallie bon nombre de chercheurs préoccupés de ces questions, est une notion à portée normative et intégrative qui est mise de l'avant par une pluralité d'acteurs de la recherche en biodiversité : elle vise l'intégration de la santé humaine, de la santé animale et de secteurs de l'environnement dans une même problématique (Bird et Mazet, 2018).

C'est sans doute un concept à soutenir, mais le problème principal qu'on rencontre ici, c'est celui de l'agentivité humaine organisée ordinaire, pour le moins déficiente sur ces questions. Expliquons : l'on admettra aisément que l'agir humain est organisé, coordonné en groupes diversifiés selon diverses fonctions. Contrairement à une notion forte de l'agentivité assez usuelle en philosophie morale, impliquant une intention personnelle consciente d'elle-même, de ses responsabilités incluant la prise en compte des conséquences indirectes de l'action, l'agentivité humaine organisée ordinaire est simplement orientée vers des buts assez simples, comme se nourrir, se reproduire, assurer le logis, en prenant les moyens les plus efficaces. Cela correspond à ce que Habermas, à la suite de Weber, appelait l'action rationnelle par rapport à une fin (Habermas, 1987 [1981]); on se souviendra que ce type d'action selon Weber n'inclut pas l'orientation axiologique. Dans le cas qui nous intéresse ici, les pertes de biodiversité et l'appauvrissement des sols ne sont pas des buts, mais des conséquences indirectes d'une action téléologiquement orientée vers certains résultats habituellement visés.

Loin donc de pouvoir nous satisfaire de solutions individuelles, il faut considérer les questions à une échelle plus vaste. Comme les problèmes ne sont pas limités à un pays et par des frontières, il semble requis de renvoyer à une coordination internationale, à des initiatives des organisations de l'ONU. Mais rappelons les limites de ces organisations qui, malgré les bonnes volontés des uns et des autres, n'ont que peu de pouvoir, outre l'éducation ou la remédiation ponctuelle. En effet, ce sont les pays singuliers qui autorisent ou non telles pratiques de collecte du bois ou de mise en marché des espèces braconnées, qui ont ou non les lois et règlement requis, qui disposent ou non des moyens de surveiller l'application de leurs lois et règlements s'ils existent. Et ce sont les habitants de tel ou tel territoire concret, chasseurs, fermiers ou éleveurs, qui ont ou non les ressources de remplacement requises, qui disposent ou non des incitatifs requis pour opérer une éventuelle transition – laquelle n'est même pas discutée encore sérieusement quand il est question de protection de la biodiversité. Ce réflexe de « recours à l'ONU » ne doit pas faire oublier ce qui est du ressort des États : signer des ententes, notamment de préservation et de conservation des écosystèmes, de type bi ou multilatéral avec les pays qui sont voisins, avec lesquels des régions écosystémiques sont partagées.

L'on sait que le GIEC jouit d'une autorité reconnue pour les connaissances sur le climat et concernant les actions à entreprendre (composante normative) (Porter *et al*., 2018). Mais l'IPBES est loin d'être aussi connu et soutenu que le GIEC; et dans la mesure où le discours demeure général, il ne semble encore s'adresser qu'aux spécialistes de la santé et de la politique, sans aucunement relever et organiser les problèmes politiques et ceux qui concernent la relève économique. En effet, soulever les questions économiques et politiques est nécessaire : les besoins alimentaires sont à la base des pressions sur la biodiversité, comme on l'a vu, et il est donc urgent de mettre en place des systèmes d'organisation répondant mieux aux requêtes de préservation. Mais pourquoi s'occuper de ces problèmes alors que la question à l'ordre du jour est la pandémie?

> Our business-as-usual approach to pandemics is based on *containment and control after a disease has emerged* and relies primarily on reductionist approaches to vaccine and therapeutic development rather than on reducing the drivers of pandemic risk to *prevent them before they emerge*. (IPBES, 2020, p. 4)

La démonstration est similaire quand l'on regarde un phénomène directement lié aux changements climatiques, soit les inondations; les événements de 2017 n'ont pas suffi à changer réellement la donne à l'arrivée de 2019. Même après cette seconde vague rapprochée de grandes inondations, la situation au Québec ne bouge que très lentement.[7] Il semble politiquement très difficile de convaincre les électeurs du besoin soutenu d'investissements préventifs, mais les décideurs n'ont pas toujours besoin de mener des consultations explicites, surtout quand une valeur est bien reconnue. Compte tenu du primat habituel de ce qui est immédiatement perceptible et saisissable comme menace ou danger, faire comprendre la valeur de la biodiversité est plus complexe qu'aider à cerner le besoin de sécurité dans sa maison (cas des inondations) : dans ce dernier cas, les conséquences sont directes et critiques.

Bien que leur discours soit parfaitement clair, les chercheurs de l'IPBES ne peuvent éviter le conditionnel et le vraisemblable, faisant appel à des changements pratiques des habitudes, des changements sur lesquels ils n'ont d'autre pouvoir que celui de recommander. Les italiques dans ce qui suit ne sont pas dans l'original:

> Pandemic risk *could be* significantly lowered by *promoting* responsible consumption and *reducing* unsustainable consumption of commodities from emerging disease hotspots, and of wildlife and wildlife-derived products, as well as *by reducing* excessive consumption of meat from livestock production. (IPBES, 2020, p. 3)

Il arrive néanmoins que les demandes soient plus catégoriques :

> Conservation of protected areas, and measures that reduce unsustainable exploitation of high biodiversity regions *will reduce* the wildlife-livestock-human contact interface *and help prevent* the spillover of novel pathogens. (IPBES, 2020, p. 5)

On parle de débordement de pathogènes ici, compte tenu de leur quantité; elle est difficile à mesurer, mais sans nul doute très importante. Admettons toutefois que la source des problèmes, c'est cet agir organisé ordinaire, non réflexif, concernant les conséquences indirectes de l'action et dont nous avons parlé plus haut. On relève de claires corrélations : il s'agit d'effets non désirés de certaines actions finalisées, comme la chasse, l'élevage et bien sûr la pêche surtout industrielle; en effet, ces dernières peuvent avoir globalement, à une grande échelle, des effets néfastes non recherchés.[8] La situation des pandémies à source zoonotique n'est pas différente à cet égard d'autres problèmes, comme celui de l'usage des plastiques ou encore plus largement celui de l'usage des énergies fossiles. Mais le problème est de passer de ce constat à la situation souhaitée. À cette fin, il faut certes un langage normatif qui peut se présenter de différentes manières comme l'appel, l'injonction, le plaidoyer, la prescription proposée ou, plus rarement, l'obligation (si la source a un réel pouvoir). Il faudrait surtout obtenir une mise en vigueur concrète. Qu'on veuille *décrire* ce qui se passe, *estimer/considérer* ce qui est possible ou *exiger/formuler* ce qui devrait être – des types d'actions discursives entre lesquelles bien sûr les différences sont notables et connues –, il s'agit d'un agir qui n'est pas seulement individuel, mais qui a au contraire un caractère collectif. Les pratiques de chasse, de pêche et de cueillette qu'on peut décrire sont collectives. Estimer le possible se fait aussi par rapport à des essais collectifs documentés, pensons à une agriculture sans pesticides. Et se donner des normes exigeantes passe aussi par des agentivités délibératives et organisées. Quel que soit le cas, l'agir se déploie selon des formes multiples qui sont à chaque fois locales, mais qui en même temps outrepassent les limites soit de compétences, soit de territoire de tel ou tel État, en se retrouvant dans plusieurs d'entre eux. Avec les sciences et la philosophie politique, l'éthique peut contribuer à trouver les manières selon lesquelles les groupes humains de diverses échelles arriveraient à se gouverner afin de transformer les manières de faire, en formulant les raisons pour le faire : valeurs et autres exigences normatives. Nous venons de voir que les problèmes sont liés; l'on ne peut se contenter de perpétuer une division des savoirs et des tâches entre l'éthique et la philosophie politique. Ce caractère assez crucial des problèmes de gouvernance est peu discuté dans le rapport de 2020 de l'IPBES, mais il ressort assez clairement du cadre théorique retenu (voir la figure 1).

Figure 1. Cadre théorique de l'IPBES

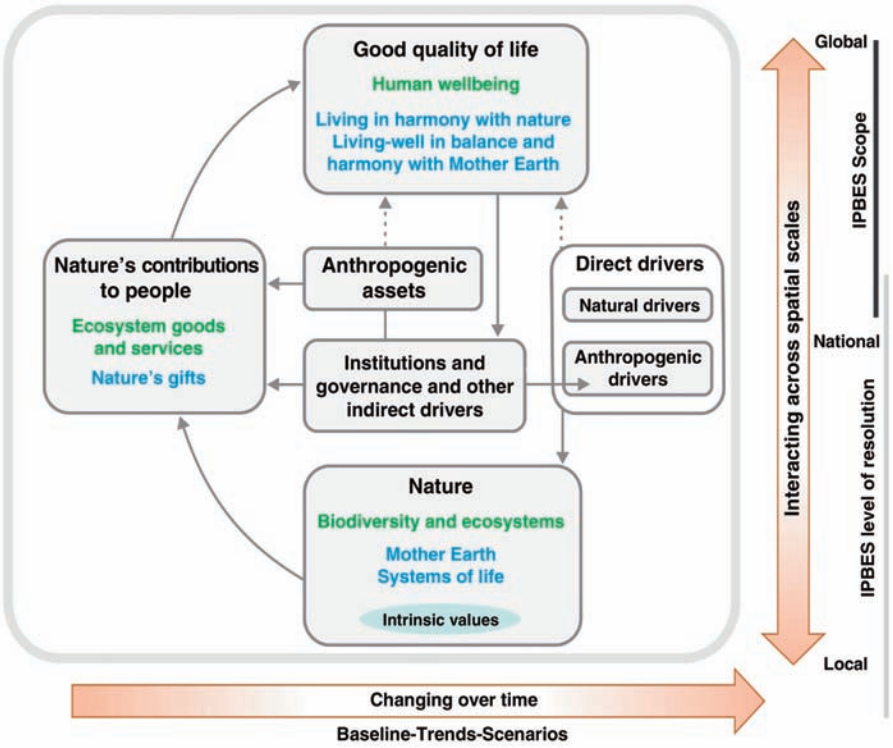

Figure SPM A 1 The IPBES conceptual framework. Source: Díaz *et al.* (2015)

Parler de gouvernance ne s'oppose pas nécessairement à un souhait d'autogouvernement à caractère politique: cela renvoie certes au rôle de l'État, mais aussi au rôle d'un ensemble d'acteurs ayant un certain pouvoir dans le contexte (Létourneau, 2019). C'est un réseau complexe de prises de décision qui est concerné, et les blocages se produisent à tout instant dans la chaîne plus ou moins lâche des acteurs. Comme les pandémies ont eu lieu à différentes époques, notamment depuis le Moyen Âge jusqu'au temps de la grippe espagnole et au-delà avec le H1N1 et le SRAS, l'on ne peut que constater que nos structures de prise de décision n'ont qu'une souplesse et une habileté relatives pour faire face de manière plus adéquate à ce genre de difficultés. Il nous faut donc faire preuve d'inventivité et proposer des manières de les traiter efficacement. Formulons l'hypothèse secondaire que les difficultés qui concernent la biodiversité sont laissées de côté parce que moins visibles et moins liées à tel acteur singulier (donc avec un faible degré d'imputabilité, sauf cas criminels; on y revient plus bas).

3. L'ABSENCE DE LA PRÉVENTION

Arrêtons-nous sur le caractère récurrent et prévisible des pandémies tant actuelles que futures. Malgré la large documentation des cas de pandémie depuis des décennies, les sociétés étaient très mal préparées et ont été prises au dépourvu. On parle ici surtout des sociétés occidentales, puisque les conséquences de la pandémie de COVID-19 ont été moins graves en Asie comme on le sait; des leçons avaient été apprises des pandémies antérieures. Ce n'est pas

que les chercheurs et les spécialistes n'avaient pas prévenu les décideurs des risques de pandémie encourus. Ainsi, en 2019, donc avant la pandémie actuelle, on pouvait lire ceci dans la documentation de l'IPBES (version française, qui n'est pas la version originale) :

> Les zoonoses représentent une menace sérieuse pour la santé humaine, les maladies à transmission vectorielle représentant environ 17 % de l'ensemble des maladies infectieuses et causant près de 700 000 décès par an dans le monde *(établi mais incomplet)* {3.3.2.2}. Les maladies infectieuses émergentes chez les espèces sauvages, les animaux domestiques, les plantes ou les populations humaines peuvent être amplifiées par des activités humaines telles que le défrichement et la fragmentation des habitats (*établi mais incomplet*) ou par l'usage excessif des antibiotiques, qui se traduit par une rapide évolution de l'antibiorésistance chez de nombreuses bactéries pathogènes *(bien établi)* {3.3.2.2}. (IPBES, 2019, p. 22)

Les notes prudentes attestant de la modalité du discours rappellent clairement ici le langage du GIEC sur les changements climatiques. On le sait, une politique de prévention est souvent manquante, en retard et pas assez développée. C'est patent dans plusieurs dossiers, pas seulement en ce qui regarde les virus transportés originellement par des vecteurs non humains et ensuite par nos semblables.

Il faudra mieux caractériser, dans une approche inspirée par Weber, les types réguliers descriptibles de l'agir des humains qui sont impliqués, quitte à admettre différentes versions pour chaque type – ce qu'il appelait les idéaltypes (Weber, 2016). Quels sont les acteurs pertinents qui auraient à se responsabiliser face à la question, non pas seulement sur le plan des organisations internationales comme l'ONU ou l'OCDE, mais à l'échelle des territoires, des pays, des régions partageant des frontières avec les principales régions de biodiversité de la planète? En effet, pour l'heure, il ne s'agit pas d'agentivité au sens fort, soit incluant une intentionnalité, des attitudes propositionnelles et des préférences (List et Pettit, 2011). En effet, nous sommes touchés par des effets indirects et non souhaités d'actions visant d'autres buts, des actions accomplies par des individus pas nécessairement coordonnés, mais qui partagent les mêmes types de fins : la chasse, l'élevage, le commerce, la cueillette des végétaux, éventuellement le trafic. Tout ceci vise de près ou de loin l'alimentation, pour la survie ou l'amélioration à court et moyen terme de leur existence ou de celle de leur famille, dans certains cas l'enrichissement. Remarquons-le, il y a de fait un ensemble fort différencié de pratiques, sur lesquelles plus d'études empiriques sont requises. On a ici des groupes entiers d'acteurs allant dans différents sens, mais avec la quantité suffisante pour obtenir l'effet indésirable. L'on peut aussi comprendre que la régulation sociale du chasseur individuel ne peut suffire pour les trafiquants d'espèces menacées (Bernard, 2016). De plus les gouvernements, oscillant de divers côtés selon les groupes d'intérêt dominants, rendent compte de coalitions à court ou moyen terme. Des entreprises peuvent mettre en marché de nouveaux produits, changer de filière agricole par exemple. Il est plus diffi-

cile d'offrir de nouvelles formes d'emploi ne comportant pas d'atteintes à la biodiversité. Le bois dans la forêt et les vivants non humains, avant d'être coupés, cultivés, élevés ou chassés, ne disposent d'aucune valeur économique, dans la mesure où ils n'ont pas de « prix ». En effet ce dernier suppose ce qui est approprié, possédé par un potentiel vendeur, qui pourra le transformer et le rendre accessible moyennant un coût déterminé pour l'acheteur situé à l'intérieur de quelque chose comme un marché.

4. L'ESPACE D'UNE ÉTHIQUE ENVIRONNEMENTALE

On a évoqué les cloisons souvent étanches entre disciplines, entre la médecine et l'écologie, entre la politique et la recherche appliquée en laboratoires, la biologie de la conservation et la virologie. C'est pourquoi plusieurs se réfèrent à une conception holiste de la santé, « One Health », une approche souvent liée à la détection des maladies sur le terrain (Bird et Mazet, 2018). La spécialisation a néanmoins fait ses preuves, bien entendu; une discipline ne peut fonctionner qu'en laissant de côté ce qui sort de son champ. Les philosophes de métier n'échappent pas à cette situation généralisée, avantage et inconvénient tout à la fois. Ainsi, depuis une quarantaine d'années, les éthiciens de l'environnement ont développé leur propre spécialité; or les spécialistes de l'éthique du climat ne sont pas vraiment des spécialistes de l'éthique de l'environnement, il suffit de les lire pour le constater (Williston, 2019; Jamieson, 2014; Broome, 2012; Gardiner, 2011; Garvey, 2008). Les philosophes de la biodiversité (notamment Maris, 2010) ne comptent pas davantage comme des spécialistes de l'éthique du climat. Depuis bon nombre d'années, les liens entre l'éthique environnementale et la biologie de la conservation sont discutés, presque toujours dans un cadre relevant de la gestion des parcs naturels ou des zoos, en termes de devoir de préservation (Soulé, dans Keller, 2010 [1989]). La question de la biodiversité dans les traités d'éthique environnementale ne soulève pas le lien possible avec les pandémies (Rolston III, 2012; Maris, 2010; Callicott, 2010 [1985]; Attfield, 2014; Curry, 2011; Light et Rolston III, 2003). Avec intérêt, on discute de la perspective antérieure, centrée sur le maintien de l'« équilibre de la nature » : si cette thématique semble pour certains dépassée, ce qui est discutable (Callicott, 2010), il faut alors prendre en compte l'importance de l'action humaine et de ses conséquences, et savoir s'adapter (Jamieson, 2008). Typiquement, l'on se préoccupe de pertes à la biodiversité et de problèmes conceptuels liés aux notions d'écosystème, ainsi que de ce qui va de pair, par exemple la question des seuils en deçà desquels l'on aurait une transformation radicale du système écologique concerné qui deviendrait néfaste – certes pour les vivants bénéficiant de l'état actuel des choses, et non pour tout vivant possible. De son côté, le pragmatiste Ben A. Minteer traite des problèmes infectieux dans le règne animal, mais pas des risques de pandémies d'origine zoonotique (Minteer et Collins, dans Minteer, 2012). De fait, en discutant de pandémie, notre réflexion est à cheval entre une problématique environnementale et une discussion de la protection de la santé publique – une intersection que certains chercheurs en bioéthique commencent à traiter (Ten Have, 2019), renvoyant aux notions de commun et de gouvernance, comme on le fera ici.

Parmi bien d'autres points restant à traiter, la préoccupation de prévention constitue un évident devoir. Elle concerne un bien important, soit de conserver un écosystème habitable; ce devoir peut se livrer sous forme de nouvelles attitudes (Dewey et Tufts, 1932). Mais plus encore, et c'est le point précis sur lequel le présent texte va insister, il est possible de construire une stratégie qui puisse être plus largement partagée en société, si la question de l'obtention de résultats nous importe. Ici, il faut refuser de se laisser enfermer dans d'étroites limites disciplinaires; une philosophie pratique pose en même temps les questions éthiques, politiques et économiques (Létourneau, 2020_b). On ne peut ici que rejoindre le pragmatisme environnemental dans son constat concernant l'échec des éthiques principielles en environnement (Norton, 2005). Encore faut-il préciser autant que faire se peut des questions qui devraient se discuter le plus près possible des terrains qui sont concernés – si l'on accepte la position biorégionaliste selon laquelle l'approche régionale est souvent la meilleure pour traiter les questions d'environnement (Parson, 2000).

Mais précisons auparavant comment cette réflexion d'éthique environnementale s'insère dans un ensemble plus vaste, qu'on peut appeler la philosophie pratique (Létourneau, 2020_a; 2020_b).[9] Les questions politiques (structure de pouvoir inadéquate pour traiter et solutionner l'enjeu) et économiques (dépendance des populations face à un environnement à valeur d'abord alimentaire, absence de modalités économiques de remplacement) sont ici incontournables, comme nous l'avons soutenu précédemment. Et un certain nombre de difficultés tantôt épistémologiques, tantôt morales ont été relevées : la surspécialisation, une approche curative et biomédicale dominante et non pas une approche préventive, la complexité des enjeux interreliés (expansion de l'exploitation du territoire, empiètements sur la biodiversité, mobilité des zoonoses en raison des bouleversements climatiques). Et dans tout ceci, un manque complet à considérer les acteurs de gouvernance qui jouent un rôle important. Ces problèmes interreliés doivent être le point de départ d'une réflexion éthique à poursuivre.

Partant de la théorie de la valuation, admettons qu'une réflexion éthique doit transformer un agir de premier degré d'attribution de valeur à un second degré, réflexif par rapport au premier ; c'est la différence entre le *prizing* et l'*appraisal*, entre l'engagement moral spontané et la discussion réfléchie (Dewey, 1939). Certes, il a été possible par le passé de penser l'éthique du point de vue de l'agir individuel; c'était le cas par exemple au sortir de l'utilitarisme classique (Sidgwick, 1981 [1907]). Toutefois dans une perspective se réclamant à la fois du pragmatisme et de la théorie critique, l'éthique se réfléchit en même temps comme sociale et en tant qu'affaire de relation avec l'environnement. C. Larrère montre bien que la reconnaissance de la valeur intrinsèque des écosystèmes n'est pas contradictoire avec la prise en compte des intérêts et besoins humains, chose qui se trouvait aussi chez A. Light et B. G. Norton (Larrère et Larrère, 2015; Light et Katz, 1996; Norton, 2015). Prétendre mettre de l'avant le primat unique des intérêts écosystémiques en refusant d'inclure en ceux-ci les intérêts humains conduirait à des paradoxes. On a tenté de trouver une solution en faisant appel à des intérêts de premier et de second ordre (Shrader-Frechette, 1996); néan-

moins cela demeure une solution purement théorique; encore faudra-t-il que cette priorisation soit reprise par les décideurs concernés. En tout cas, seule une prise en compte de ces besoins et intérêts peut éventuellement régler les problèmes, étant donné que ceux-ci ont pour source principale cet agir organisé ordinaire (pas assez doté d'une fin qui soit suffisamment inclusive de tous ses effets) de l'espèce *Homo sapiens*. Sinon, ces intérêts humains se coalisent et font obstacle, imposant un immobilisme aussi lourd que destructeur. Les choses continuent de se déployer tout simplement dans leur logique coutumière. Sans doute que « les institutions » ou « la société » peuvent bouger avec des logiques de pression, cela s'est vu. Ces luttes sont toutefois, en l'absence de rapport de force significatif, d'une efficacité au mieux moyenne.

Une approche de gouvernance polycentrique, inspirée par Elinor Ostrom et son école, signifie un renforcement et un élargissement de la sphère politique, et non sa diminution (Ostrom, 2005; Létourneau, 2019). Une riche biodiversité n'appartient à personne, et à ce titre elle peut être traitée comme un *commun* (Ostrom, 2005). D. Graeber nous a montré que, de toute manière, l'appel au marché ne produit pas le rétrécissement de la place de l'État, il faut donc en prendre acte (Graeber, 2015). Sans doute qu'une éducation visant la transformation des pratiques est possible également à l'échelle des groupes humains, bien qu'il faille que chaque individu soit finalement convaincu qu'un certain questionnement est fondé, nécessaire et valide. Cela ne suffit évidemment pas puisque l'action néfaste en environnement relève des cumuls d'actions, et non de la volonté des uns ou des autres.

Il faut reconnecter la réflexion éthique aux autres lieux pertinents d'une philosophie pratique : politique, économique, épistémologique. Cela ne peut évidemment pas être tout à fait accompli dans les limites du présent texte. Il serait intéressant de revenir sur l'état stationnaire de l'économie chez J.S. Mill; sans doute se distingue-t-il des discours de critique du modèle de la croissance infinie, des discours construits depuis le rapport Meadows de 1972 et qu'on retrouve aussi chez les penseurs de la post-croissance (Mill, 2018; 1871; Meadows, 1972; Seidl et Zahrnt, 2010; Daly, 1996). La prise en compte des besoins anthropiques limite ici très sérieusement ce que nous pouvons faire, mais le fait de les ignorer ne permet pas de solution : il les occulte et promet plutôt l'échec. Il faut bien le dire, l'appel aux principes, sur la base des notions pourtant riches de la considérabilité morale ou de l'approche écocentrique, avec tout le décentrement qu'elles procurent, n'a pas conduit à l'avancement de la tâche à ce jour, et rien n'indique qu'il en sera autrement dans l'avenir (Norton, 2005). Suffit-il de se définir par le recours à un seul « centre »: *bio*, *anthropo*, *éco*, *patho*? Il y a autant de centres qu'il y a de points possibles de référence dans un ensemble (James, 1910). Toute recherche de centre présuppose une sorte de modèle sphérique par défaut qui ne va aucunement de soi (Sloterdijk, 1999), bien qu'il soit extrêmement difficile de s'en déprendre.

L'adhésion morale de certaines personnes aux principes fondamentaux n'assure apparemment pas de manière efficace le passage à l'action. Il suffit pour le justifier de penser, par contraste, au nombre élevé de personnes travaillant dans les processus de décision et d'opération dans toute la chaîne concernant l'alimentation, de la production à la distribution, et qui ne sont pas vraiment rejointes par les spécialistes de l'éthique de l'environnement. Cet élément doit être pris au sérieux et réfléchi, car les pratiques collectives en jeu, considérées globalement, s'avèrent mauvaises – et surtout les empiètements, qui sont sans cesse plus nombreux. Elles sont mauvaises *pour nous comme pour les autres espèces qui actuellement peuvent vivre dans l'écosystème actuel*. Certes, une fois la planète devenue inhabitable pour nous les humains, un nouvel équilibre provisoire serait produit. Mais l'on peut se demander quelles espèces pourraient encore y vivre, compte tenu de notre adaptabilité très élevée, en comparaison de bien des vivants, limités à des niches écologiques plus restreintes (Pocheville, 2015). De fait, ce sont les impératifs d'une vie économique humaine – pensons seulement au déboisement parfois sauvage et massif ainsi qu'à d'autres pratiques alimentaires dépassant le simple cadre d'une agriculture sédentaire basée sur les plantes et l'élevage – qui rendent difficilement évitable le surgissement accru de maladies d'origine zoonotique. Il n'est pas non plus assuré que faire la promotion d'une agriculture biologique, de la permaculture ou d'autres approches moins intensives suffira à arrêter un empiètement marqué sur des régions qu'on devrait protéger, pour conserver la biodiversité actuelle, en leur laissant un espace de développement et de créativité (Maris, 2010, p. 164).

5. QUELQUES QUESTIONS POUR UNE ÉTHIQUE ENVIRONNEMENTALE PENSÉE DANS LE CADRE D'UNE PHILOSOPHIE PRATIQUE MARQUÉE PAR LE PRAGMATISME ET LA THÉORIE CRITIQUE

En fait, la crise qu'a causée la COVID-19 montre plus que toute autre dans quelle impasse nous nous trouvons du point de vue social et du point de vue scientifique. Socialement, nous avons appris à traiter les problèmes de manière spécialisée. Tout le monde comprend qu'il y a des liens entre les domaines, mais, de manière générale, les champs de recherche demeurent cloisonnés, tout autant que le sont les ministères de nos différents gouvernements. La division du travail discutée par Durkheim et appliquée avec rigueur dans le monde industriel a été fort efficace, mais elle comporte un prix à payer. Ainsi, selon la division habituelle des tâches en sciences, les problèmes de santé ne sont pas les problèmes de pollution environnementale, et les problèmes d'agriculture ne sont pas les problèmes concernant le climat; de plus, la gestion des sols n'est pas traitée par les spécialistes de la virologie et encore moins par ceux de l'épidémiologie. Cela n'empêche pas tel épidémiologiste de travailler sur les microbes des sols, bien entendu, ou telle chercheure de relever les défis de la recherche en santé environnementale. Mais ces travaux d'interface ne donnent pas pour autant aux décideurs les compétences requises pour traiter les problèmes de manière vraiment transversale.

Le discours des scientifiques est hautement spécialisé et prévu pour des spécialistes; or les expertises peinent à être pleinement comprises par qui de droit. Dans le cas du Québec, et ce serait vrai si l'on regardait aussi dans bien d'autres régions et pays, des mois ont passé avant que des certitudes scientifiques bien établies aient pu être acceptées et mises en pratique. Donnons pour exemples la question du port du masque, celle du congé de la relâche printanière de 2020, celle aussi de l'aération dans les écoles.[10] Si les bonnes décisions sont basées sur les meilleures connaissances, encore faut-il pouvoir en tenir réellement compte, l'arbitrage entre les expertises demeure en général dans un cercle fermé. Parler ici de supériorité épistémique des uns ou des autres n'est peut-être pas le meilleur moyen de surmonter dans la pratique les écarts et les différences entre les expertises mobilisées ici et là.

Le problème a de plus un rapport éminent avec nos systèmes politiques, incluant les processus de gouvernance qui sont loin d'avoir la cohésion et le degré de collaboration requis (Létourneau, 2019). Le prix à payer d'une situation de pouvoirs distribués dans une société polycentrique au sens d'Ostrom, c'est notamment le fait que la coordination entre ces pouvoirs n'est pas donnée et au contraire demeure toujours à construire (Ostrom, 2005). Les systèmes de gouvernance « restructurés » sont forcément plus lents, moins efficaces; et la recette de la centralisation pour faire des économies d'échelle est encore appliquée, après que son manque d'efficience ait pourtant été démontré.[11]

Un peu comme cela a été fait pour le sens éthique des programmes axés sur l'adaptation aux changements climatiques, il est possible de proposer ici une approche régionale multipartite, en étroite collaboration avec les instances politiques concernées et en incluant la santé publique, pour rendre possible une approche inclusive visant la gouvernance des changements globaux, y compris sur le front de la pandémie et de sa prévention (Létourneau, 2021). En effet pour mettre en jeu la prévention, l'on ne peut prendre chacun des milieux de manière isolée (villes, forêts, régions riveraines de l'océan, régions montagneuses, plaines, etc.) (IPBES, 2021). Il faut impliquer des chaînes d'acteurs qui ne sont pas toujours sur un seul territoire, car il y a des effets mutuels et des interactions à considérer. On ne pourra faire plus ici que développer une sorte de modèle simplifié d'une gouvernance possible.

Il faut sans doute dans un premier temps obtenir ou concevoir un répertoire assez exhaustif des zones de biodiversité qui sont les principales sources des maladies zoonotiques; c'est sur ces territoires, avec la collaboration d'organisations comme l'OMS, que devraient être créées des tables de concertation. Il serait requis que les instances politiques des pays et régions concernés y soient représentées; plus encore, que des mandats officiels venus des autorités concernées sur ces territoires permettent une prise au sérieux des recommandations qui devraient en être attendues par la suite. Ces tables se donneraient pour mission de réunir ce que nous pouvons considérer comme les parties prenantes d'une sauvegarde de deux valeurs substantielles : une biodiversité robuste et une vie humaine qu'on souhaite de qualité. La seconde dépend de la première, mais la

première requiert aussi la seconde, si l'on veut éviter les comportements dérogatoires, soit les empiètements dont on a parlé plus haut – cela suppose, notons-le bien, que certains usages peuvent être soutenables (pour une évaluation, la contribution des sciences est requise). Il faudrait alors convoquer certains acteurs parmi les éleveurs, les chasseurs, les vendeurs et boutiquiers qui tiennent les marchés concernés, des biologistes de la conservation actifs dans certaines régions. Dans les milieux affectés par la criminalité concernant les espèces rares, prévoir un renforcement des forces de sécurité compétentes serait requis. On ne peut laisser de côté les banques qui financent ou prêtent, ni la fonction du transport, ou les acteurs de la construction, requérant les matériaux de la forêt, ni les institutions de santé locales, quelques ONG bien implantées sur le terrain également, les spécialistes en épidémiologie et en zoonoses. Cette liste n'est pas une formule omnibus, mais bien un exemple de liste possible, ayant à être générée sur les terrains par des acteurs connaissant bien le milieu concerné pour établir les liens et mener à bien les convocations requises – ce qui suppose bien sûr qu'un groupe prenne l'initiative. Un cadre de gouvernance structuré, souple et variable selon les milieux serait à instaurer. Faudrait-il ou non en venir à des mesures coercitives? Il ne faut pas l'exclure d'emblée : en fonction d'une diversité d'enjeux et de contextes, les solutions « mur à mur » ne vont pas de soi. Pensons aussi à des mécanismes incitatifs de divers genres, qui peuvent être efficients dans ce qu'on appelle la *soft law* (Wanner, 2021); une revue plus poussée des bilans de ce côté demeure requise. Serait-il intéressant de se donner, à l'échelle des communautés, un ensemble de « biens » à viser en commun? Sans aucun doute, pour autant qu'un pluralisme soit possible. Une préservation de la biodiversité, liée au concept de la santé unique et commune (*One Health*), pourrait être un bon point de départ, surtout pour les chercheurs en santé publique.

CONCLUSION

Les réflexions informées par les sciences nous conduisent à réfléchir à l'organisation sur le plan social et régional, ce qui peut ouvrir le chemin menant à une meilleure prévention des phénomènes pandémiques – c'est une chose plus facile à dire qu'à concrétiser, bien évidemment. Au point de vue de la gouvernance, il serait temps de mettre en chantier non pas le remplacement des fonctionnements démocratiques par une nouvelle organisation élitaire et scientifique, mais bien l'intégration nécessaire des compétences scientifiques requises dans les prises de décision sans pour autant perdre les acquis d'une vie démocratique ouverte au débat et à la discussion.

On peut donc conclure qu'il faut contrer cette tendance bien documentée à l'empiétement sur les espaces du vivant non humain, notamment les espaces jugés cruciaux et importants de biodiversité, y compris les espaces déjà protégés (CBD, 2004). Certains souhaitent que cessent du jour au lendemain les pratiques alimentaires reposant sur les espèces sauvages et le braconnage. Même l'élevage d'espèces comme le vison et la dépendance des populations envers la nourriture d'origine animale ne sont pas sans risques, on le sait. Nous ne sommes toutefois pas à la veille, à l'échelle planétaire et surtout en dehors des pays du

premier monde, d'en finir avec la chasse, le recours à la viande de brousse (*bush meat*) et aux marchés « chauds » (Burki, 2020), bien qu'un État comme la Chine ait des pouvoirs que d'autres pays n'ont pas et que la généralisation ne soit pas de bon aloi. En tout cas, une « prise de conscience » de la part des éthiciens et une «sensibilisation» de leurs homologues ne permettent apparemment pas d'avancer de façon décisive dans la résolution de ces problèmes. Les pratiques concernées sont liées, d'une part, à la pauvreté, à des conditions de vie en lesquelles les besoins alimentaires de base ne peuvent pas être considérés comme allant de soi, tant s'en faut. Elles sont liées, d'autre part, à des pratiques ancestrales, pour lesquelles il existe très peu ou pas de solutions de remplacement. Il est facile de condamner le braconnage ou des pratiques alimentaires peu orthodoxes, quand les peuples qui sont les premiers concernés disposent à peine d'organismes de protection ou de ressources alimentaires pouvant suppléer à des sources sans doute hétérodoxes pour nous, mais souvent devenues coutumières ailleurs! Le même raisonnement vaut d'ailleurs, même en laissant de côté de pures situations de pauvreté, pour l'ensemble des acteurs de la chaîne concernée par l'alimentation, ici ou ailleurs.

Pour réfléchir adéquatement la question de la pandémie d'un point de vue d'éthique, nous avons opéré un double recadrage. D'une part, les phénomènes pandémiques sont à considérer dans une perspective préventive, ce qui requiert de se référer au problème des zoonoses. Or celles-ci sont directement liées aux empiètements de plus en plus sévères sur les zones chaudes de biodiversité, situation aggravée par les changements climatiques en cours. L'autre recadrage, c'est de repenser l'éthique de l'intérieur d'une philosophie pratique capable de lier le questionnement avec les enjeux politiques, économiques et épistémologiques. Cela nous conduit tout droit à une problématique de gouvernance à pôles multiples, un polycentrisme qui souhaite renforcer le rôle des États et non le diminuer, en ouvrant la responsabilité politique à tous les acteurs affectant dans un sens ou l'autre la biodiversité. Ceci étant posé, n'ignorons pas les défis de la recherche actuelle : rendre plus concrète pour les acteurs tant nationaux que régionaux la question de la biodiversité, notamment en produisant des études documentant de manière accessible les pertes encourues et les risques qui en découlent.

NOTES

[1] Pour le moment, une quantité d'articles en tout genre paraissent sur la question des victimes collatérales de la pandémie. Il est trop tôt pour se faire une idée globale à ce sujet. Par ailleurs, deux catégories de victimes se mêlent souvent : d'une part, les gens qui souffrent déjà de certaines affections et sont emportés par le virus, un lieu de débat pour les sceptiques; d'autre part, les gens qui sont laissés sur des listes d'attente en raison du triage devenu nécessaire par l'encombrement des services de soin, ce qui entraîne aussi un excès de victimes par rapport à celles qu'on aurait eu en d'autres années – sans oublier les gens qui n'ont pas accès à des services de santé parfois minimaux ou inexistants. Traitant du cas états-unien, sur une base de 300 000 morts avérés de la COVID-19, un texte de recherche avançait le nombre de 400 000 morts supplémentaires ou en excès. Voir Woolf, Chapman *et al*. (2020).

[2] Il suffit pour s'en convaincre de lire le discours du directeur général de l'Organisation mondiale de la santé, le docteur Tedros Adhanom Ghebreyesus, le 18 janvier 2021 dernier. https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-148th-session-of-the-executive-board

[3] En décembre, le rapport préliminaire de la protectrice du citoyen du Québec, Marie Rinfret, a été déposé. Il faudra bien sûr voir la version complète du rapport, mais l'on sait déjà que le transfert de nombreux patients dans les CHSLD, qui n'étaient pas équipés pour faire face à la situation, a été une erreur profonde. Je me contenterai de remarquer que les régularités habituelles du système ont simplement continué d'avoir cours.

[4] Nous en avons la preuve empirique avec les fluctuations de la maladie de Lyme, notamment dans le sud du Québec depuis plusieurs années. Force est d'admettre que les zoonoses sont affectées par les changements climatiques, même si les empiètements anthropiques sont probablement le facteur prépondérant. Ces mouvements zoonotiques sont repérables aussi en Alaska, par exemple (Hueffer *et al*., 2013).

[5] Il serait abusif d'estimer que toutes les activités humaines sont nuisibles à la biodiversité, ou qu'elles n'ont aucun bon effet. Voir sur ce point Prévost-Julliard, Maris *et al.*, 2010, p. 20-21. De même dans le dossier climat, dans certains contextes, ni l'azote ni le dioxyde de carbone ne sont problématiques : c'est le passage de certains seuils quantitatifs qui pose un problème.

[6] Cécile Aenishaenslin, professeure d'épidémiologie à la Faculté de médecine vétérinaire de l'Université de Montréal, publie sur cela régulièrement dans les revues scientifiques. Elle a aussi publié un bref texte accessible à tous, faisant le point sur les connaissances de manière synthétique (dans Aenishaenslin, 2020). Elle estimait très probable que le virus ait été transmis d'un animal à un humain. Ses propos sont en continuité complète avec ce que disent l'ensemble des chercheurs sur les zoonoses.

[7] Le cas du Québec étant mieux connu que d'autres du rédacteur de ce texte, notons que le gouvernement de la province canadienne a certes développé le « Plan d'action en matière de sécurité civile relatif aux inondations »; il a également mis sur pied le projet INFO-Crue visant la cartographie des zones inondables sur le territoire, ce qui est en fait une importante mise à jour et modernisation complétant et rectifiant ce qui existait. Alexandrine Bisaillon (Ouranos) le détaillait lors d'une conférence (22 janvier 2021) organisée par le Réseau inondations intersectoriel du Québec, mis sur pied lui-même après les événements de 2019 avec l'appui des Fonds de recherche du Québec. Ce sont des travaux d'une grande importance, mais il est évident que beaucoup reste à accomplir, dans un régime de connaissances marqué par l'incertitude, d'une part, et la multiplicité d'acteurs parties prenantes, d'autre part.

[8] Il ne s'agit pas ici de déclarer mauvaises en soi les opérations que sont la pêche, l'élevage ou la chasse. Depuis plusieurs décennies, Leopold a bien montré l'intérêt d'avoir quelques prédateurs supérieurs en liberté dans les écosystèmes, justement pour préserver un certain équilibre dynamique dans les milieux. On a affaire dans le cas des attaques à la biodiversité à des échelles quantitatives tout autres; cf. Leopold, 1949.

[9] Sur la base d'une revue de littérature et d'une théorisation personnelle, j'en viens à la définition suivante de la philosophie pratique : il s'agit d'interroger l'action humaine en situation, en tenant compte d'un ensemble de questions interreliées et inséparables : les questions éthique, politique et économique, sans oublier la question épistémologique et la question communicationnelle. Ce modèle est toutefois susceptible de varier en fonction des domaines d'interrogation (Létourneau, 2020_2; 2020_3).

[10] Je ne souhaite pas m'arrêter trop longtemps sur ces questions, sur lesquelles il y aurait lieu de produire force détails et chronologie. Si la première était liée à une décision politique ayant trait à la disponibilité insuffisante d'une ressource, reste que ce type de besoin était tout à fait prévisible, si du moins les épidémiologistes avaient été écoutés. Permettre des sorties en masse et des entrées incontrôlées pendant des semaines cruciales (notamment le congé de la relâche printanière) a forcément eu des conséquences, il semble ici que le raisonnement était : profitons-en pendant qu'il en est encore temps, et par conséquent laissons les autres aussi en profiter. Quant aux problèmes d'aération, il en a été question dès l'été 2020, et en plein milieu de l'hiver, certains rapports de situation commençaient à peine d'être connus : la question a avancé au mieux à pas de tortue.

[11] Ainsi, amputer pour des raisons de réforme budgétaire (comme l'a fait le précédent gouvernement québécois) de leur autonomie administrative des unités de soin de taille moyenne au profit des CIUSSS et des CISSS visait des économies d'échelle, dont le prix s'est payé en vies humaines. Cette tendance à comprimer les dépenses pour épargner dans les frais encourus pour le soin des personnes âgées a été bien engagée au Québec depuis 20-30 ans, comme l'expliquait Damien Contandriopoulos, professeur à University of Victoria, lors d'une entrevue donnée en mai 2020. https://www.journaldemontreal.com/2020/04/20/la-reforme-barrette-a-eu-un-impact-negatif-sur-la-sante-publique

BIBLIOGRAPHIE

Aenishaenslin, Cécile, Hongoh, Valérie, Cissé, Hassane Djibrilla, Hoen, Anne Gatewood, Samoura, Karim, Michel, Pascal, Waaub, Jean-Philippe et Denise Bélanger, « Multi-criteria decision analysis as an innovative approach to managing zoonoses: results from a study on Lyme disease in Canada, » *BMC Public Health*, 2013, vol. 13, article 897. doi: 10.1186/1471-2458-13-897.

Aenishaenslin, Cécile, « Réfléchir à notre responsabilité collective à l'ère de la COVID-19 », *Le Devoir,* 20 mars 2020; https://www.ledevoir.com/opinion/idees/575971/reflechir-a-notre-responsabilite-collective-a-l-ere-de-la-covid-19

Attfield, Robin, *Environmental Ethics*, New York, Polity, 2014.

Bernard, Tiphaine, « La lutte contre le commerce illégal d'espèces sauvages », *Criminologie,* vol. 49, no. 2, 2016, pp. 71-93. https://doi.org/10.7202/1038417ar

Bird, Brian H. et Jonna A. K. Mazet, « Detection of Emerging Zoonotic Pathogens: An Integrated One Health Approach, » *Annual Review of Animal Biosciences*, vol. 6, no. 1, 2018, pp. 121-139.

Broome, John, *Climate Matters*. *Ethics in a Warming World*, New York et Londres, Norton, 2012.

Burki, Talha, « The Origins of Sars CoV », *The Lancet*, August 2020, p.1018-1019. https://www.thelancet.com/action/showPdf?pii=S1473-3099%2820%2930641-1

Callicott, John B., *Éthique de la terre*, Paris, Wildproject, 2010 [1985].

CBD (Convention on Biodiversity), *Biodiversity Issues for Consideration in the Planning, Establishment and Management of Protected Area Sites and Networks,* Technical series n°15, Secretariat of the Convention on Biological Diversity, Montréal, Canada, 2004.

Curry, Patrick, *Ecological Ethics*. *An Introduction*, New York, Polity, 2011.

Daly, Herman E., *Beyond Growth*. Boston, Beacon Press, 1996.

Dewey, John et James H. Tufts, *Ethics*, *in* Jo Ann Boydston (dir.), *The Later Works of John Dewey*, vol. 7. Carbondale (Ill.), Southern Illinois University Press, 1985 [1932].

Dewey, John, *Theory of Valuation*, Chicago, University of Chicago Press, 1939.

Diouf, Boucar, « Cette autre grande menace sanitaire planétaire », *La Presse*, 12 décembre 2020. https://plus.lapresse.ca/screens/40943807-f4b0-428b-8c61-702349cb50ae__7C___0.html?utm_content=twitter&utm_source=lpp&utm_medium=referral&utm_campaign=internal+share

Gardiner, Stephen M., *A Perfect Moral Storm*, The Ethical Tragedy of Climate Change, Oxford, Oxford University Press, 2011.

Garvey, James, *The Ethics of Climate Change*. *Right and Wrong in a Warming World*, Londres, Bloomsbury, 2008.

Graeber, David, *The Utopia of Rules*. *On technology, stupidity and the secret joys of bureaucracy*, Londres, Melville House, 2015.

Hoek, Gerard, Krishnan, Ranjini M., Beelen, Rob *et al*., « Long-term air pollution exposure and cardio-respiratory mortality: a review, » *Environ Health,* vol. 12, article 23, 2013.

James, William, *A Pluralistic Universe*. *Hibbert Lectures, 1909*, 1910. Disponible en ligne : https://www.gutenberg.org/ebooks/11984.

Jamieson, Dale, *Ethics and the Environment: an Introduction*, Cambridge, Cambridge University Press, 2008.

———, *Reason in a Dark Time. Why the Struggle against Climate Change failed – and what it means for our future*, Oxford, Oxford University Press, 2014.

Habermas, Jürgen, *Théorie de l'agir communicationnel*, Vol. 1 et 2, Paris, Fayard (Suhrkamp), 1987 [1981].

Karsten Hueffer, Alan J. Parkinson, Robert Gerlach et James Berner, « Zoonotic infections in Alaska: disease prevalence, potential impact of climate change and recommended actions for earlier disease detection, research, prevention and control, » *International Journal of Circumpolar Health,* vol. 72, no. 1, 2013. DOI: 10.3402/ijch.v72i0.19562

IPBES (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services), S. Brondizio, J. Settele, S. Díaz and H. T. Ngo (dir.), « Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, » EIPBES secretariat, Bonn, Germany, 2019. Retrieved from https://ipbes.net/global-assessment

———, Daszak, Peter., Amuasi, John, das Neves, Carlos, G., Hayman, David, Kuiken, Thijs, Roche, Benjamin, Zambrana-Torrelio, Carlos, Buss, Peter, Dundarova, Heliana, Feferholtz, Yasha, Földvári, Gabor, Igbinosa, Etinosa, Junglen, Sandra, Liu, Qiyong, Suzan, Gerardo, Uhart, Marcela, Wannous, Chadia, Woolaston, Katie, Mosig Reidl, Paola, O'Brien, Karen, Pascual, Unai, Stoett, Peter, Li, H. et Ngo, H. T., *Workshop Report on Biodiversity and Pandemics of the Intergovernmental Platform on Biodiversity and Ecosystem Services*, IPBES secretariat, Bonn, Germany, 2020. DOI:10.5281/zenodo.4147317.

———, Pörtner, Hans-Otto, Scholes, Robert J., Agard, John, Archer, Emma *et al.*, *Scientific outcome of the IPBES-IPCC co-sponsored workshop on biodiversity and climate change*, IPBES secretariat, Bonn, Germany, 2021. DOI:10.5281/zenodo.4659158.

Larrère, Catherine et Raphaël Larrère, *Penser et agir avec la nature*. *Une enquête philosophique*, Paris, La découverte, 2015.

Leopold, Aldo, *A Sand County Almanac*, Oxford, Oxford University Press, 1949.

Létourneau, Alain, « L'autogouvernement et la gouvernance. Réflexion à partir d'un projet d'adaptation aux changements climatiques sur le territoire de la MRC de Memphrémagog », *Sens public*, publié le 20 août 2019, ISSN 2104-3272, http://sens-public.org/article1408.html

———, « Les coordonnées de la philosophie pratique : le "sens en usage" de l'expression dans cinq articles de Wikipédia », *in* André Lacroix (dir.), *La philosophie pratique pour penser la société*, Ste-Foy, Presses de l'Université Laval, 2020_a, pp. 17-28.

———, « La philosophie pratique : un ensemble de questions pour examiner les projets et imaginer l'action », *in* Jean-Yves Beziau et Daniel Schulthess (dir.), *L'Imagination. Actes du 37e Congrès de l'ASPLF (Rio de Janeiro, 26-31 mars 2018)*, Londres, Collège Publications, 2020, « Academia Brasileira de Filosofia », vol. 1, 2020_b, pp. 719-741.

———, « L'adaptation aux changements climatiques d'un point de vue éthique », *Ethica*, vol 24, no. 2, 2021, pp. 107-138.

Light, Andrew et Holmes Rolston III (dir.), *Environmental Ethics*. *An Anthology*, Oxford, Blackwell, 2003.

Light, Andrew et Eric Katz (dir.), *Environmental Pragmatism*, New York et Londres, Routledge, 1996.

List, Christian et Philipp Pettit, *Group agency*. *The possibility, design and status of corporate agents*, Oxford, Oxford University Press, 2011.

Maris, Virginie, *Philosophie de la biodiversité*. *Petite éthique pour une nature en péril*, Paris, Buchet/Chastel, 2010.

Meadows, Donella H., Jorgen Randers et Dennis L. Meadows, *The Limits to Growth,* Yale University Press, 2013 [1972].

Minteer, Ben A., *Refounding Environmental Ethics*. *Pragmatism, Principle, and Practice.* Philadelphie, Temple University Press, 2012.

Misak, Cheryl, *Cambridge Pragmatism*. *From Peirce and James to Ramsey and Wittgenstein*, Oxford, Oxford University Press, 2016.

Münzel, Thomas, *et al*., « Environmental stressors and cardio-metabolic disease: part I-epidemiologic evidence supporting a role for noise and air pollution and effects of mitigation strategies, » *Eur Heart J.,* vol. 38, no. 8, 2017, pp. 550-556.
doi: 10.1093/eurheartj/ehw269. PMID: 27460892.

Norton, Bryan G., *Searching for Sustainability*. *Interdisciplinary Essays in the Philosophy of Conservation Biology*, Cambridge, Cambridge University Press, 2003.

———, *Sustainability*. *A Philosophy of Adaptive Ecosystem Management*, Chicago, University of Chicago Press, 2005.

———, *Sustainable Values, Sustainable Change*. *A Guide to Environmental Decision Making*, Chicago, University of Chicago Press, 2015.

Ostrom, E., *Understanding Institutional Diversity*, Princeton, Princeton University Press, 2005.

Parson, E. (dir.), *Gérer l'environnement*. Montréal, Presses de l'Université de Montréal (traduction de *Governing the Environment*), 2000.

Peirce, Charles S., « Comment se fixe la croyance », *in* Ch. S. Peirce, *Pragmatisme et Pragmaticisme*, Paris, Cerf, 2002 [1877], pp. 215-235.

Pocheville, Arnaud, « The Ecological Niche: History and Recent Controversies, » *in* Thomas Heams, Philippe Huneman, Guillaume Lecointre, *et al*. (dir.), *Handbook of Evolutionary Think-*

ing in the Sciences, Dordrecht, Springer, 2015, pp. 547-586. ISBN 978-94-017-9014-7.
Porter, Amanda J., Kuhn, Timothy R. et Brigitte Nerlich, « Organizing Authority in the Climate Change Debate: IPCC Controversies and the Management of Dialectical Tensions, » *Organization Studies*, vol. 39, no. 7, 2018, pp. 873-898. doi:10.1177/0170840617707999

Prévost-Julliard, Anne-Caroline, Maris, Virginie *et al*., *Biodiversités*. *Nouveaux regards sur le vivant*. Paris, Le cherche midi, 2010.

Gouvernement du Québec, Ministère de la Santé et des Services sociaux, « Maladie de Lyme - Traitement », 2020. https://www.msss.gouv.qc.ca/professionnels/zoonoses/maladie-lyme/traitement/, consulté le 12 décembre 2020.

Reddy, Sanjay G., « Population health, economics and ethics in the age of COVID-19,» *BMJ Global Health*, 2020, 5:e003259. Doi:10.1136/bmjgh-2020-003259

Rolston III, Holmes, *A New Environmental Ethics*. *The Next Millennium for Life on Earth*, New York et Londres, Routledge, 2012.

Schiesari, Luis, Waichman, Andrea, Brock, Theo, Adams, Cristina et Britta Grillitsch, « Pesticide use and biodiversity conservation in the Amazonian agricultural frontier, » *Philosophical transactions of the Royal Society of London. Series B, Biological sciences*, vol. 368, no. 1619, 2013, 20120378. https://doi.org/10.1098/rstb.2012.0378

Seidl, Irmi et Angelika Zahrnt (dir.), *Postwachstumsgesellschaft*. *Konzepte für die Zukunft*, Marbourg, Metropolis V, 2010.

Shrader-Frechette, Kristin, « Individualism, Holism, and Environmental Ethics, » *Ethics and the Environment*, vol. 1, no. 1, 1996, pp. 55-69.

Sidgwick, Henry, *The Methods of Ethics*, Indianapolis, Hackett, 1981 [1907].

Sloterdijk, Peter, *Bulles*. Sphères II. Paris, Fayard/Pluriel, 1999.

Soulé, Michael E., «What is conservation biology? », *in* David R. Keller (dir.), *Environemental Ethics: the Big Questions*, Malden (Ma), Wiley & Blackwell, 2010 [1985], pp. 384-391.

Ten Have, Hank A.M. J., *Wounded Planet: how declining biodiversity endangers health and how bioethics can help*, Baltimore, Johns Hopkins, 2019.

Wanner, Maximilian S. T., « The effectiveness of soft law in international environmental regimes: participation and compliance in the Hyogo Framework for Action, » *Int Environ Agreements*, vol. 21, 2021, pp. 113-132. https://doi.org/10.1007/s10784-020-09490-8

Weber, Max « Catégories de la sociologie de compréhension », *in Concepts fondamentaux de sociologie*, Paris, Gallimard, 2016, pp. 165-224.

Williston, Byron, *The Ethics of Climate Change*. *An Introduction*, New York et Londres, Routledge, 2019.

Woolf, Steven H., Chapman, Derek A., Sabo, Roy T. *et al.*, « Excess Deaths From COVID-19 and Other Causes, » *JAMA*, vol. 324, no. 5, 2020, pp. 510-513. doi:10.1001/jama.2020.11787

WHO (World Health Organization), « Weekly Epidemiological Update, September 7th, 2020 ». https://www.who.int/publications/m/item/weekly-epidemiological-update-8-december-2020

THE ILLUSORY DISTINCTION BETWEEN RE- AND PREDISTRIBUTION

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ABSTRACT:

The distinction between redistribution and predistribution is now embraced by many political philosophers, like Jacob Hacker or Martin O'Neill. This distinction, we could think, is particularly important for the question of how we react to crises, like the current coronavirus pandemic. If the policies take the form of taxes and transfers, like cash-flow assistance, it is redistribution, one could argue. If the policies are meant to alter pretax incomes, as policies changing the conditions for bankruptcy are, it is predistribution. This paper shows why that is not so. Re- and predistribution are only techniques of presentation. They are meant to put the emphasis on different ways we can depict the consequences of policies. Both the "pre-" of predistribution and the "re-" of redistribution are misnomers. This paper argues that we cannot establish a strong distinction between policies that are re- and those that are predistributive, as the case of the basic income will show. Given that classical liberals endorsed egalitarian policies, moreover, the idea of predistribution cannot be used by progressives who want to differentiate their social justice platforms from the classical liberal program.

RÉSUMÉ :

La distinction entre redistribution et prédistribution est maintenant acceptée par de nombreux philosophes politiques, comme Jacob Hacker ou Martin O'Neill. Cette distinction, pourrait-on penser, est particulièrement importante pour la question de savoir comment nous réagissons aux crises, comme l'actuelle pandémie de coronavirus. Si les politiques prennent la forme d'impôts et de transferts, il s'agit de redistribution, pourrait-on dire. Si les politiques visent à modifier les revenus avant impôts, comme les politiques modifiant les conditions de la faillite, il s'agit de la prédistribution. Cet article montre pourquoi ce n'est pas le cas. La redistribution et la prédistribution ne sont que des techniques de présentation. Ils visent à mettre l'accent sur différentes manières de décrire les conséquences des politiques publiques. Le « pré » de la prédistribution et le « re » de la redistribution sont tous deux trompeurs. Cet article soutient que nous ne pouvons pas établir une distinction forte entre les politiques redistributives et prédistributives, comme le montre le cas du revenu de base. Étant donné que les libéraux classiques ont approuvé plusieurs politiques égalitaires, de plus, l'idée de prédistribution ne peut pas être utilisée par les progressistes qui veulent différencier leurs plates-formes de justice sociale du programme libéral classique.

1. THE FALL OF REDISTRIBUTION AND THE RISE OF PREDISTRIBUTION

"*Semper pauper eris, si pauper es*," once said the Roman poet Martial—that is, "if you are poor now, then you will stay poor." One could find a similar adage under the infamous Speenhamland system to mitigate rural poverty in England and Wales, which lasted from 1795 to 1834—"once on the rates, always on the rates."[1] But what if everyone were on the rates, we could ask, and forever so? This is exactly what a basic income guarantee offers—that is, it offers a periodic payment for everyone without any precondition. Yet the problem, we could think, is that such a redistributive measure disturbs property rights. This is why the idea of "predistribution," or the "way in which the market distributes its rewards in the first place," is now often preferred to "redistribution," which focuses on taxes and transfers. Indeed, said Jacob Hacker,[2] "pre-distribution is where the action is." Progressive reformers, he added, must embrace this new distributive approach "because excessive reliance on redistribution fosters backlash, making taxes more salient and feeding into the conservative critique that government simply meddles with 'natural' market rewards."[3] Not so. Focusing on predistribution to avoid having to use the tax system is not where the action is. Predistribution is a misleading solution to a fictional problem, this paper argues.

Though the name may be new, the idea of predistribution is anything but. "Inequality," Henry Simons argued back in the 1930s, "is overwhelmingly a problem of investment in human capacity, that is, in health, education, and skills; it can hardly be scratched by possible redistribution of wealth."[4] In other words, for one of the founding fathers of the Chicago School of economics, inequality was not a problem that could be solved solely by taxes and transfers. We need to invest in developing the capacities of the people. It is also important to look at market rules and see how they can further equality. "It is an obvious responsibility of the state," Simons said, "to maintain the kind of legal framework within which competition can function effectively as an agency of control."[5] Although the concept has now been appropriated by progressives, the idea of predistribution had already been defended by advocates of capitalism. Friedrich Hayek and Milton Friedman both maintained that the background rules of markets should promote economic equality.

This distinction between re- and predistribution, we could think, is particularly important for the question of how we react to crises—for example, the current coronavirus pandemic or the past financial crises. In such times, unemployment, inequality, and poverty may rise steeply. Should we then enact temporary redistributive policies or rather build predistributive institutions? This is not the right way to think about market distribution, this paper claims. It is not clear that predistribution can be an alternative to redistribution. Every policy has distributive consequences, and different policies will lead to different patterns of distribution in society. The so-called concepts of redistribution and predistribution are actually techniques of presentation, this paper argues. They are meant to simplify the complex connection between policies *P* and distributive conse-

quences *C*. They are, moreover, interchangeable, given enough distance or a different point of view. Following the Danish legal theorist Alf Ross,[6] we could argue that it is possible with equal correctness to say

> (i) *P* has redistributed wealth from one group to another, leading to *C*,
> or
> (ii) the way the market distributes its rewards *C* is determined by *P*.

It is true, at least in economics, that it may be important whether distribution occurs through taxes and transfers or, say, through a reform of employment law. But to judge the justice of our social institutions, or to take the viewpoint of ethics, we should be wary of this now-popular distinction between redistribution and predistribution. Progressives who favour the latter as a way to circumvent the argument of classical liberals like Friedman or Hayek are being overzealous. This is because classical liberal theories, which are also often incorrectly called neoliberal, libertarian, or conservative, embraced both ideas.[7]

For instance, Hayek and Friedman argued for a basic income guarantee—that is, a nonmarket welfare safety net.[8] Hayek, moreover, endorsed inheritance taxation, a limited form of progressive taxation, a reform of the default rules of contract law, a strengthening of workers' entitlements, and other policies we now associate with liberal egalitarianism.

This paper thus argues for two main points. First, we cannot establish a strong distinction between policies that are redistributive and those that are predistributive, as the case of the basic income will show. These two ideas can be found in every policy. Second, given that classical liberals endorsed the above policies, the idea of predistribution cannot be used by progressives who want to differentiate their social justice platforms from the classical liberal program.

2. THE IDEA OF PREDISTRIBUTION DOES NOT BELONG TO PROGRESSIVES

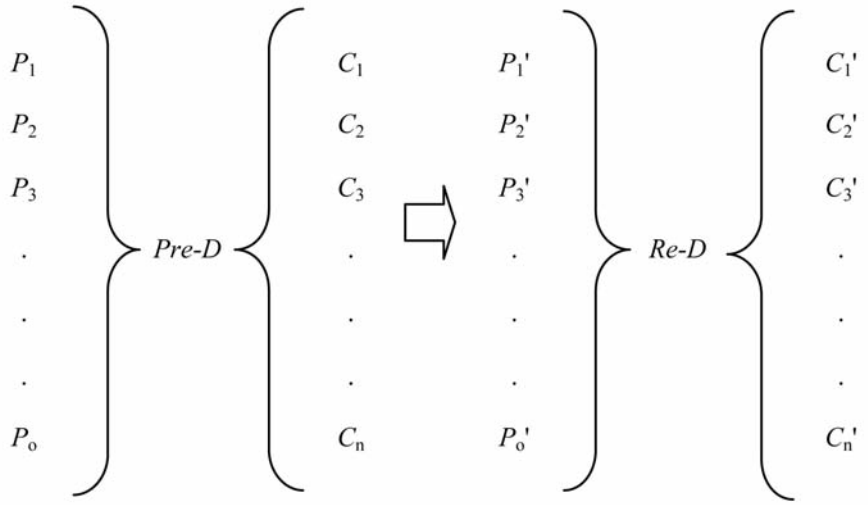
The idea of predistribution has now been broadly embraced by political philosophers, social theorists, economists, and politicians, like Thomas Scanlon,[9] Joseph Stiglitz,[10] Thomas Piketty,[11] Martin O'Neill, and the former UK Labour leader Ed Miliband. We must be careful how we use this idea, though, especially if it is supposed to distinguish liberal egalitarians from classical liberals. Let us first establish what predistribution cannot be if the idea is to remain coherent. On that point, we can agree with O'Neill to say that "the talk of *before* and *after* with regard to the tax system simply does not stand up," since "economic activity is an endlessly ongoing process."[12] Predistribution, then, is not an attempt to encourage a more equal distribution "before" governments collect taxes.

Consider how governments use different kinds of relief packages to fight the coronavirus pandemic. If the economic activity of some people is no longer

sufficient to afford them a decent livelihood, the government can indeed step in and make sure they at least get enough. If the policies take the form of taxes and transfers, like cash flow assistance, it is redistribution, one could argue. If the policies are meant to alter pretax incomes, as policies changing the conditions for bankruptcy do, it is predistribution. Not so, we will see.

In Norway, for example, if you are a normal employee, your income tax is deducted from your salary before you even receive it. We could think that this tax system is predistributive in the sense that it is integral to the "way in which the market distributes its rewards in the first place," to use Hacker's words. But this would only weaken the idea of predistribution. Temporal sequence is not an attractive way to frame the distinction. Could we say that if the tax is taken from you after you receive your salary, it is redistribution, and if it is taken before, then it is predistribution? No. The fact is that taxes, much like other policies with distributive consequences, are ways in which we determine how the market distributes its rewards. There are no before and after moments. We should then reject an understanding of predistribution, *Pre-D,* as a first moment of distribution as opposed to the second redistribution moment, *Re-D*, as table 1 illustrates.

Table 1. The Alleged Two Moments of Distribution



O'Neill thinks that the concept of predistribution can nonetheless be an important idea for the progressive agenda, as it can be redeemed in terms of its "aims or effects." That is, predistribution would pursue (a) more equal bargaining power within the labour market, and (b) greater security, independence, and freedom outside the labour market.[13] This section disagrees. Switching to that definition of predistribution does not make such an idea any stronger. Before James Meade[14] pioneered the idea, classical liberals were already arguing for these two objectives. In fact, Hayek endorsed a basic income guarantee, and Friedman, a negative income tax, following in the footsteps of Frank Knight, Jacob Viner, and Henry Simons, to further these allegedly predistributive aims.[15]

We now face a dilemma. The basic income would be a redistributive policy, according to Hacker, that is justified on predistributive grounds, for O'Neill. Additionally, this basic income would fit right in with the progressive agenda, according to Hacker and O'Neill, though that policy was repeatedly endorsed by classical liberals, libertarians, and neoclassical liberals. Something is manifestly wrong with the concept of predistribution. It cannot both be the "rallying cry" of progressives and describe classical liberal policies.

The difference between classical liberals and liberal egalitarians has been exaggerated. In fact, some progressives have appropriated some ideas of the classical liberal tradition and turned them against that tradition. For instance, Liam Murphy and Thomas Nagel have argued against what they call the error of "everyday libertarianism,"[16] which, as O'Neill writes in agreement, is the view "that fails to take seriously the ways in which the tax system itself is part of the set of legal rules that constitute our overall system of property."[17] Yet such a view had previously been extensively criticized, for example, by Friedman, Viner, and Knight. Additionally, Hayek had already called out a similar error. "As far as the great field of the law of property and contract are concerned," Hayek wrote,

> we must, as I have already emphasized, above all beware of the error that the formulas "private property" and "freedom of contract" solve our problems. They are not adequate answers because their meaning is ambiguous. Our problems begin when we ask what ought to be the content of property rights, what contracts should be enforceable, and how contracts should be interpreted or, rather, what standard forms of contract should be read into the informal agreements of everyday transactions.[18]

Let us set the record straight concerning the classical liberal understanding of capitalism. A market, classical liberals argued, is nothing else than a given combination of policies, $P_1, P_2, P_3, \ldots, P_o$, and the precise form of market we get is the result of the combination we choose. It is true that not all combinations of policies generate a market—for example, if we have a central direction of labour, other policies will not generate a market. But there is still a very wide range of sets of rules that will generate what we would all recognize as market systems—consider Norway and the United States. There are thus no "natural" market rewards. The rewards are the result of the market we have chosen. A different set of rules will lead to different consequences. There is nothing natural in one not being able to afford the antiviral treatment one needs. This would be the result of the healthcare policies we adopted, and these can be modified.

We know that a market society tends to leave some people behind, such that they may live in extreme poverty, do back breaking manual labour, or find themselves at the mercy of their tyrannical supervisor. Classical liberals accordingly argue that we need some mechanisms to maintain a certain level of equality and

sufficiency, in terms of resources, power, or entitlements, without which markets will no longer work in a just manner. For instance, sick people should be able to see a doctor regardless of how rich they are. In fact, "liberalism has always accepted without question," said Knight, "the doctrine that every member of society has a right to live at some minimum standard, at the expense of society as a whole."[19] This is because, though there is some indeterminacy about the consequences of markets, it is not the case that in such an economic system everyone will indeed have a decent income. On that point, there is no indeterminacy—we know that some people will be left behind. Since, according to Knight, "the purpose of economic activity is to satisfy wants,"[20] we then need to find ways to compensate for markets when they fail to do so. The tax system, classical liberals understood, is simply a way to make market distribution work in a fairer or more just way, such that no one has to be left behind.

The so-called error of "everyday libertarianism" is not appropriately named. For example, "no modern people," wrote Viner, another founder of the Chicago School of economics, "will have zeal for the free market unless it operates in a setting of 'distributive justice' with which they are tolerably content."[21] Distributive justice is not something we must take seriously only in times of crisis, when, for example, unemployment or inequality passes a certain threshold. It is rather a built-in feature of markets, classical liberals argued. The tax system is an essential part of market institutions, and therefore that system is also a question of justice. There never was any disagreement between classical liberals and progressives on this issue.[22] Yet if progressives want to appropriate O'Neill's two aims through the concept of predistribution, then we must indeed disagree.

3. THE ILLUSORY DISTINCTION BETWEEN REDISTRIBUTION AND PREDISTRIBUTION

What we call redistribution and what we call predistribution are simply ways to refer to the distributive consequences of policies. It is not the case that the consequences of predistribution will manifest themselves temporally in a different way for the people than the consequences of redistribution will. The "pre-" of predistribution is a misnomer. If we reform employment law in a way that introduces new costs for employers, like paid sick leaves, the employers will feel the consequences much in the same way as they would a new tax. It is a new cost. This section shows why the distinction between re- and predistribution is an illusion, and then why, as classical liberals were aware, it is the case that making distributive judgments is inevitable in a market society.

Let us now disagree with O'Neill. Not only does predistribution resist definition in terms of temporal sequence, but it also cannot be defined by the two aims he proposed—namely, more equality of bargaining power within the market and more freedom outside the market. First, policies have a diffuse effect on society, and, in fact, every policy will have both re- and predistribu-

tive consequences. Second, the effect of one rule depends on the broader system of rules. For instance, certain taxes might have more "predistributive" consequences, like the effects of inheritance taxes on intergenerational wealth accumulation and on inequality of opportunity. But this is so only because we also have a certain system of property rules.

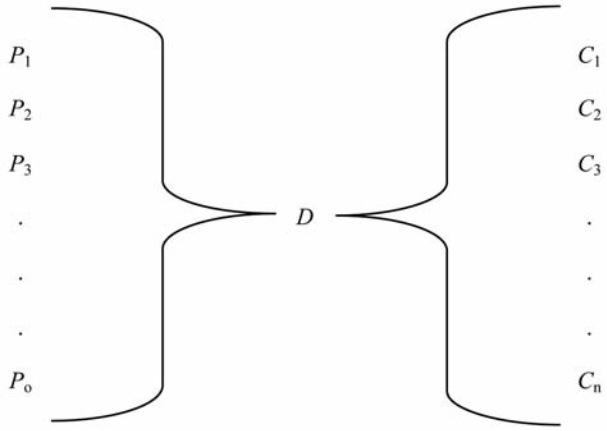
As Cass Sunstein noted, "a grant of entitlements to employees might make employees somewhat wealthier. But market readjustments will ultimately force someone—perhaps workers, perhaps consumers—to bear the resulting cost, and it is quite possible that the adjustment will swallow the redistributive effect, perhaps through changes in the rest of the wage package."[23] In other words, even if we have strong reasons to think that P_1 will lead to C_1, it is possible that C_1 will be nullified through some market response, C_2, C_3, …, C_n. The aim of a given policy can be assessed only within the broader set of market institutions. For instance, if we try to strengthen the vacation entitlements of employees, prices may increase, wages may decrease, or hiring may decrease. The incidence of a rule change, therefore, might not be the one we wished for, or at least it might not be entirely. Table 2 summarizes the connection between policies *P* and distributive consequences *C*.

$P_1 - C_1$	$P_2 - C_1$	$P_3 - C_2$	…	$P_o - C_1$
$P_1 - C_2$	$P_2 - C_2$	$P_3 - C_3$		$P_o - C_2$
$P_1 - C_3$	$P_2 - C_4$	$P_3 - C_4$		$P_o - C_3$
.	.	.		.
.	.	.		.
.	.	.		.
$P_1 - C_n$	$P_2 - C_n$	$P_3 - C_n$		$P_o - C_n$

Table 2. The Systematic Connection between Policies and Distributive Consequences

In other words, P_1 can lead to C_1, C_2, C_3, …, C_n. It is not the case that any policy can lead to any distributive consequence. But there is nonetheless a margin of indeterminacy, such that one *P* can lead to many *C*, depending on the circumstances. As Ross noted, we can simplify this kind of table by introducing a semantic reference. That is, we can introduce the notion of distribution *D* to simplify this systematic connection of *P* and *C*.

Table 3. The Simplified Connection between Policies and Distributive Consequences



More precisely, the idea of distribution *D*, which encompasses both redistribution and predistribution, is a way to simplify the connection of each policy *P* with some distributive consequences *C*. That is, following Ross, *D* merely stands for the fact that $P_1, P_2, P_3, \ldots, P_o$ entail the totality of distributive consequences $C_1, C_2, C_3, \ldots, C_n$. As a technique of presentation, *D* stands for the policies that "create distribution," which are shown in one series, and the consequences that "distribution" entails, which are shown in another series.[24] However, the notion that as a result of instituting some policies we "created distribution" is nonsense. Nothing was distributed per se. We rather created an institutional framework.

One conclusion we can draw from this analysis is that all policies have distributive consequences. The expression "distributive policies" is a pleonasm. Again, this idea was well understood by classical liberals. It is impossible not to alter the entitlements of different parties when legislating. This is true whether we regulate, authorize, outlaw, fund, grant, sanction, declare, or restrict. To legislate is to make a distributive judgement.

Another conclusion is that we cannot establish a strong distinction between re- and predistribution because of the indeterminacy of the connection between *P* and *C*. The semantic reference *D* is meaningful only for the broader system of rules—that is, as a result of $P_1, P_2, P_3, \ldots, P_o$. For example, a new liability rule may affect the costs of car liability insurance, which, in turn, may make having a car too costly for poor people and prevent those people from working in some faraway places. Yet this new rule P_1 will lead to these consequences only if paired with other rules $P_2, \ldots, P_o$. This lesson can be generalized to all rules. Hence, in a market capitalist system, with its intricate system of rules, any policy will have both pre- and redistributive consequences if we use O'Neill's definition.

Recall that O'Neill thinks that the distinction between re- and predistribution can be explained by the "aims or effects" of policies. On the one hand, if we

focus on the effects, we must conclude that the distinction is insubstantial because of the above analysis. On the other hand, if we focus on the aims, we then need to recognize that Hayek and Friedman were progressives much in the way that Rawls and Dworkin were because they argued for the same broad objectives. Since this recognition is unlikely to happen, we should abandon the concept of predistribution. The temporal sequence of policies, their consequences, and their aims are all unsatisfactory ways in which to establish the distinction.

It is easy to get misled by the notions of predistribution and redistribution. There is "market distribution" only in the sense that the combination of policies we choose will lead to a given state of affairs. Laissez-faire is a conceptual impossibility. A market can exist only as the result of institutions like property and contract.[25] Even in times of crises, like the current pandemic, when high unemployment may seem unavoidable, *C* remains a result of *P*. Therefore, we can make people and businesses better off with relief packages like a basic income. We can make sure that people get treated if they get sick. This is a matter of policy. Much like progressives, classical liberals share the two aims in terms of which O'Neill wants to define predistribution. But this is not a question of predistribution. It is rather a question of market distribution—that is, of finding the appropriate collection of policies that will broadly and imperfectly lead to the distributive consequences we favour.

It may be that Hacker has not appropriately framed the problem to which predistribution is a supposed to be a response. The problem is not that redistributive measures disturb property rights, one could argue, but that they do not. Instead of changing the institutions that govern ownership and control over the means of production, we leave everything in place and just redistribute some of the resulting income. This is a common Marxist objection, defended by, for example, Iris Marion Young.[26] The issue is not just about shares of income, the argument goes, but also about "relations of production." Focusing on predistribution, therefore, permits us to change the underlying institutional structure—or what we could name the "base," as opposed to the "superstructure," in Marxist terms.

For example, major crises, like the current coronavirus pandemic or the global financial meltdown of 2007–2008, have made some people seriously reconsider the merits of our institutions. If our markets permit the kinds of inequity these crises have created, then perhaps we need to radically rethink our commitment to market capitalism. This is one important thought behind the surge of the concept of predistribution—rather than simply patching our system, we need to reinvent it. Taxes and transfers are often seen as patches, or as a flimsy remedy to an inadequate system. Yet, we must note, any new policy will change the market we have, since a market is nothing but the result of a given combination of rules. Therefore, a new tax can reinvent markets as much as a new regulation of wage-bargaining processes or switching to a single-payer healthcare system. But these are questions of market distribution, this paper argues—not of predistribution.

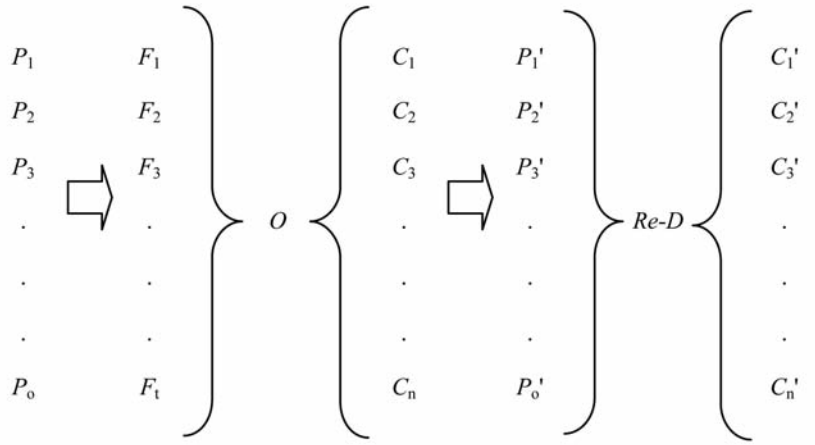
4. THE EDUCATION OF CYRUS IN DISTRIBUTING COATS AND DEFINING PROPERTY

Let us now examine what the problem with redistribution may be. Since predistribution is supposed to offer an alternative to redistribution, we should be able to show that it does not suffer from the same problem. It is not clear that this can be shown. Consider the case Cyrus the Great had to adjudicate in his boyhood, which Xenophon narrated as follows:

> There were two boys, a big boy and a little boy, and the big boy's coat was small and the small boy's coat was huge. So the big boy stripped the little boy and gave him his own small coat, while he put on the big one himself. Now in giving judgment I decided that it was better for both parties that each should have the coat that fitted him best. But I never got any further in my sentence, because the master thrashed me here, and said that the verdict would have been excellent if I had been appointed to say what fitted and what did not, but I had been called in to decide to whom the coat belonged, and the point to consider was, who had a right to it.[27]

In this case, the master argued that Cyrus should have simply followed Polemarchus in arguing that "justice is the giving to each man what is proper to him."[28] The given system of entitlements established that the small boy had ownership of the huge coat, and that the big boy owned the small coat. Hence, we could think, in giving the huge coat to the big boy, Cyrus redistributed and acted wrongly. He bypassed the respective entitlements of the parties to bring about a new allocation of coats. The master, conversely, thought that Cyrus would reflect on the general rules necessary to support peace and order in society.

Table 4. Ownership and the Alleged Second Moment of Redistribution



In other words, the master thought that certain conditioning facts *F*, like the fact of having lawfully acquired a coat by purchase, led to ownership *O*. Any redistributive policy *P*', after that moment of ownership, disturbs the entitlements of the parties and is consequently wrong.

But the master was not entirely correct. Cyrus was asked to rule, or make a distributive judgment, which is what he did. That distributive judgment is not posterior to ownership, as it rather defines it. Yet, we could think, Cyrus still made a bad judgement when defining ownership. This is what David Hume once argued—Cyrus incorrectly focused on mere convenience. Hume then introduced his famous analogy of walls and vaults. The happiness of humankind arising from justice, Hume argued, may be compared to a vault, "where each individual stone would, of itself, fall to the ground; nor is the whole fabric supported but by the mutual assistance and combination of its corresponding parts."[29] One way to understand Hume's disapproval of Cyrus's decision, then, is to say that for property rules to be just, they must be inflexible.[30] They can never be broken.

This is the way classical liberal theories are often understood. Redistribution, it is often said, is wrong because it disturbs the entitlements of the parties. Not so, said champions of capitalism, like Hayek and Friedman. It is important to understand the exact mistake Cyrus made because it is the same mistake classical liberals often impute to progressives.

The mistake of Cyrus was to redefine ownership in an inappropriate way. Likewise, when classical liberals criticize progressive policies, more often than not, they argue against an inappropriate method of distribution. In this way, classical liberals will agree with Hume in saying that good intentions are not enough. As Hayek noted, "It may sound noble to say, 'Damn economics, let us build up a decent world'—but it is, in fact, merely irresponsible."[31] Cyrus was irresponsible. Therein lies the problem. The fact that Cyrus could make a distributive judgment was never in question—and it could not even be questioned. Inasmuch as one is ruling, one must inevitably make a distributive judgment. The new rule of Cyrus would have been another brick in the wall to define entitlements, not something that could make the vault "fall to the ground," as Hume put it in his analogy.

According to the predistributive ideology Hacker champions, we could think that the correct solution to the problem here is to look at the way in which the market distributes coats in the first place. But this is an illusion. The problem was not that Cyrus attempted to redistribute coats. The problem was that he was careless in his distributive judgment, given his objective. Predistribution is not a solution to that problem. Cyrus promulgated a policy P_1 in order to produce the distributive consequence C_1— namely, that the small boy gets the small coat and the big boy, the big one. The problem with this case, classical liberals would argue, is that the same policy P_1 can lead to a number of different distributive consequences, C_1, C_2, C_3, …, C_n, including unforeseen and potentially undesirable ones.

5. WHY WE NEED A SAFETY NET IN THE GRAND MARKET MÊLÉE

Re- and predistribution are only techniques of presentation. They are meant to put the emphasis on different ways we can depict the consequences of policies. We can talk of redistribution only in a relative way. For example, given the system of rules, and given the respective talents of people *A* and *B*, and given the demand and supply of different talents and goods, then we can say that introducing a specific policy P_1 will change the distribution of resources from *A* to *B*. But we could have equally said that the way the market distributes its rewards is determined, in part, by P_1. This is true whether P_1 is a tax or a regulation in employment law. Much like the "pre-" of predistribution, consequently, the "re-" of redistribution is also a misnomer. We can see that the distinction between re- and predistribution is solely a matter of perspective and does no work, analytically speaking. *D* is only a way to connect *P* and *C*.

Taxes are policies like others to determine how consumers will act in a market. If sugar is heavily taxed, but its substitute, sucralose, is not, we can expect the tax to have an effect on the relative consumption of sugar and sucralose. A market with few taxes would be very different from one with many. The Norwegian market is radically different from the American one, not only because of its labour and welfare policies, but also because of its tax system. Taxes are then crucial to determine the way markets distribute their rewards.

The question, therefore, is not whether we use the tax system or the background rules of markets to further egalitarian objectives. Taxes are part of that background. The question is rather whether some policies are justified by their connection to some distributive consequences. Much of what progressives now endorse to counter the consequences of market capitalism was already proposed by classical liberals, including the basic income.

It is easier to understand why classical liberals endorsed a basic income guarantee once we understand what "market distribution" really is. To paraphrase Ross, we often talk as if *D* were a causal link between *P* and *C*, an effect that is occasioned or created by every *P*, and which, in turn, is the cause of a totality of *C*.[32] But that is not what happens. Market distribution does not distribute anything per se, I argued. It is rather a shorthand to say that a combination of rules will make market competition possible, as Hayek explained.[33]

In a way, everyone is "on the rates" in a market, regardless of whether we have a basic income. Most of what we get is not a return on labour or capital, but rather a surplus from cooperation.[34] Such cooperation is made possible by the system of rules, and therefore the rewards we get in a market mirror the institutions we choose. That is, *C* is a result of *P*—or *C* is "the rate" people get, given the system of institutions created by $P_1, P_2, P_3, \ldots, P_o$.

The problem is that these institutions are flawed. For example, "two classes of workers," said Friedman, "are not protected by anyone: workers who have only one possible employer, and workers who have no possible employers."[35] Similarly, Knight warned us that market institutions systematically disadvantage weak, poor, and improvident people. "But as the game is organized," Knight wrote,

> the weak contestants are thrown into competition with the strong in one grand mêlée…. In fact the situation is worse still; there are handicaps, but, as we have seen, they are distributed to the advantage of the strong rather than the weak.[36]

The situation is even worse—not only are the strong being advantaged by *P*,[37] but the moment *P* also defines who the strong will be to get the market rewards *C*. As talented as one may be, one will not get rewarded for one's talent if that talent is not currently in demand. Supply and demand, we know, are not only the result of individual preferences, as they are also shaped by our institutions.[38] In fact, our preferences themselves are shaped by our institutions.[39] One may then agree with Knight to say that "it is then justifiable at least to regard as unfortunate the dominance of the business game over life, the virtual identification of social living with it, to the extent that has come to pass in the modern world."[40] Not only is it unfortunate, but it is also unjust, classical liberals argued.

Having a universal basic income is a way to correct this injustice. Since we do not know exactly how markets can disadvantage specific groups, rather than to make ad hoc policies for each disadvantaged group, it is safer to give a minimum rate to everyone. This "rate," or basic income, is not in any way shocking for classical liberals or what we now often call conservatives, as Hacker suggested. The problem, said Knight, is that "of improving the game itself, or devising a better one."[41] Instituting a basic income is a simple way to improve markets, classical liberals argued. A basic income reaches everyone who would not benefit from our institutions, especially when crises disturb their normal functioning.

The timeliness of the basic income is that it permits us to confront the indeterminacy of the connection between *P* and *C*. Though we know that in times of crisis, inequality and poverty may rise steeply, we often do not know how the crisis will affect specific people, groups, or enterprises. Even with what we learned from the previous crises, there is still much uncertainty about how to respond to new ones—as evidenced by the disorganized attempts to control the consequences of the current coronavirus pandemic. A basic income, as Karl Widerquist noted,[42] allows people to say "no," making them less vulnerable to market outcomes. That is, it lessens the uncertainty linked to participating in the grand market mêlée. Both progressives and classical liberals can agree that it is a desirable feature of what we have called "market distribution" that it does not lead to too much uncertainty.

In conclusion, redistribution and predistribution, this paper argued, are untimely ideas in that they put the emphasis in the wrong place and they establish a distinction where there should be none. I previously agreed with O'Neill that "there is simply no such thing as two distinct categories of policy, one marked redistribution and one marked predistribution."[43] But we cannot agree with him that this distinction can be reframed in terms of the "aims and effects" of policies, such that predistributive policies would then have specific aims dear only to progressives. That distinction creates a false dichotomy.

NOTES

[1] Karl Polanyi, *The Great Transformation*, Boston, Beacon Press, 2001, p. 84.

[2] Though the term "predistribution" is often said to have been coined by Jacob S. Hacker in 2011, at the Progressive Governance Conference in Oslo, one can find earlier uses of the term—for example, in James Robertson, "The Future of Money", *Soundings*, Vol. 31, 2005, pp. 118–132.

[3] Jacob Hacker, "The Institutional Foundations of Middle-Class Democracy", *Policy Network*, 2011, p. 35.

[4] Henry Simons, *Economic Policy for a Free Society*, Chicago, University of Chicago Press, 1948, pp. 6f.

[5] Henry Simons, *Economic Policy for a Free Society*, Chicago, University of Chicago Press, 1948, p. 42.

[6] Alf Ross, "Tû-Tû", *Harvard Law Review*, Vol. 70, No. 5, 1957, pp. 812–825.

[7] Here, I focus on twentieth-century classical liberals, like Friedrich Hayek, Milton Friedman, Ludwig von Mises, Frank Knight, Jacob Viner, and Henry Simons. The basic principles of classical liberalism are individual freedom, market capitalism, limited government, and the rule of law.

[8] Friedrich Hayek, *Law, Legislation and Liberty*, London, Routledge, 2013, p. 249. Milton Friedman, *Capitalism and Freedom*, Chicago, University of Chicago Press, 2002, p. 191.

[9] Thomas M. Scanlon, *Why Does Inequality Matter?*, Oxford, Oxford University Press, 2018, p. 102.

[10] Joseph Stiglitz, *Rewriting the Rules of the American Economy*, New York, W. W. Norton, 2015.

[11] Thomas Piketty, "Capital, Predistribution and Redistribution", *in Seminar on Thomas Piketty's Capital in the Twenty-First Century*, edited by Henry Farrell, Crooked Timber, 2014, pp. 90–107.

[12] Martin O'Neill, "Power, Predistribution, and Social Justice", *Philosophy*, Vol. 95, No. 1, 2020, p. 70.

[13] Martin O'Neill, "Power, Predistribution, and Social Justice", *Philosophy*, Vol. 95, No. 1, 2020, p. 87. The idea of predistribution encompasses, for example, "concerns with minimum wage levels, or the regulation of trade unions and wage bargaining processes, as well as issues of financial and corporate regulation, the regulation of important sectors such as the housing or energy markets, and the use of national and local government procurement spending in shaping the structure of markets" (p. 64).

[14] James E. Meade, *Efficiency, Equality and the Ownership of Property*, London, George Allen & Unwin, 1969.

[15] Matt Zwolinski, "A Hayekian Case for Free Markets and a Basic Income", *in* M. Cholbi and M. Weber (eds.), *The Future of Work, Technology, and Basic Income*, New York, Routledge, 2019, pp. 7–26.

[16] Liam Murphy and Thomas Nagel, *The Myth of Ownership*, Oxford, Oxford University Press, 2002, p. 32.

[17] Martin O'Neill, "'Death and Taxes': Social Justice and the Politics of Inheritance Tax", *Renewal*, Vol. 15, No. 4, 2007, p. 64.

[18] F. Hayek, *Individualism and Economic Order*, Chicago, University of Chicago Press, 1980, p. 113.

[19] Frank H. Knight, *Freedom and Reform*, Indianapolis, Liberty Press, 1982, pp. 61f.

[20] Frank H. Knight, "The Ethics of Competition", *Quarterly J. of Economics*, Vol. 37, No. 4, 1923, p. 584.

[21] Jacob Viner, "The Intellectual History of Laissez Faire", *J. of Law and Economics*, Vol. 3, 1960, p. 68.

[22] Friedrich Hayek, *Law, Legislation and Liberty*, London, Routledge, 2013, p. xx.

[23] Cass R. Sunstein, "Switching the Default Rule", *N.Y.U. Law Review*, Vol. 77, No. 1, 2002, p. 126.
[24] Alf Ross, "Tû-Tû", *Harvard Law Review*, Vol. 70, No. 5, 1957, p. 820.
[25] "'The institution of property,'" said Simons, "is a kind of shorthand notation for an infinitely complicated political-economic system and, indeed, for almost any possible alternative system.… To say that liberal democracy rests on private property is almost pure tautology." Henry Simons, *Economic Policy for a Free Society*, Chicago, University of Chicago Press, 1948, p. 27.
[26] Iris Marion Young, *Justice and the Politics of Difference*, Princeton, Princeton U. Press, 1990, pp. 15ff.
[27] Xenophon, *Cyropedia* (*The Education of Cyrus*), I.C3.17, London, J. M. Dent & Sons, 1914, pp. 16f.
[28] Plato, *The Republic*, I.332, translated by B. Jowett, Chicago, Encyclopædia Britannica, 1952, p. 298.
[29] David Hume, *An Enquiry Concerning the Principles of Morals*, Chicago, Open Court, 1912, p. 148.
[30] David Miller, *Social Justice*, Oxford, Oxford University Press, 1979. p. 165.
[31] Friedrich Hayek, *The Road to Serfdom*, Chicago, University of Chicago Press, 2007, pp. 215f.
[32] Alf Ross, "Tû-Tû", *Harvard Law Review*, Vol. 70, No. 5, 1957, p. 820.
[33] "The functioning of competition not only requires adequate organization of certain institutions like money, markets, and channels of information—some of which can never be adequately provided by private enterprise—but it depends, above all, on the existence of an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible." Friedrich Hayek, *The Road to Serfdom*, Chicago, University of Chicago Press, 2007, p. 87.
[34] Peter Dietsch, "Just Returns from Capitalist Production", manuscript, 2020.
[35] M. Friedman and R. Friedman, *Free to Choose*, Orlando, Harcourt Brace Jovanovich, 1990, p. 245.
[36] Frank H. Knight, "The Ethics of Competition", *Quarterly J. of Econ.*, Vol. 37, No. 4, 1923, pp. 609f.
[37] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, V.i.II.12, G.ed. p. 715, London, Encyclopædia Britannica, 1952, p. 311.
[38] S. Deakin, D. Gindis, G. M. Hodgson, K. Huang, and K. Pistor, "Legal Institutionalism: Capitalism and the Constitutive Role of Law", *Journal of Comparative Economics*, Vol. 45, 2017, pp. 188–200.
[39] Friedrich Hayek, "The Non Sequitur of the 'Dependence Effect'", *Southern Economic Journal*, Vol. 27, No. 4, 1961, pp. 346–348.
[40] Frank H. Knight, "The Ethics of Competition", *Quarterly J. of Economics*, Vol. 37, No. 4, 1923, p. 612.
[41] Frank H. Knight, "Intellectual Confusion on Morals and Economics", *International Journal of Ethics*, Vol. 45, No. 2, 1935, p. 219.
[42] Karl Widerquist, *Independence, Propertylessness, and Basic Income: A Theory of Freedom as the Power to Say No*, New York, Palgrave Macmillan, 2013.
[43] Martin O'Neill, "Power, Predistribution, and Social Justice", *Philosophy*, Vol. 95, No. 1, 2020, p. 85.

WILL CARBON TAXES HELP ADDRESS CLIMATE CHANGE?

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ABSTRACT:

The coronavirus disease 2019 (COVID-19) crisis ought to serve as a reminder about the costs of failure to consider another long-term risk, climate change. For this reason, it is imperative to consider the merits of policies that may help to limit climate damages. This essay rebuts three common objections to carbon taxes: (1) that they do not change behaviour, (2) that they generate unfair burdens and increase inequality, and (3) that fundamental, systemic change is needed instead of carbon taxes. The responses are (1) that there is both theoretical and empirical reason to think that carbon taxes do change behaviour, with larger taxes changing it to a greater extent; (2) that undistributed carbon taxes are regressive but distributing the tax receipts can alleviate that regressivity (and, in many cases, make the overall effect progressive); and (3) that while small changes for increasing democratic decision-making may be helpful, (fundamental) change takes time and the climate crisis requires urgent action.

RÉSUMÉ :

La crise de la maladie à coronavirus 2019 (COVID-19) devrait servir de rappel sur les coûts de la non-prise en compte d'un autre risque à long terme, les changements climatiques. Pour cette raison, il est impératif de considérer les mérites des politiques susceptibles de contribuer à limiter les changements climatiques. Cet essai réfute trois objections courantes aux taxes sur le carbone : (1) qu'elles ne changent pas les comportements (2) qu'elles génèrent des charges injustes et augmentent les inégalités, et (3) qu'un changement fondamental et systémique est nécessaire au lieu de taxes sur le carbone. Les réponses sont (1) qu'il existe des raisons à la fois théoriques et empiriques de penser que les taxes sur le carbone modifient effectivement les comportements, et que des taxes plus élevées les modifient dans une plus grande mesure; (2) que les taxes sur le carbone non distribuées sont régressives, mais que la distribution des recettes fiscales peut atténuer cette régressivité (et, dans de nombreux cas, rendre l'effet global progressif); et (3) que, bien que de petits changements pour l'amélioration de la prise de décision démocratique peuvent être utiles, un changement (fondamental) prend du temps et la crise climatique exige une action urgente.

INTRODUCTION

The coronavirus disease 2019 (COVID-19) crisis ought to serve as a reminder about the costs of failure to consider another long-term risk, climate change. For this reason, it is worth considering the merits of policies that might help to limit the damages associated with climate change. Indeed, some have argued that the COVID-19 crisis itself is the best time to introduce such policies, largely because the usual costs of destabilizing or reorienting the economy are lessened when there are other major shocks (Singer and Mintz-Woo, 2020; Mintz-Woo et al., forthcoming). On the assumption that it is a good time for considering climate change policies, what are the reasons for some specific policies?

One set of policies involves pricing carbon. The motivation is straightforward; if emitting carbon causes harm, then emitting should not be free. More generally, it is difficult for individuals and companies to discern the climate effects of their actions and, fundamentally, many citizens and companies lack the motivation to discover or to respond to their actions' climate effects. A carbon price provides both information and incentives; as the prices of carbon-intensive products and services rise, individuals and companies both recognize how to change and are rewarded for changing their behaviours. In this manner, carbon pricing policies can contribute to choices that more properly reflect the cost to society.

Perhaps the simplest form of carbon pricing is a carbon tax, which puts some fixed price on an additional unit[1] of carbon.[2] That price is meant to reflect the damages that the carbon is estimated to cause.[3]

But carbon taxes face a lot of objections from the public (Carattini et al., 2018). Taxes in general are of course unpopular, but even the idea of taxing something bad (like emitting carbon and contributing to climate change) can elicit a lot of concern. This essay considers three common objections to carbon taxes: (1) that they won't change behaviour, (2) that they will increase inequalities or create unfair burdens, and (3) that they are superfluous or that only truly fundamental, systemic change can address the problem. In response to the first objection, evidence is adduced from existing policies including the first broad-based North American carbon tax. The evidence suggests that behaviour does change. In response to the second objection, it is pointed out that the tax revenue from a carbon tax can be used to reduce inequality (and make the policy net progressive). In response to the third objection, it is pointed out that the untested nature of fundamental changes means they will require time both to address different social structures and to refine the new systems as they result. Given that climate change requires immediate action and (fundamental) change takes time, this makes fundamental change a bad fit for addressing climate change. I consider these three objections in turn.

"CARBON TAXES WON'T CHANGE ANYONE'S BEHAVIOUR"

The first objection is that carbon taxes won't change anyone's behaviour. In considering behavioural change, it is helpful to think of society as composed of three groups.[4] The issue here is about who would reduce their carbon emissions. First, in the wealthiest group are those who already produce a lot of carbon and would continue to produce a lot of carbon, even if it were more expensive to do so. Second, in the poorest group are those who produce much less carbon and would continue to do so were it to become more expensive. Finally, in the middle group are people who are on the edge with respect to some behaviours and who are content producing carbon at the current price, but who would reduce their carbon-intensive activities were it more expensive to produce carbon.

In the COVID-19 context, we should expect that people are more sensitive to changes in price on average because of the shocks the pandemic has introduced into the economy. For this reason, we might expect the middle group to be even larger during the current period of shocks (Mintz-Woo et al., forthcoming).

Those in our first, wealthy category can afford to keep polluting, even if it is more expensive. Those in our second, poor category already cannot. An objector might admit that there could be some in the third category who would change, but might claim that they are fewer, and, besides, how do we know there really are such people at all? It's hard to imagine changing your actions just because there is more cost.

First, in theory, if we line individuals up according to how much they want to pursue various behaviours that increase emissions (in terms of how much they would pay to do so), we would get our three groups. With actual people, there may be different sizes to these groups—and in extreme cases with very bimodal distributions (where the mass of the population is concentrated around two points with less mass in between), there may be very few—but the larger the society, the more people we could expect in this middle group. Furthermore, we can "increase" the number of people in this group by instituting a larger carbon tax, because the greater the tax, the greater the number of people who would fall into the group that changes behaviour based on the resulting price difference.

In the context of COVID-19, the theoretical case is even stronger. We know that people face greater costs and uncertainties in the midst of the pandemic, so we should expect there to be more people who are likely to be sensitive to increased costs and who, therefore, would change their behaviour more than usual in response to higher prices. Furthermore, there are more social costs to travelling at this point as well; the potential for spreading SARS-CoV-2 is increased with greater travel, so to some extent it is more valuable to dissuade travel now than it is usually. This is most clearly the case with air travel over long distances, but it is plausible that commuting over shorter distances also introduces risks that increase the social costs of travel.

Second, in practice, with respect to taxing other behaviours, we can see that taxing other social bads has affected their use. This is even the case with behaviours that are highly difficult to change—because, for instance, they are addictive, as in the case of cigarette smoking (e.g., Hu et al., 1995). One way to explain the counterintuitive nature of these behavioural changes is to appeal to what psychologists call "heuristic questions," or questions that are easier to answer in lieu of the target question. For instance, it is easy to answer a heuristic question like "Would I change my behaviour if it were more expensive to emit?" instead of the more complex question "How many people in society would change their emitting behaviour if it were more expensive?" which requires considering the diversity of costs and considerations that go into others' behaviour and their different means and needs. It's easy to answer that I would not change my behaviour and then assume that others are relevantly similar, when of course there are many relevant differences among people in society.

Third, in practice, with respect to carbon pricing globally, there is evidence that carbon pricing influences the amount of carbon that we emit. Rohan Best, Paul J. Burke, and Frank Jotzo use a database from the International Energy Agency covering about 96 percent of the global population in 2017 to see how countries with carbon prices, or with higher carbon prices, performed in terms of reducing the emissions growth from fuel combustion (2020). They find that having a carbon price is associated with a statistically significant 2 percent reduction in CO_2 emission growth and, moreover, that larger carbon prices are associated with greater reductions—an effective carbon tax increase of €1/tonne of CO_2 is associated with a statistically significant 0.2 percent reduction in CO_2 emission growth, even when other relevant policies are accounted for. For instance, the authors control for feed-in tariffs (which pay directly for renewable energy) and renewable portfolio standards (which set a minimum percentage of the energy mix as coming from renewable sources). This line of research suggests that carbon prices help reduce emissions, and that higher carbon prices help more. Of course, these carbon prices are not all carbon taxes, so it makes sense to turn to evidence from a specific case of carbon taxes as well.

This brings us to the final point, in practice, about evidence from regions that have implemented carbon taxes in particular. The first general carbon tax introduced in North America, in the Canadian province of British Columbia, is worth considering. It started at C$10/tonne of CO_2, which increased in C$5/tonne of CO_2 increments annually until the tax finally reached C$30/tonne of CO_2. Although the tax has been successful in many respects (and is liked by British Columbians), the key here is about behaviour. A review of the scientific literature conducted by Brian C. Murray and Nicholas Rivers (2015) found that the carbon tax had decreased British Columbian emissions by an estimated 5-15 percent since its introduction, relative to the expected emissions trend. Notably, it had done so while not appearing to burden the province's economy (Hassler et al. (2016) come to similar conclusions about Sweden). These results support the claim that, in some of the earlier broad-based carbon tax policy cases, behavior related to CO_2 changed.

All of these lines of evidence suggest that some in society change behaviour in response to carbon taxes (and other climate laws). However, another important response to the objection is that the goal of carbon taxes is not solely to shift behaviour away from carbon-intensive consumption. Both a moral point and a practical point can be added. With respect to morality, consider the people from our first group whose behaviour does not change and who simply pay the additional cost. One might think that the tax has failed with respect to these people. But no—the point is that the emissions associated with their actions are damaging to society, so they should face those consequences—that is, the estimated cost of those damages. The moral problem was that, before the carbon tax, these people were damaging society without paying for the damages. If they pay the estimated cost of the damages, then that is a morally different situation, and, intuitively, they do not owe society more than the estimated costs of those damages.

The practical point to add is that it is not the case that the only effect of a carbon tax is that some people shift their behaviour. The other major effect is that a carbon tax raises tax revenue for the government. This practical importance is not insignificant: the tax revenue can also be used for many purposes, such as investment in green technologies or infrastructure. As will be discussed in the next section, it can also be used to make the carbon tax more distributionally just.

"CARBON TAXES WILL INCREASE INEQUALITIES AND MAKE UNFAIR BURDENS"

The second objection is that carbon taxes will increase inequalities and produce unfair burdens on society. In the context of COVID-19, we should be especially concerned about this; the crisis does not have equal effects on everyone—those who have fewer resources and more tentative jobs have been impacted more starkly. And consumers tend to think about the consumer side of taxes: namely, taxes make things cost more money. It is true that taxes on carbon are disproportionately borne by the poor; higher portions of their living costs are related to energy and these may be harder to avoid. For this reason, the objector is right to be concerned about increasing inequalities, especially in the context of COVID-19.

This is an important objection, but my answer is that tax money does not simply disappear and that we should recognize that post-tax income is distinct from post-tax-and-transfer income. In other words, after taxes have been paid, there are ways that the government can transfer that tax revenue, and some of these ways will reduce or remove inequalities. In many places, taxing carbon (which is usually regressive, as the objection rightly reflects) and then rebating that tax revenue in simple per capita rebates (that is, just dividing up the revenue by citizen and giving everyone an equal share) will be an overall progressive tax policy that puts more net money in the hands of the poorest half of society and takes away more net money from the wealthier half. It also has advantages of being

an easy-to-implement way of using the revenues (Baranzini, 2017). In other words, in many places, you don't need to specially design the carbon tax to be progressive; if you just commit to dividing up the revenue generated evenly, the overall result ends up progressive.

Let us consider this objection a bit more carefully. One version of this worry is that the inequalities in society are exacerbated by carbon taxes. This worry can arise because, when thinking about taxes, we often focus on paying the taxes and not on what those tax revenues can be used for. When we focus only on the paying the taxes, it is (in many cases) true that the effect is regressive, meaning that proportionally greater payments are made by those who are poorer than by those who are wealthier.

But those revenues can be used in multiple ways, ranging from paying down debt and reducing corporate income taxes to reducing distortionary taxes like payroll taxes and, most importantly for our purposes, issuing equal per capita lump-sum rebates (i.e., cheques that divide the carbon tax equally amongst all taxpayers). For instance, a report from the Urban-Brookings Tax Policy Center found that, in the United States, that last, lump-sum option "would more than offset the carbon tax burden for low- and middle-income taxpayers but leave high-income families with a net tax increase" (Rosenberg et al., 2018). Since those with lower (and middle) incomes would end up ahead in net terms, and those with higher incomes would end up behind in net terms, the overall incidence of the tax with the rebate option would be progressive.

Therefore, it is possible to design a carbon tax that does not increase inequalities (and that, in fact, decreases inequalities). Of course, in the context of COVID-19, there is great need for governments to fund the kinds of safety-net measures that protect people, especially those in precarious economic or social circumstances. For this reason, using the tax revenues to pay for the deficits associated with this needed spending may also be more progressive during this crisis.

A second version of this worry comes from Lukas Tank, who argues that carbon pricing generates unfair burdens (2020). He points out that people like those in the first category, the very wealthy, will not change their behaviour (and the additional burden of the tax increase will not lower their welfare much). However, those in the less well-off, middle group will have their welfare lowered more due to the additional burden of the tax increase. This argument relies on the (plausible) assumption that welfare is not increased by a marginal dollar as much for the wealthy as for those less well-off.

However, even if we consider uniform carbon taxes, where what you pay for one more tonne of CO_2 does not depend on how wealthy you are or on how many tonnes you have already emitted, this objection insufficiently considers tax revenue possibilities. Again, it is possible for a carbon tax which is regressive with respect to post-tax income to be net progressive with respect to post-

tax-and-transfer income, especially if the carbon tax is designed with an equal per capita lump sum rebate mechanism. In other words, if everyone emits the same as they do today, it is progressive, but since each given individual's rebate is mostly independent of her own emissions (since the rebate comes from everyone's taxes), changing her emissions barely affects her rebate. However, every time she reduces her own emissions, the less tax she pays. So, everyone has an incentive to reduce their own emissions, and the poorest will in general benefit the most. Indeed, we can even make a stronger claim if we believe that the same amount of income will increase the welfare of those less well-off more than the welfare of those wealthier: the progressive outcomes not only mean resources are distributed more fairly but also that more welfare in generated in society.

In short, objectors who are worried that carbon taxes will increase inequality or introduce unfair burdens are right when they consider the carbon tax to be simply a cost to consumers. If they regard it as also a benefit to the government, there are ways the funds can be used to offset that regressivity. However, some think that there is something more fundamentally problematic about taxing carbon and some of these worries are discussed in the next section.

"CARBON TAXES ARE SUPERFLUOUS AND WHAT IS REALLY NEEDED IS FUNDAMENTAL, SYSTEMIC CHANGE"

The final family of objections concerns political alternatives to carbon taxes. There are also many forms of such objections, but the focus here will be on two versions: that a focus on carbon taxes distracts from stronger legislation, such as legislation that prohibits certain types of activities (legislation sometimes called "command-and-control instruments"), and that a focus on carbon taxes distracts from fundamental, systemic changes, where these can include a variety of goals, but often fundamental changes in the economy, such as shifts away from capitalism.

First, we have the objection that carbon taxes are unneeded or redirect interest away from command-and-control legislation. This objection is well taken; some of the prominent advocates of carbon taxes say that introducing carbon taxes should come with reducing or removing legislation that already exists in order to increase public acceptance.

While I agree that it is important to consider whether a proposal takes away political or public oxygen from another proposal, there is nothing necessary about carbon taxes supplanting other policies. In fact, a carbon tax that was combined with other climate policies, like renewable portfolio standards (which require a certain percentage of renewable energy sources) or funding for green research and development, would create many synergies. It is not yet clear whether jurisdictions with carbon taxes have more or less capacity to introduce other green policies, but it is worth considering.

Furthermore, many advocates of carbon prices would claim that the merits of carbon prices outweigh the merits of command-and-control legislation. This type of legislation is costly for the economy because it amounts to deciding which emissions should be reduced or, worse, to picking winners (in case a specific technology should be used). There is no guarantee that any particular agent, including the government, will reliably select the best technologies to encourage or the worst technologies to prohibit, especially when the technologies are new or are in development. In contrast, a carbon price automatically guides emitters to reduce their most carbon-intensive practices with whatever technologies are best placed to assist.

Second, we have the stronger claims for fundamental, systemic change. These include, but are not limited to, calls to disrupt capitalism and to institute new democratic or citizen-led governance structures. We see these in various political and activist movements, especially in new activist groups like Extinction Rebellion, a group of United Kingdom-based activists, which draws attention via large-scale actions like groups pretending to die in public places.

Of course, there is too little space here to respond properly to these claims, but again it is not necessary to entirely disagree. A first point to make is that some democratic governance structures, such as citizens' assemblies (as instituted in places like Ireland and British Columbia), can produce helpful advice that has the moral weight that comes from being recommended by fellow citizens (Howarth et al., 2020). However, it would take time to incorporate these governance structures more centrally into existing institutions.

This brings us to the second, and key, point: the response that "(fundamental) change takes time." Fundamental, systemic changes are, almost by definition, untested; therefore, they require time to iterate and improve. Since we have less experience of societies structured along different lines, and people have different ideas about what the ideal structure would look like, we can expect that there would be both disagreement about how to change society and a need to test or refine different changes. But these characteristics are unhelpful in the context of climate change; the challenge of reducing climate change is one of incredible urgency. The time it would to take to test and revise fundamental aspects of society, especially global capitalism, is time that we would lose for implementing policies that could reduce carbon today. Given the lag time for carbon to cycle through the system and its persistence in the atmosphere, that lost time would be consequential.

In making these claims, I am assuming that systemic change would substitute for climate change policies during the transition period. The assumption is that systemic change would be sufficiently socially demanding that it would not make it possible to simultaneously address our carbon usage during a transition. It is worth noting that this contrasts with my claims about a carbon tax. Although a carbon tax is a major policy, I deny that it need substitute for other conventional green policies. But if change takes time, and fundamental change prevents other

simultaneous policies being enacted, then fundamental, systemic changes—which may well be good ideas for any number of independent reasons—would prevent us from addressing climate change quickly enough.

CONCLUSION

COVID-19 demonstrates the potential fragility of societies without policies aimed at addressing future risks. Climate change is an even larger future risk, and, while we do have climate policies in place, it behooves us to consider more. Citizens have the opportunity to consider and demand policies that could help address climate change, such as carbon taxes, and the context of COVID-19 may be a crucial opportunity to do so. This essay is meant to address some of the most common objections to carbon taxes, since thoughtful debate about climate policies is needed in response to COVID-19 in order to build back better.

NOTES

[1] The usual unit is a tonne of CO_2, which is a mixture of carbon and oxygen.

[2] There are more regions where carbon prices have instead been implemented via cap-and-trade systems. These systems price carbon by setting a maximum permitted volume of emissions and then facilitating trading of those permits. Sometimes, carbon-pricing mechanisms are distinguished as "quantity-based" (cap-and-trade) or "price-based" (carbon-tax) policies. Some of the worries here have counterparts for quantity-based policies, but often price-based policies elicit stronger objections from the public, which justifies a focus on them. The other reason for focusing on carbon taxes as opposed to cap-and-trade is that the ethics of carbon taxes have been relatively neglected within the climate ethics literature, while cap-and-trade has been well covered (e.g., Page 2011 and citations therein).

[3] It should be noted that the process of estimating those damages or the cost to society of an additional tonne of CO_2 comes with many moral complexities of its own, cf. Fleurbaey et al. 2019.

[4] Technically, this means thinking of three groups classed by willingness to pay for carbon-intensive products, but we can approximate that classification by ranking the population in terms of overall wealth.

REFERENCES

Baranzini, Andrea, van den Bergh, Jeroen C. J. M., Carattini, Stefano, Howarth, Richard B., Padilla, Emilio and Roca, Jordi, "Carbon Pricing in Climate Policy: Seven Reasons, Complementary Instruments, and Political Economy Considerations", Wiley Interdisciplinary Reviews: Climate Change, vol. 8, no. 4, 2017, p. e462. Available at: http://doi.wiley.com/10.1002/wcc.462

Best, Rohan, Burke, Paul J., & Jotzo, Frank, "Carbon Pricing Efficacy: Cross-Country Evidence", Environmental and Resource Economics, vol. 77, no. 1, 2020, pp. 69–94. http://doi.org/10.1007/s10640-020-00436-x

Carattini, Stefano, Carvalho, Maria and Fankhauser, Sam, "Overcoming Public Resistance to Carbon Taxes", Wiley Interdisciplinary Reviews: Climate Change, vol. 9, no. 5, 2018, pp. 1–26. Available at: http://doi.wiley.com/10.1002/wcc.531

Fleurbaey, Marc, Ferranna, Maddalena, Budolfson, Mark, Dennig, Francis, Mintz-Woo, Kian, Socolow, Robert, Spears, Dean and Zuber, Stéphane, "The Social Cost of Carbon: Valuing Inequality, Risk, and Population for Climate Policy", The Monist, vol. 102, no. 1, 2019, pp. 84–109. Available at: http://doi.org/10.1093/monist/ony023

Hassler, John, Krusell, Per, and Nycander, Jonas, "Climate Policy", Economic Policy, vol. 31, no. 87, 2016, pp. 503–558. Available at: http://doi.org/10.1093/epolic/eiw007

Howarth, Candice, Bryant, Peter, Corner, Adam, Fankhauser, Sam, Gouldson, Andy, Whitmarsh, Lorraine, and Willis, Rebecca, "Building a Social Mandate for Climate Action: Lessons from COVID-19", Environmental and Resource Economics, vol. 76, no. 4, 2020, pp. 1107–1115. http://doi.org/10.1007/s10640-020-00446-9

Hu, Teh-Wei, Sung, Hai-Yen, and Keeler, Theodore E., "Reducing Cigarette Consumption in California—Tobacco Taxes vs an Antismoking Media Campaign", American Journal of Public Health, vol. 85, no. 9, 1995, pp. 1218–1222. http://doi.org/10.2105/AJPH.85.9.1218

Mintz-Woo, Kian, Dennig, Francis, Liu, Hongxun, and Schinko, Thomas, "Carbon Pricing and COVID-19", Climate Policy, forthcoming. https://doi.org/10.1080/14693062.2020.1831432

Murray, Brian, and Rivers, Nicholas, "British Columbia's Revenue-Neutral Carbon Tax: A Review of the Latest 'Grand Experiment' in Environmental Policy", Energy Policy, vol. 86, 2015, pp. 674–683. http://doi.org/10.1016/j.enpol.2015.08.011

Page, Edward A., "Cashing in on Climate Change: Political Theory and Global Emissions Trading" Critical Review of International Social and Political Philosophy, vol. 14, no. 2, 2011, pp. 259–279. http://doi.org/10.1080/13698230.2011.529713

Rosenberg, Joseph, Toder, Eric, and Lu, Chenxi, Distributional Implications of a Carbon Tax, (Noah Kaufman, Ed.), New York: Tax Policy Center, Urban Institute & Brookings Institution, 2018. Available at: https://www.taxpolicycenter.org/publications/distributional-implications-carbon-tax

Singer, Peter and Mintz-Woo, Kian, "Put a Price on Carbon Now!" Project Syndicate, 2020. Available at: https://www.project-syndicate.org/commentary/low-oil-prices-ideal-time-for-carbon-tax-by-peter-singer-and-kian-mintz-woo-2020-05 [Accessed May 25, 2020].

Tank, Lukas, "The Unfair Burdens Argument Against Carbon Pricing", Journal of Applied Philosophy, vol. 37, no. 4, 2020, pp. 612–627. http://doi.org/10.1111/japp.12429

COVID-19 AND THE FUTURE OF ZOOS

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ABSTRACT:

The COVID-19 crisis has left zoos especially vulnerable to bankruptcy, and the precarity of their financial situation threatens the lives and well-being of the animals who live in them. In this paper, we argue that while we and our governments have a responsibility to ensure the protection of animals in struggling zoos, it is morally impermissible to make private donations or state subsidies to zoos because such actions serve to perpetuate an unjust institution. In order to protect zoo animals without perpetrating further injustice, governments should subsidize the transformation of zoos into sanctuaries and then facilitate the gradual closure of most of these sanctuaries.

RÉSUMÉ :

La crise du COVID-19 a rendu les zoos particulièrement vulnérables à la faillite, et la précarité de leur situation financière menace la vie et le bien-être des animaux qui y vivent. Dans cet article, nous soutenons que si nous et nos gouvernements avons la responsabilité d'assurer la protection des animaux dans les zoos en difficulté financière, il est moralement inadmissible de faire des dons privés ou d'offrir des subventions étatiques aux zoos, car de telles actions servent à perpétuer une institution injuste. Afin de protéger les animaux des zoos sans commettre d'autres injustices, les gouvernements devraient subventionner la transformation des zoos en sanctuaires et ensuite faciliter la fermeture progressive de la plupart de ces sanctuaires.

1. INTRODUCTION

Zoos and aquariums everywhere are facing financial collapse. The lockdowns implemented in response to the COVID-19 pandemic have forced zoos to close their doors to the public, thereby ending their primary source of income.[1] Even in contexts where zoos are allowed to reopen, ongoing physical distancing requirements typically reduce visitor numbers.[2] Unlike tourist attractions that have been able to reduce costs by suspending their operations, zoos continue to have high maintenance costs because the animals in their care need to be fed, housed, and looked after. With ongoing maintenance costs and no income from ticket sales, zoos are left particularly vulnerable to bankruptcy during the COVID-19 crisis, and the precarity of their financial situation threatens the lives and well-being of the animals who live in them.

Most defenders of animal rights see zoos as institutions that unjustly incarcerate animals for human gain (Francione 2000, pp. 23-25; Malamud 2017). This might make one think that it would be wrong to give financial support to zoos, since doing so will only perpetuate injustice. Indeed, European affiliates of the animal protection organization People for the Ethical Treatment of Animals (PETA) have launched petitions to urge governments to close zoos rather than to subsidize them in their current form.[3] While we share the view that zoos ought ultimately to be abolished, we argue that the current situation is complicated by the fact that there are individual and collective duties to assist animals who are threatened by zoos' financial situation. This means that doing nothing is not an option, because allowing animals to starve or to be killed in struggling zoos is not morally permissible. At the same time, we argue that the crisis has also created an unexpected opportunity to address the unjust treatment of animals held captive in zoos—an opportunity that it would be remiss to overlook. This paper calls for us to take advantage of this opportunity and offers a positive proposal for beginning the transition from current conditions to a world without zoos.

The paper is structured as follows. We begin by outlining three rights that sentient animals possess and which are crucial to thinking about the ethics of zoos (section 2). Zoos, we argue, are unjust institutions since they routinely violate these rights (section 3).[4] Having established that zoos are unjust, we argue that individuals and collectives have a duty to prevent the injustice done to zoo animals (section 4). The paper then sets out how we can best satisfy these duties and makes a series of positive proposals for how states and individuals ought to proceed (sections 5 and 6).

2. ANIMALS RIGHTS AND ENTITLEMENTS OF JUSTICE

The argument advanced in this paper assumes that sentient animals have at least some basic rights. We can add very little to the general case for animal rights—which has been persuasively argued at length elsewhere[5]—but here we briefly identify three rights that inform the subsequent discussion.

First, and perhaps least controversially, is the right that sentient creatures have against humans *not to be made to suffer unnecessarily*. The grounds of this right are straightforward. Sentient animals are those with preferences, desires, and the capacity to experience the world as subjectively aware creatures. This means that they have a significant interest in things going well for them, which in turn gives rise to a range of positive rights, such as rights to access unpolluted water and a suitable habitat. Conversely, they have a significant interest in avoiding negative experiences, such as pain and suffering. The right not to be made to suffer protects sentient nonhuman animals against humans' treating them in ways that cause them to experience harm (Cochrane 2012, pp. 54-57).

Second, we maintain that sentient animals have a *right not to be killed unnecessarily* by humans. This right protects sentient creatures' fundamental interest in continued life. Life is valuable for all sentient creatures because "they have an interest in living to experience the goods that lie in prospect for them" (McMahan 2008, p. 67). Moreover, continued life is a necessary condition for everything else that an animal might have an interest in and thus it is the most important interest they have. Here we agree with Christine Korsgaard, who argues that "even if the rabbit's life is not as important to her as yours is to you, nevertheless, for her it contains absolutely *everything of value*, all that can ever be good or bad for her…. The end of her life is the end of all value and goodness for her" (Korsgaard 2018, p. 65, emphasis in original). Once we acknowledge how fundamental continued life is for other sentient animals, the idea that they have a right not to be killed by us is compelling.

Third, we believe that sentient animals have a *right to self-determination*. Since they are subjectively aware agents, sentient animals have preferences and desires that they try to satisfy through self-determined action. Animals with these agential capacities have a significant interest in determining what happens in their lives, and in being able to exert control over the contents of their lived experience (Healey and Pepper 2020). The right to self-determination, then, protects competent animals' interest in having their wilful agency respected in certain domains of activity. For instance, many wild animals competently negotiate the world without human assistance and so have a right to be self-determining—that is, to live free of human interference.[6] Importantly, the right to self-determination is not all or nothing: one does not need to have a right to be self-determining in *all* spheres of activity in order to have a right to be self-determining in *some*. This means that even when domesticated and captive animals cannot survive without human assistance, they may nonetheless be competent judges of whether they want to be touched or seen, what and when they want to

eat, who they want to spend time with, what activities they want to engage in, and so on, and so they have a right to have their will respected in these domains (Donaldson and Kymlicka 2016; Healey and Pepper 2020).

While this is not an exhaustive list of animals' rights, it is our view that whatever other entitlements of justice nonhuman animals may have, they at the very least have these three rights.[7] When these rights are violated, the animals are directly wronged and injustice occurs. Thus, a just interspecies society is one in which nonhuman animals are not made to needlessly suffer at the hands of humans, where animals are not unnecessarily killed by humans, and where their capacity for self-determination is not unjustifiably limited by humans.

3. ZOOS AND AQUARIUMS: UNJUST INSTITUTIONS

Zoos (and aquariums—we use "zoos" to include both) are facilities that display animals in enclosures to the paying public. Though zoos remain popular attractions in most societies, we argue in this section that they routinely violate the rights of the animals in their care. Zoos, then, are unjust institutions.[8]

3.1. The Right Not to Suffer

Advances in knowledge about zoo animals and their welfare have allowed modern zoos to improve the survival and reproduction rates of the animals in their care. However, even for comparatively good zoos, it is difficult to provide the material conditions necessary for animals' flourishing. Of course, animals in zoos are not a homogenous group, and individuals respond to their captivity in different ways. For some animals, such as small rodents and small reptiles, life in captivity may not have a significant impact on their welfare at all.[9] Importantly, however, these are not the animals that most visitors go to see. Studies suggest that visitors' interests gravitate towards large mammals (see Carr 2016). And it is large, active mammals for whom captivity is most difficult. Bears, elephants, primates, big cats, whales, and dolphins all fare less well in captivity because confinement deprives them of the resources and opportunities that they need to flourish as the kinds of creatures that they are (Marino 2018, pp. 101-107). Confined to small enclosures, unable to roam freely, unable to avoid the gaze of humans and their fellow inmates, unable to gather food or stake claims to territory, and lacking opportunities for companionship and diverse forms of social interaction, these animals struggle to adjust to the artificial and restricted conditions of their confinement. Their lives are monotonous and limited in ways that have serious impacts on their physical and psychological health. For instance, as critics have long maintained, confining animals in zoos produces anxiety, sadness, neurotic behaviour, and other negative experiences. One source of psychological suffering are visitors, whose presence and behaviour are very stressful for some animals (Fernandez et al. 2009; Hosey 2008). This stress sometimes results in increased intraspecies and interspecies aggression and can cause a range of stereotypies—constant and repetitive behaviours that have no obvious goal or function (Mason 1991)—such as pacing, rocking, swimming in

circles, mouthing at cage bars, and excessive grooming, to name but a few. These abnormal behaviours are symptomatic of the psychological suffering caused by confining animals in zoos.

Incidentally, zoo-related news reports during the COVID-19 pandemic frequently make the claim that animals in zoos "miss" their visitors. The general thrust of this claim is that animals in zoos are suffering *because* they miss the stimulation that interaction with human zoo-goers provides. This is evidenced, or so it is claimed, by the fact that animals who might otherwise be entirely indifferent to visitors suddenly show increased interest in staff or journalists close to their enclosures.[10]

We think that this narrative of "lonely animals" must be resisted. Such reports create a romanticized idea about zoos and the impact of visitors. We do not deny that some animals may have found the recent changes to their daily routine distressing.[11] However, it does not follow that the presence of visitors is a welcome aspect of these animals' lives, or that once visitors return, these animals can resume living good lives. The animals' response may simply be an indicator that their lives are so lacking in stimulation and enrichment that even noisy and disruptive visitors are an improvement. This should be seen as an indictment of zoos, not a reason for zoo visitors to think that they are improving animals' welfare by visiting and supporting zoos.

3.2. The Right Not to Be Killed

When animals have an interest in continued life, this means that, other things being equal, more life is good for them. While studies show that zoos mostly enhance the longevity of mammals, there are some animals, such as female Asian and African elephants, who live longer in the wild than they do in zoos (Tidière et al. 2016, p. 4). Hence, one obvious way in which zoos harm some animals is by reducing their lifespans. Of course, this is not the same as actively killing animals, but it nonetheless shows how zoos can set back the fundamental interest that individual animals have in living.

More troubling, however, is the intentional killing of zoo animals by those who are supposed to care for them. One recent news story that garnered much public attention involved Neumünster Zoo, whose director explained that the zoo was drawing up a "kill list" of animals that could be killed to feed others if the lack of income made it difficult to pay for the zoo's ongoing costs during the COVID-19 crisis.[12] This statement may suggest that killing for non-euthanasia purposes is a rare occurrence in zoos, limited to crises such as the one we are currently facing. However, the zoo director herself emphasized that euthanasia is *not* uncommon in zoos and is sometimes legally required. While the term "euthanasia" is meant to apply to cases where animals are killed because they have a serious, terminal illness and/or are enduring unbearable suffering with little prospect of alleviation or recovery, in the zoo context (and other contexts involving nonhuman animals), the term is frequently applied to the painless killing of

healthy animals for reasons other than their own well-being.[13] A common practice in zoos is so-called "population management euthanasia" (e.g., Powell et al. 2018), in which "surplus" animals are killed—because, for example, they can't contribute to the zoo's breeding programme. Estimates suggest that European zoos within the European Association of Zoos and Aquaria (EAZA) kill between 3,000 and 5,000 animals each year (Browning 2018).

The case of Marius—a young, healthy giraffe at Copenhagen Zoo—brought attention to this issue in 2014. Marius was shot to death[14] because his genes were not useful to the zoo's breeding programme. His body was dissected in front of an audience of visitors and then fed to the zoo's carnivores. Copenhagen Zoo's treatment of Marius is consistent with EAZA's "Culling Statement,"[15] and EAZA publicly supported the decision, noting that "the young animal in question could not contribute to the future of its species further, and given the restraints of space and resources to hold an unlimited number of animals within our network and programme, should therefore be humanely euthanised."[16] Copenhagen Zoo also killed two young leopards in 2012 for similar reasons; it is reported to kill between twenty and thirty healthy "exotic" animals per year.[17]

In addition to the killing of "surplus" animals, captive animals are often killed if they pose a threat to human life. For instance, Margaash, a snow leopard who escaped his enclosure at Dudley Zoo in the UK, was shot dead after he couldn't be coaxed back.[18] Other animals have been sacrificed in defence of humans, not because they have escaped their enclosures, but because humans have found their way inside. In recent years, perhaps the most infamous case of this involved Harambe, a 17-year-old western lowland gorilla. A three-year-old boy climbed into the gorilla enclosure at the Cincinnati Zoo and Botanical Garden and was grabbed and dragged by Harambe. Fearing for the boy's life, a zoo worker shot and killed Harambe.[19] To be clear, we are not saying that the zoos were wrong to prioritize the lives of the humans in these cases (though much depends on the circumstances). However, the apparent conflict between the rights of the animals, on the one hand, and the rights of the humans, on the other, is entirely human in creation. If zoos did not exist, neither would these threats to human safety, and animals would not have to pay for these conflicts with their lives.

It's important to understand that killing in zoos is not a rare occurrence. Nor are decisions about killing individual animals made in light of those animals' interests or the interests of other animals in the zoo. Instead, such decisions are made in light of the zoos' goals, particularly its commercial interests. Frequently, animals who require expensive medical treatments, who do not play well with others, or who are surplus to the zoo's breeding program are killed.

3.3. The Right to Self-Determination

Zoos must be categorized as what Erving Goffman famously called "total institutions" (1961). According to Goffman, a total institution is a closed social system in which life is organized by strict norms, rules, and schedules. Daily

life within that system is governed by a single authority who determines the rules and issues orders to the residents and staff (1961, p. 6). Moreover, the "encompassing or total character [of total institutions] is symbolized by the barrier to social intercourse with the outside and to departure that is often built right into the physical plant, such as locked doors, high walls, barbed wire, cliffs, water, forests, or moors" (Goffman 1961, p. 4). This description of a total institution clearly reflects the organization and structure of zoos. Animals are confined in a closed system that they are unable to leave, and all aspects of their lives are heavily regulated and monitored by those in charge: social interaction, movement, diet, reproduction, activity, sleep, observation, and so on. Moreover, the zoo is separated from the rest of society by physical barriers designed to block escape attempts and keep non-fee-paying members of the public out.

Recognizing that zoos are total institutions makes it clear how they limit the degree of control animals can have over the shape of their own lives, thus violating their rights to be self-determining. Animals captive in zoos cannot choose to leave, and few have the freedom to leave their enclosures. Animals captive in zoos cannot choose where to live and with whom to live. Animals captive in zoos cannot choose what to eat and when to eat it. Animals captive in zoos cannot choose their relationships since the communities that animals live in are determined by zoo management. Moreover, animals may be moved in or out of specific communities when this suits zoo breeding programmes or the commercial interests of zoos, which affects not only individual animals' interests but also undermining communal life. Animals captive in zoos often cannot choose to be unobserved since zoos have an interest in ensuring that visitors can actually see the animals they pay to visit.[20] Zoos interfere with animals' reproduction—for example, by preventing them from reproducing or by subjecting them to artificial insemination. For all of these reasons, and countless others, the right of animals to be self-determining is incompatible with keeping them captive in zoos.

Since zoos clearly violate the rights of many animals in their care, they are unjust institutions. However, some try to defend the existence and practices of zoos by appealing to the contribution that zoos make to education and species conservation. Might these kinds of benefits justify infringing on animals' rights in the ways we outline in this section? Note, first, that claims about the educational and conservational benefits of zoos should not be taken at face value: studies assessing zoos' actual effects typically reveal more modest benefits than is often claimed (Born Free Foundation 2007; Jamieson 2002, p. 187; Moss and Esson 2013). More importantly, educational and conservational benefits, even if large, cannot justify violating the rights of individual animals. While rights are generally not considered absolute, they protect rights-holders by blocking simplistic utility calculations: it does not become permissible to violate rights simply because this would maximize the good. However, the pursuit of other goods can justify infringements on individual rights if, first, the good in question is of similar importance as the right to be infringed upon, and, second, if the benefit achieved is sufficiently large. Education and species conservation are not the

kinds of goods that could, even in principle, be weighed against basic rights such as the right to continued existence. Thus, whatever benefits zoos might bring about with regard to education and species conservation, those goods cannot be used to justify the rights violations associated with keeping animals in zoos.

4. WHAT DO WE OWE TO ZOO ANIMALS?

The financial problems that zoos are facing create additional risks for captive animals—as is starkly demonstrated by some zoos' proposals to kill animals in their care to reduce costs. Animals' rights not to be harmed and killed clearly impose duties on those who own and manage zoos not to take this approach. However, the pandemic has made it difficult for the individuals and organizations primarily responsible for the care of zoo animals to avoid such desperate measures. Zoos have called on both governments and individuals to donate funds so that these measures can be avoided.

Such pleas made by zoos, especially when tied to accounts of "kill lists," have the flavour of moral blackmail: "If you don't help us, then we will be forced to kill our animals." These kinds of appeals trade on our desire to help cute animals in need, but they obfuscate the fact that those who make the appeals are primarily responsible for the vulnerability of the animals in their care. Zoos deliberately choose to display animals to a paying public and are responsible for capturing them in the wild, acquiring them from other zoos, or breeding them in captivity. That they now ask for donations to "prevent" them from killing animals in their care and allow them to continue their rights-violating practices is deeply problematic.[21]

At the same time, of course, this does not release us from our duties to the animals who are affected by zoos' response to the current crisis. If we trust that zoos have no other choice but to kill their animals, who else may bear a duty to prevent that outcome?[22]

4.1. State Governments

We argue that just as the state must protect vulnerable humans in circumstances where their caregivers are unable to satisfy their duties of care, the same is true for other vulnerable animals. This means that governments are under a duty to rescue animals in zoos facing financial collapse. However, government subsidies, which many zoos have requested and some governments have begun to provide,[23] are problematic if offered unconditionally: zoos can use such resources in any way they see fit, and it is unclear whether such funds will prevent wrongful killing. Moreover, by subsidizing zoos, governments legitimize what is, as we argued above, a fundamentally unjust institution. Government subsidies to zoos, then, are likely to perpetuate rather than alleviate the unjust treatment of captive animals, both directly (by supporting its operations) and indirectly (by providing symbolic support to the institution).

This leaves current governments in a difficult situation: they have a duty to prevent the killing of captive animals in zoos that are struggling to cope with the crisis, but they must do so in a way that does not perpetuate or compound the injustices that animals in zoos suffer. If unconditional subsidies are not appropriate, how should governments respond? We sketch our preferred solution in section 5.

4.2. Individual Citizens

Individuals too have a duty to assist others in need, even when those others are nonhuman animals. As Peter Singer famously argued, "if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it" (Singer 1972, p. 231). Insofar as individuals can do something to prevent animals in zoos from being harmed and wronged as a result of the COVID-19 crisis, we have a duty to do so. Moreover, by acquiescing and participating in a system that allows animals to be kept captive for our entertainment, we citizens are complicit in the institutional structures that allow zoos to exist. This makes us partially responsible for the threat that zoo animals currently face and further places us under a duty to mitigate that threat.

What precisely is the content of these duties? While zoos have called on citizens to donate money to keep them afloat as the pandemic continues, we argue that citizens must not make donations to zoos. While such donations could in principle help alleviate the current financial strain and thus prevent the killing of animals in response to the crisis, they offer no scope for influencing how zoos are run or even how donations are used. For example, as we noted earlier, killing animals for the purposes of "population management" is a routine element of how zoos operate, so there is little reason to be confident that zoos would use these funds to prevent killings; they may simply decide that these funds are better spent elsewhere. In the absence of oversight mechanisms that ensure that such donations would be used for the intended purpose, the risk of supporting the ongoing operation of an unjust institution rather than preventing harm to individual animals is significant.

What if donations are made not in the form of money, but are instead directly targeted to the needs of the animals—for example, by providing food?[24] While this reduces the risk of funds being misdirected, it does not fully address the concern: to the extent that food donations free up resources, they indirectly fund the zoo and thus support its (unjust) operations. In addition, donations—monetary or nonmonetary—legitimize the institution: no matter how critical donors might be of zoos, any donation to a zoo might be interpreted as an expression of support for the institution, and zoos can easily claim that the donations they receive are an endorsement of their work.

Finally, there are plenty of organizations affected by the current crisis that are committed to helping (nonhuman or human) animals, such as animal shelters

and rescue organizations.[25] We clearly also have duties to the animals cared for by these organisations. As long as individuals have more duties than they can realistically meet, they should direct their donations towards organizations that are not unjust and where they can be confident that funds will be used for appropriate purposes.

The concerns raised in this section speak against individuals' and states' donating to zoos. We turn now to our positive proposals that states should seek to realize, and that citizens should endorse and campaign for.

5. TOWARDS JUSTICE FOR ANIMALS IN ZOOS: A POSITIVE PROPOSAL

Calls for boycotts of zoos and aquaria have been successful in some contexts. Consider, for example, the increasingly critical perception of orcas in captivity and the way in which this has affected companies such as Sea World. However, such successes remain focused on animals with higher cognitive capacities, and, for most people, the permissibility of zoos *tout court* is not in question.[26] It is thus hard to be optimistic that anti-zoo campaigns will make substantial progress, at least in the short term. The present situation, however, presents an opportunity for more radical change.

Given the financial problems zoos face because of the pandemic, they are unlikely to survive without assistance. Some zoos have explicitly announced that they will go bankrupt unless they receive substantial financial subsidies.[27] This gives governments a rare opportunity to fundamentally transform zoos. To be clear, we think that governments are obligated to do more than to get zoos to reform their practices by, for example, requiring them to enlarge enclosures or by outlawing captivity for specific species. The fundamental problems with zoos that we described above cannot be addressed through such reforms. Zoos routinely violate animals' rights to not suffer, to not be killed, and to be self-determining, and the only way to avoid such violations is for animals not to be in zoos in the first place.

How, then, should governments respond to the financial crisis facing zoos? Our proposal is that governments subsidize the transformation of zoos into sanctuaries and then facilitate the gradual closure of most of these sanctuaries. As a first step, governments should seek to return to the wild those animals for whom independent life (or semi-independent life—e.g., with additional food provided by humans) is a possibility. This is unlikely to be an option for more than a small fraction of animals currently in zoos: life in captivity often leaves animals without sufficient skills to survive in the wild,[28] and environmental degradation has reduced many animals' natural habitats.[29]

Most zoo animals are unfit for release into the wild and should be allowed to live out their lives in sanctuaries rather than zoos. While, in the real world, the lines between zoos and organizations that call themselves sanctuaries can be blurry,

on our understanding, sanctuaries differ from zoos in two important respects. First, sanctuaries are oriented towards their residents' flourishing (Donaldson and Kymlicka 2015). Sanctuaries "provide a safe-haven for displaced beings—they are fundamentally about those *inside* the walls" (Kemmerer and Kirjner 2015, p. 231, emphasis in original). Unlike zoos, sanctuaries are focused on animals as individuals, rather than as representatives of a particular species. Second, sanctuaries are not run as businesses and therefore do not depend on fee-paying visitors. Currently, sanctuaries are typically charities and rely on donations; while this addresses some of the concern about the incentive structures faced by zoos, the reliance on donations may create problems of its own (see Emmerman 2015). On our proposal, funding for sanctuaries would be provided by governments and taxpayers. This is important not only because it frees sanctuaries from catering to donors, but also because it underlines sanctuaries' role in offering homes for animals on whom we have inflicted severe injustice.

What kind of life would former zoo animals lead in sanctuaries? In their discussion of sanctuaries for farmed animals, Donaldson and Kymlicka (2015) distinguish between two "models" that sanctuaries can adopt. The first, the "refuge + advocacy" model, seeks to provide refuge for rescued animals, but also uses refuges for advocacy and educational purposes—for example, by holding "open days" on which visitors can interact with residents. The second, the "intentional community" model, on the other hand, sees sanctuaries as models for just interspecies communities: sanctuaries are permanent homes for the animals who live in them and seek to provide, as far as possible, opportunities for agency. For example, residents are permitted to explore different activities and different levels of social interaction with other residents, of the same and other species.

How, precisely, sanctuaries for former zoo animals would look depends on the kinds of animals housed in them. For nonpredatorial animals, such as goats, integration into a sanctuary that adopts the intentional community model is a congenial option. However, the intentional community model assumes that sanctuary residents are nonpredators: this makes it possible for residents to roam freely in the sanctuary and to interact safely with other residents. Zoos, however, house many predators who typically need to be kept separate from other species (and sometimes from members of the same species). This means that sanctuaries for formerly captive animals would be limited in how far they can move in the direction of an "intentional community" model.

Predators and obligate carnivores pose a broader difficulty for our proposal. Obligate carnivores currently in zoos depend on the death of other animals for their survival. They will either kill these animals themselves (if released into the wild) or have them provided by the sanctuary. Would this be a reason to end these predators' lives instead of releasing them into the wild or a sanctuary? Clearly, allowing the killing of animals to feed former captive predators is problematic. The suffering and killing of animals always matter morally, even if the harm is inflicted by other (nonhuman) animals.[30] But preventing these deaths by killing the predators violates the rights *of the predators*. The fact that this

tragic conflict has been caused by humans makes the situation even more complex: we have created these predators and have made them suffer in captivity for their entire lives; killing them now instead of allowing them to live out their lives in the wild or, more likely, in a sanctuary only compounds that injustice. At the same time, two wrongs don't make a right: the fact that the predators are victims of injustice does not by itself justify killing other animals to keep them alive. One possible response to this dilemma is to explore how we can allow former captive carnivores to have decent "retirements" while seeking to reduce, as far as possible, the harm done to other animals to feed them. This might involve, for example, procuring roadkill to feed sanctuary carnivores or exploring plant-based alternatives.[31] As we argue below, sanctuaries for such animals will need to be phased out over time, so we are looking for an acceptable, if morally imperfect, solution for currently existing carnivores, not a long-term solution.

One of the questions sanctuaries would need to address is on what terms, if at all, they should allow visitors. Part of Donaldson and Kymlicka's concern about the "refuge + advocacy" model is that, by allowing visitors, such sanctuaries "enable forms of animal viewing that may reinforce implicit assumptions about a human entitlement to confine and display animals" (2015, p. 55). While this speaks against short-term visitors who walk through the sanctuary as one would through a zoo, the "intentional community" model allows for long-term guests who become part of the community for the duration of their stays.

We share the concern that it is problematic to open sanctuaries to visitors. Existing wild animal sanctuaries that do allow visitors often emphasize that the presence of visitors is not stressful for the animals. The Wild Animal Sanctuary in Colorado, for example, explains on its website that "large carnivores (and most other animals) do not consider air or sky to be territory, so if people are on elevated platforms or walkways they will not be considered a threat."[32] The sanctuary is visited by almost 170,000 visitors per year. They do not address other sources of stress visitors might create, such as noise, flashes from cameras, or visitors' attempts to get animals' attention. More importantly, however, irrespective of how stressful the visits are for the animals, this does not alleviate the primary concern: that allowing nonhuman animals to be viewed in this way normalizes problematic assumptions about their status; visits therefore reinforce the human-animal hierarchy that underlies our unjust treatment of other animals (Malamud 2017; Sorenson 2008). This concern, we think, is a compelling reason for sanctuaries to remain closed to the public. It also speaks against other ways of facilitating the "viewing" of animals, such as webcams that allow us to watch animals virtually.[33] To adapt Donaldson and Kymlicka's language, we argue that the sanctuaries housing such animals should follow a "rescue-only" model. They must operate as rescues rather than as intentional communities and would not be used for advocacy purposes: visitors would not be allowed.

What should happen to sanctuaries in the long term? Sanctuaries that, because of the animals they house, can follow Donaldson and Kymlicka's "intentional community" model are consistent with interspecies justice and can continue to

provide homes for former zoo animals and their offspring. This is not the case for sanctuaries that must follow the "rescue-only" model. While such sanctuaries would allow animals to live significantly better lives than they would otherwise have lived, they are far from ideal.

First, while such sanctuaries can provide improved living spaces, it is not clear that even under those conditions, animals' lives are as good as they would have been in the wild (Emmerman 2014). Providing more space is an important advantage of sanctuaries over zoos—but, again, for many animals this will still be inadequate. Carole Baskin, the founder of Big Cats Rescue, notes in an interview that while the space that the sanctuary provides for the big cats in its care is not enough, "it's way more than anywhere else."[34] The degree to which the space and enrichment that sanctuaries can provide falls short of animals' requirements is likely to vary between species and between individual animals.

Second, animals in such sanctuaries are still subject to confinement and captivity (Emmerman 2014). Even if, as some argue, captivity is not in itself a violation of animals' rights (e.g., Cochrane 2009), it frequently infringes on their rights to self-determination. While sanctuaries for domesticated animals can allow animals significant choice over the extent to which they want to interact with other species, concerns about territoriality and predator-prey relationships will make this much harder in sanctuaries that house nondomesticated animals. Such sanctuaries, then, may still share many of the features of the total institutions that we discussed in section 3.3.[35] While they should seek to attenuate these concerns—for example, by experimenting with different ways to extend the scope for their residents' agency—we anticipate that such efforts are unlikely to achieve more than modest improvements for animals' agency.

This suggests that moving animals from zoos into sanctuaries cannot be the final step of the process we are proposing. The lives they can lead within the sanctuary are of course better than those they can lead in a zoo because the institution is driven by the animals' interests. But for many animals, such as predators, sanctuaries will involve a significant amount of restriction. For such animals, sanctuaries are temporary solutions to be phased out over time.[36] "Rescue-only" sanctuaries provide captive animals with a home in which to "retire" and comfortably live out their lives, but we cannot be satisfied with the lives these animals lead and we should not seek to repopulate these sanctuaries.

In order for these sanctuaries to become obsolete, their residents must be prevented from procreating, which of course implies yet another restriction of their agency. In addition, this means that animals must not be allowed to procreate even when they are members of endangered species. Our proposal therefore runs counter to the conservation objectives that, to many, support the existence of zoos. This, we think, is a price we must accept. Individual animals have interests and rights; species do not. It is not permissible to make individual animals suffer so that the species can survive (Jamieson 2002, p. 173)—and this would be particularly problematic when it is human activity that has driven a species to the brink of extinction.[37]

The reforms we are proposing here would vastly improve the lives of animals currently captive in zoos. States now have an opportunity to acknowledge the injustice captive animals have suffered and the role they (and we) have played in allowing this injustice to continue. For governments to decide to end the captivity of animals in zoos would send a powerful message of interspecies justice and of the importance of making amends and seeking to repair the injustice we have done.

6. BACK TO REALITY

Of course, we understand that our proposal is unlikely to garner mass appeal, and that support for zoos remains depressingly widespread. If our release/sanctuary proposal is not adopted, does this mean that governments (or individuals) should donate funds to struggling zoos after all? We think the answer is no. First, as we argued above, donations of this kind come with risks, and we cannot be certain that donations would actually prevent the killing of animals, given how zoos are structured. Second, some zoos may simply not survive without significant donations or subsidies and may be forced to close down. Governments should of course do what they can to ensure that the animals in these zoos are placed in sanctuaries rather than moved to other zoos or killed. But bailing out zoos is not a reliable way to fulfil our duties towards the animals who live in them. Indeed, bailing out zoos is morally wrong, and states who make such provisions must be held to account.

This is where the actions of individual citizens are most important. As we mentioned above, individual citizens have a duty to pressure their governments into adopting something like the release/sanctuary model proposed here. This could involve, for example, signing petitions such as PETA's, writing to local government representatives, discussing the issue with others, or leaving comments on online news stories about zoos. Moreover, individual citizens mustn't lose sight of the fact that unconditional subsidies to zoos are effectively public funds that are being used to support an unjust institution. Citizens have a responsibility to do what they can to ensure that their taxes are not used for unjust ends, and they have a duty to animals in zoos to end their captivity. It is individual citizens who must hold their governments to account for their failure to adequately protect the rights of animals in zoos.

7. CONCLUSION

COVID-19 has been disastrous for many, and it threatens to be disastrous for the millions of animals held captive in zoos. Yet this outcome is not inevitable. It is not inevitable that zoo animals will be killed, nor is it permissible. We have a duty to prevent this. The current situation presents us with the opportunity to abolish zoos by radically reforming the institutions that they currently are.

We have argued here for the following proposal: First, release into the wild (or "supported wild") as many of the animals currently in zoos and aquaria as possi-

ble. Second, the remaining animals are to be housed in sanctuaries; this may well include zoo grounds transformed into sanctuaries. Third, we must distinguish between animals who can have rich, flourishing lives in sanctuaries that protect their rights and agency and those for whom life in a sanctuary necessarily remains limited. While the former can form part of a future that meets the requirements of interspecies justice, the latter must be temporary: they allow animals to live out their lives in better conditions than would have been the case in a zoo, but they must be phased out once the animals in them have died.

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NOTES

[1] Chester Zoo in the UK, for example, reports that ticket sales make up 97 percent of its income; https://www.bbc.co.uk/newsround/52483218

[2] https://www.bbc.com/news/world-europe-52831021; https://www.newyorker.com/news/our-columnists/some-zoos-and-some-of-their-animals-may-not-survive-the-pandemic

[3] https://www.peta.de/notschlachtung-corona-zoos; https://www.peta.org.uk/blog/covid-19-uk-zoos/

[4] Of course, zoos are far from the only institutions to treat nonhuman animals unjustly. The focus of this paper is on zoos because the pandemic, by depriving them of their main source of income, has created a specific normative question: given that zoos are unjust, how should we respond to their requests for financial assistance? And how should we respond to their threats that they might inflict further harm on animals if they are denied assistance? Our argument would of course also apply to other unjust institutions that were seeking financial support in similar circumstances.

[5] For detailed defences of animal rights, see, for example, Cavalieri (2001), Cochrane (2012), and Regan (2004).

[6] Of course, when wild animals are not competent (e.g., they cannot understand the threat of disease), it may be permissible to intervene (e.g., to provide a vaccine), since in those cases their interest in self-determination may be outweighed by other interests. Additionally, it may be permissible to infringe on animals' right to self-determination if we have good justification (e.g., the displacement of some wild animals to make space for a bounded sanctuary to protect others).

[7] Some theorists may argue that nonhuman animals also have a right against being in captivity. Here we remain agnostic about whether animals have this right because we do not have the space to defend or disavow it. (For discussion and an argument that challenges the idea that animals have a right against captivity, see Cochrane (2009).) That said, we believe that the right to self-determination will rule out many forms of captivity and will demand a radical transformation in the conditions of many of those who cannot be fully liberated. On the connection between captivity and agency, see Delon (2018).

[8] Many defenders of animals have criticized zoos, and what we say here has much in common with those criticisms. One important feature of our view is that because it adopts a rights-based framework, utilitarian considerations in defence of (or against) zoos are irrelevant. This point is elaborated in section 3.3.

[9] It is worth noting that for many large zoos, most of the animals in their care are invertebrates such as insects, spiders, worms, leeches, and snails. For example, there are over 10,000 invertebrates at London Zoo, which make up over half of the animals in their "collection" (sic): https://www.zsl.org/about-us/list-of-animals-and-animal-inventory. Whether these animals are subjectively aware is the source of much dispute. However, if such animals are conscious, their experiences and interests are likely to be far simpler than those of creatures with more complex physiologies. While those interests might make such creatures morally considerable—we ought, for example, to avoid deliberately harming them—they may not be sufficient to ground rights to life or self-determination.

[10] See for instance, https://www.bbc.co.uk/news/world-52493750, https://www.theguardian.com/world/2020/apr/02/new-zealand-zoos-strive-to-entertain-lonely-inhabitants-amid-lockdown, and https://www.newyorker.com/news/our-columnists/some-zoos-and-some-of-their-animals-may-not-survive-the-pandemic.

[11] Though some reports also note that the lockdown has improved some animals' daily lives. Perhaps most notably, reports of a pair of pandas "finally" mating after living together for over thirteen years in a Hong Kong zoo were accompanied by speculation that this was facilitated by the absence of visitors. See, for example, https://www.cbc.ca/radio/thecurrent/the-current-for-april-24-2020-1.5544114/what-the-pandemic-s-peace-and-quiet-could-mean-for-giant-pandas-mating-in-captivity-1.5544502.

[12] https://www.dw.com/en/german-zoo-draws-up-coronavirus-slaughter-list/a-53135354

[13] See, for example, the Association of Zoos and Aquariums' public statement on the killing of Marius the Giraffe. The association labels the "unfortunate incident" an instance of euthanasia: https://www.aza.org/aza-news-releases/posts/statement-by-association-of-zoos-and-aquariums-regarding-the-euthanasia-of-giraffe—

[14] He was not injected with a lethal substance so that his body could be fed to other animals.

[15] https://www.eaza.net/assets/Uploads/Position-statements/EAZA-Culling-statement.pdf

[16] https://www.theguardian.com/world/2014/feb/09/marius-giraffe-killed-copenhagen-zoo-protests

[17] https://www.seattletimes.com/nation-world/when-babies-dont-fit-the-plan-question-for-zoos-is-now-what/

[18] https://www.bbc.co.uk/news/uk-england-birmingham-46398647

[19] https://www.bbc.co.uk/news/world-us-canada-36414813

[20] One study shows that zoo-goers' "least favourite" animals are those that are not visible (Carr 2016).

[21] It is notable that animal sanctuaries and shelters have not made similar "threats," even though they, too, are facing significant financial hardship as a result of the COVID-19 crisis. This, we think, underscores how the motivations and incentive structures of zoos differ radically from those of sanctuaries, which are not motivated by profit and do not instrumentalize the animals in their care. We discuss the differences between zoos and sanctuaries and explain why the latter are preferable, in section 5.

[22] We focus here on the duties that different actors have in responding to the specific situation zoos are facing because of the pandemic. We do not mean to imply that agents, individual or collective, have no duties to zoo animals in contexts where zoos do not need financial assistance. In those other contexts, citizens have, at the very least, a duty to not visit zoos and to campaign for the transformation of zoos into sanctuaries, and institutions have duties to work towards dismantling such institutions.

[23] https://www.gov.uk/government/news/14-million-financial-support-for-englands-zoos-unveiled

[24] https://www.edinburghnews.scotsman.com/lifestyle/food-and-drink/east-lothian-restaurant-owner-extends-food-donations-edinburgh-zoo-2847290; https://www.bbc.com/news/uk-england-somerset-52034409

[25] https://balkaninsight.com/2020/05/27/endangered-sanctuaries-how-covid-19-could-close-polands-animal-shelters/

[26] For US data on this question, see https://today.yougov.com/topics/lifestyle/articles-reports/2017/05/09/zoos-lose-favor-with-a-quarter-of-Americans; for Canadian data, see http://angusreid.org/cetacean-ban-marineland-vancouver-aquarium/

[27] https://www.animals24-7.org/2020/05/12/animals-for-ransom-zoos-the-covid-19-cash-flow-crunch/

[28] https://www.nationalgeographic.com/animals/2008/01/predators-captivity-habitat-animals/; https://www.bbcearth.com/blog/?article=can-captive-animals-ever-truly-return-to-the-wild

[29] https://www.theguardian.com/world/2020/feb/02/zoos-time-shut-down-conservation-education-wild-animals

[30] On the issue of predation, see, for example, Hills (2009), Horta (2013), and Cormier & Rossi (2018).

[31] For more discussion of this question, see Abbate (2016).

[32] https://www.wildanimalsanctuary.org/mile-into-the-wild-walkway

[33] Several zoos have begun to offer virtual "tours" and access to webcams, especially as a response to the COVID-19 restrictions on visitors. Webcams are also present at many sanctuaries. While we emphasize here the concern that allowing the "viewing" of animals perpetuates problematic assumptions about status hierarchies, there may be additional reasons not to permit such practices—for example, because animals have an interest in/ right to privacy (Pepper 2020).

[34] https://www.nationalgeographic.com/news/2014/3/140320-animal-sanctuary-wildlife-exotic-tiger-zoo/

[35] Donaldson and Kymlicka (2015) and Kemmerer and Kirjner (2015) also discuss this problem.

[36] This does not imply that all sanctuaries for wild animals or predators need to be phased out. Indeed, there will always be wild animals in need of such sanctuaries—e.g., those who are injured or suffering from disease. Our argument here extends only to sanctuaries that house former zoo animals.

[37] See also Korsgaard 2018, ch. 11, for discussion of this issue.

REFERENCES

Abbate, Cheryl, "How to Help When It Hurts: The Problem of Assisting Victims of Injustice," Journal of Social Philosophy, vol. 47, no. 2, 2016, pp. 142–170.

Born Free Foundation. "Is the Ark Afloat? Captivity and Ex-Situ Conservation in UK Zoos" 2007. Accessed from http://www.zoocheck.com/wp-content/uploads/2015/04/Is-the-Ark-Afloat-BFF-07.pdf.

Carr, Neil, "An Analysis of Zoo Visitors' Favourite and Least Favourite Animals," Tourism Management Perspectives, vol. 20, 2016, pp. 70–76.

Cavalieri, Paola, The Animal Question: Why Nonhuman Animals Deserve Human Rights, Oxford, Oxford University Press, 2001.

Cochrane, Alasdair, "Do Animals Have an Interest in Liberty?", Political Studies, vol. 57, no. 3, 2009, pp. 660–679.

———, Animal Rights without Liberation: Applied Ethics and Human Obligations, New York, Columbia University Press, 2012.

Cormier, Andrée-Anne and Mauro Rossi, "The Problem of Predation in Zoopolis," Journal of Applied Philosophy, vol. 35, no. 4, 2018, pp. 718–736.

Delon, Nicholas, "Animal Agency, Captivity, and Meaning," The Harvard Review of Philosophy, vol. 25, 2018, pp. 127–146.

Donaldson, Sue and Will Kymlicka, "Farmed Animal Sanctuaries: The Heart of the Movement?", Politics and Animals, vol. 1, no. 1, 2015, pp. 50–74.

———, "Rethinking Membership and Participation in an Inclusive Democracy: Cognitive Disability, Children, Animals", in Barbara Arneil and Nancy Hirschmann (eds.), Disability and Political Theory, Cambridge: Cambridge University Press, 2016, pp. 168–197.

Emmerman, Karen, "Sanctuary, Not Remedy," in Lori Gruen (ed.), The Ethics of Captivity, New York, Oxford University Press, 2014, pp. 213–230.

Fernandez, Eduardo J., Michael A. Tamborski, Sarah R. Pickens and William Timberlake, "Animal-Visitor Interactions in the Modern Zoo: Conflicts and Interventions", Applied Animal Behaviour Science, vol. 120, no. 1–2, 2009, pp. 1–8.

Francione, Gary, Introduction to Animal Rights: Your Child or the Dog? Philadelphia, Temple University Press, 2000.

Goffman, Erving, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates, New York, Anchor Books, 1961.

Gruen, Lori, "Dignity, Captivity, and an Ethics of Sight," in Lori Gruen (ed.), The Ethics of Captivity, New York, Oxford University Press, 2014, pp. 231–247.

Healey, Richard and Angie Pepper, "Interspecies Justice: Agency, Self-Determination, and Assent," Philosophical Studies, 2020.

Hills, Alison, "Utilitarianism, Contractualism and Demandingness," Philosophical Quarterly, vol. 60, no. 239, 2009, pp. 225–242.

Horta, Oscar, "Zoopolis, Intervention, and the State of Nature," Law, Ethics and Philosophy, vol. 1, 2013, pp. 113–125.

Hosey, Geoff, "A Preliminary Model of Human-Animal Relationships in the Zoo," Applied Animal Behaviour Science, vol. 109, no. 2–4, 2008, pp. 105–127.

Hutchins, Michael, Brandie Smith and Ruth Allard, "In Defense of Zoos and Aquariums: The Ethical Basis for Keeping Wild Animals in Captivity," Journal of the American Veterinary Medical Association, vol. 223, no. 7, 2003, pp. 958–966.

Jamieson, Dale, Morality's Progress: Essays on Humans, Other Animals, and the Rest of Nature, Oxford, Oxford University Press, 2002.

Kemmerer, Lisa and Daniel Kirjner, "The Damage and Hope of Total Institutions: Visiting a Bear Sanctuary in Cambodia," in Lisa Kemmerer (ed.), Bear Necessities: Rescue, Rehabilitation, Sanctuary, and Advocacy, Leiden, Brill, 2015, pp. 231–237.

Korsgaard, Christine, Fellow Creatures: Our Obligations to the Other Animals, New York, Oxford University Press, 2018.

Malamud, Randy, "The Problem with Zoos," in Linda Kalof (ed.), The Oxford Handbook of Animal Studies, Oxford, Oxford University Press, 2015, pp. 397–410.

Marino, Lori, "Captivity," in Lori Gruen (ed.), Critical Terms for Animal Studies, Chicago, University of Chicago Press, 2018, pp. 99–111.

Mason, Georgia, "Stereotypies: A Critical Review," Animal Behaviour, vol. 41, no. 6, 1991, pp. 1015–1037.

McMahan, Jeff, "Eating Animals the Nice Way," Daedalus, vol. 137, no. 1, 2008, pp. 66–76.

Moss, Andrew and Maggie Esson, "The Educational Claims of Zoos: Where Do We Go from Here?," Zoo Biology, vol. 32, no. 1, 2013, pp. 13–18.

Peper, Angie, "Glass Panels and Peepholes: Nonhuman Animals and the Right to Privacy," Pacific Philosophical Quarterly, 2020, published online.

Regan, Tom, The Case for Animal Rights (updated version), Berkeley, University of California Press, 2004.

Singer, Peter, "Famine, Affluence, and Morality," Philosophy and Public Affairs, vol. 1, no. 3, 1972, pp. 229–243.

Sorenson, John, "Monsters: The Case of Marineland," in Jodey Castricano (ed.), Animal Subjects: An Ethical Reader in a Posthuman World, Waterloo, Wilfrid Laurier University Press, 2008, pp. 195–222.

Tidière, Morgane, Jean-Michel Gaillard, Vérane Berger, Dennis W. H. Müller, Laurie Bingaman Lackey, Olivier Gimenez, Marcus Clauss and Jean-François Lemaître, "Comparative Analyses of Longevity and Senescence Reveal Variable Survival Benefits of Living in Zoos across Mammals," Scientific Reports, vol. 6, 2016: 36361.

WHAT ISN'T NEW IN THE NEW NORMAL: A FEMINIST ETHICAL PERSPECTIVE ON COVID-19

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ABSTRACT:

This essay argues that dominant responses to the COVID-19 pandemic redouble disparities in vulnerability to harms because these responses simply attempt to return to conditions prior to the outbreak of the virus. Although the widespread impact of COVID-19 has made interdependence more vivid, the underlying sociocultural devaluation of vulnerability, relationality, and dependency has intensified structural inequalities. People who were already disempowered and disadvantaged have been consigned to even more precarious conditions. A feminist ethical perspective avows vulnerability, relationality, and dependency as conditions that are both unavoidable and central to life. Such a perspective thus provides insight into why some dominant responses to the virus are unjust and what more ethical and more socially just responses to the pandemic, which foster social health as well as physical health, might look like.

RÉSUMÉ :

Cet essai soutient que les réponses prédominantes à la pandémie de COVID-19 intensifient les disparités en termes de vulnérabilité aux torts parce que ces réponses tentent simplement de revenir aux conditions antérieures à l'épidémie du virus. Bien que l'impact généralisé du COVID-19 ait rendu l'interdépendance plus vive, la dévaluation socioculturelle sous-jacente de la vulnérabilité, de la relationnalité et de la dépendance a intensifié les inégalités structurelles. Des personnes déjà démunies et défavorisées ont été placées dans des conditions encore plus précaires. Une perspective éthique féministe reconnaît la vulnérabilité, la relationnalité et la dépendance comme des conditions à la fois inévitables et centrales à la vie. Une telle perspective permet ainsi de mieux comprendre pourquoi certaines réponses dominantes au virus sont injustes et à quoi, des réponses à la pandémie plus éthiques et socialement plus justes, favorisant la santé sociale ainsi que la santé physique, pourraient ressembler

It has become nearly a truism that the COVID-19 pandemic has not only exposed longstanding inequalities but also exacerbated them. Patterns of racial, gender, and socioeconomic inequality have produced disparate rates of infection and mortality. People who were already disempowered and disadvantaged have been consigned to even more precarious conditions by the virus as well as by the attempts to mitigate its impact. The continuing experience of the pandemic straightforwardly reinforces the critiques of structural injustice and differential vulnerabilities offered by feminist and critical race theory: that historical legacies of oppression (both symbolic and structural), present political and economic policies, and persistent interpersonal bias produce disproportionate harmful vulnerability for historically oppressed social groups (women, people of colour, Indigenous people, people with disabilities, and especially those positioned at the intersections of these groups).

Thus, in this case, health is yet another of the many goods that is unequally accessed because of entrenched and interlocking patterns of racial, socioeconomic, and gendered oppression. The injustice is specially pointed with respect to racial disparities in COVID-19 cases and fatalities: in the US, cases are 2.7 times higher for Black people than for white people and 3.2 times higher for Latinx people than for white people (McLaren, 2020).[1] The virus is also twice as likely to be fatal for Black and Latinx people as it is for white people (Selden and Berdhal, 2020, p. 1). These higher mortality rates are linked to increased incidence of exposure to the virus, whether in the workplace, at home, or in transit; people in these communities are more likely to hold jobs that require them to be physically present at work and more likely to live in the same household as a healthcare worker (Selden and Berdhal, 2020, p. 4; McLaren, 2020). Unequal health outcomes are compounded by bias and stereotyping, as in the "racialized characterization of behavior" and conditions such as obesity (Chowkwanyun and Reed, 2020, p. 202). Instead of treating higher infection and mortality rates as the consequence of structural inequalities, biased interpretation of these disparities treats them as a quasi-natural or otherwise inevitable consequence, products of purported individual pathology or innate vulnerability, and so preempts responsibility for preventing or addressing them.

The perspective of feminist ethics calls for both critical and creative reconstructive endeavours (Miller 2017, Gilson 2021). Assessing responses to the pandemic from this perspective, therefore, involves, first, critique of the inequalities accompanying the virus and of the conditions underlying such inequalities and, second, indications as to what is required for more ethical and more socially just responses to the pandemic. The underlying conditions for inequality, as noted above, are the triad of historically entrenched structure, policy, and interpersonal bias. In this context, insofar as dominant responses to the pandemic amount to attempts to return to the state prior to the outbreak of COVID-19, they redouble disparities in vulnerability to harms. Thus, the critiques of structural injustice and precarity offered by feminist and critical race theorists can provide insight into why dominant responses to the virus are flawed and unjust, as well as into what more ethical and more socially just responses to the pandemic might look like.

I. THE CRITICAL PERSPECTIVE OF FEMINIST ETHICS

In this first part of the essay, I highlight three intertwined threads of such a critique. First, feminist ethics offers a conceptual, theoretical critique of how the neglect, disavowal, and, ultimately, division of certain constitutive features of human existence—vulnerability, relationality, and dependence—cause us to mistake ourselves for, or aspire to be, invulnerable, isolated, independent beings and thus lead to ethical error (Kittay, 2011; Butler, 2004). Second, a more recent critique of the hermeneutic dominance of neoliberalism highlights how the disavowal of these features manifests in contemporary politico-economic ideology and policy, reductively economizing value, meaning, and choice as well as generating individualizing, precarity-inducing effects (Lorey 2015). Accordingly, a third practical critique identifies a dearth of provisions for care as a direct effect of the neoliberal policy shifts toward austerity and privatization and thus a direct effect of the neglect of vulnerability, relationality, and dependency that underlies the neoliberal framework. Unravelling public systems of support and privatizing (previously public) services perpetuates injustice, especially because doing so disproportionately affects those who are disempowered and disadvantaged. Yet public institutions and policies have been a vehicle for inequality just as much as (if not more than) a vehicle for equality and for the rectification of past wrongs. At a time when people turn to public health officials and institutions and to federal and state governments for guidance, regulation, and support, critique of the disciplinary and dominating uses of state power is all the more pressing.

Vulnerability, relationality, and dependence are at the core of both the experience of the COVID-19 pandemic and the myriad ways in which individuals, communities, and institutions are responding to it. Definitions of vulnerability range from susceptibility to harm to bodily openness, but the concept may be understood best as an ambiguous condition of being affected.[2] We are vulnerable because of our corporeal and social nature: we can be affected and in turn affect others in complex ways because we are embodied beings in intersubjective relations with one another. Often vulnerability is equated with susceptibility to harm, but openness to injury is only one (negative) aspect of what it means to be vulnerable. People are also vulnerable in their openness to affection, care, love, and myriad other forms of relation that are both positive and ambivalent. Vulnerability, thus, cannot be reduced to its merely negative manifestations, but is a condition that is both ambivalent (having antipodal effects) and ambiguous; that is, it is a complex, multilayered, and sometimes conflicting condition. One way to understand this complexity is to employ a distinction that is now common in scholarly literature on vulnerability. On the one hand, vulnerability is a fundamental ontological condition pertaining to all; it is an unavoidable condition of being affected that defines our very being. On the other hand, vulnerability is only ever experienced in highly specific ways and, in this sense, it is necessarily variable: it is situational. The complexity of vulnerability can be understood only by analyzing how the shared ontological condition of being vulnerable is realized situationally and is experienced in concrete ways. The fundamental

condition of being affected is the precondition for experiencing specific forms of injury and/or care, which are themselves a product of the ways in which people can and must relate to one another. Thus, a distinction can be made between vulnerability, which names an ambivalent and ambiguous openness to being affected, and precarity, which refers specifically to politically and socially induced forms of vulnerability to harm.

Vulnerability thus also names a condition of relationality. In the context of such vulnerability, *relationality* refers to the formative quality of our relations with others, that is, to the specific ways in which we affect and are affected by one another. To refer to ourselves as relational beings is to afford primacy to the relationships that shape who we are, how we comport ourselves, what we value, and so on, rather than to regard ourselves as primarily individuals defined as free, intentional choosers and free only in our independence from others. Relations of dependency, in which we rely on and need others, are central relations not only at the beginning of our lives but throughout our lives, albeit in ways that often go unacknowledged. The feminist project of challenging gender bias in normative theory initially drew attention to these three dimensions of human life because their association with women and women's stereotypical roles and spheres of activity caused them to be overlooked and devalued. As a project of revaluation, feminist ethical critique held not only that women should not be confined to care work in the private domain, but also that caring for dependents, valuing and sustaining relationships, and being dependent and vulnerable ought to be recognized as unmitigatedly central to all human lives and, thus, valued.

By extending this critique beyond its origins in care ethics, practices and theories that devalue, deny, and/or neglect these features of our existence can be critiqued as enabling ethical error. In particular, devaluations and denials of vulnerability, relationality, and dependence function to splinter these conditions, dividing them between those considered or consigned to occupy them and those who do not (or do not have to). Denying vulnerability, for instance, may most obviously mean ignoring the vulnerability of others, or denying the ethical significance of their vulnerability, or refusing awareness of specific negative kinds of vulnerabilities. Yet denying vulnerability also involves reducing vulnerability's ambiguity and complexity to a merely negative and quasi-inherent condition. Devalued as a condition of being weaker and liable to injury, vulnerability is eschewed in any form and becomes a condition to avoid at all costs and thus a burden to outsource to others to bear. Consequently, denying relationality is not simply denying that one has a relationship to others—although an underappreciation for what counts as a relationship and to whom one is related may be part of denying relationality. Rather, denying relationality means denying the *significance* of that connection and, in particular, its formative quality. To deny relationality means to overlook how who one is and how one lives depend on others. In other words, one's self-definition is intertwined with how one defines others and how others define oneself (Hoagland, 2007; Baldwin, 1998, p. 682). Denying relationality often entails denying dependence—namely, denying that one relies on others and needs them when one in fact does—or

diminishing the significance of that dependence, "backgrounding" those others and their activities (Plumwood, 1993, p. 48).[3] Such "backgrounding" is a prime instance of the division of vulnerability, relationality, and dependency that occurs when placing the burden of the (devalued) condition onto those who are marginalized. People may deny dependence in order to maintain the illusion of a valorized independence (and illusions of competence, capability, self-sufficiency, autonomy, and so on) and, thus, often in order to maintain the status quo hierarchy. When people deny dependence and relationality, further stigmatizing those others on whom they are dependent, then it becomes easier to exploit the vulnerability of others—that is, to induce their precarity (Lorey 2015). Neoliberal policies that shift responsibility from public institutions to individuals, emphasizing individual economic maximization and accountability, are the prime mechanism for increasing the precarity of those who are denied the (material and symbolic) resources needed to take such responsibility.

II. VULNERABILITY, RELATIONALITY, AND DEPENDENCE IN THE TIMES OF COVID-19

How has the pandemic brought to the fore experiences of vulnerability, relationality, and dependence, and thus problems linked with devaluing and splintering these conditions? Exposure to a potentially life-threatening virus is a clear instance of vulnerability. It is tempting to regard precautionary measures as efforts to ward off all vulnerability in a misguided display of mastery, but there are more nuanced ways of understanding how vulnerability is at stake in responses to the pandemic. The widespread impact of COVID-19 has made our interdependence—the various ways and the extent to which we all affect one another—much more vivid, drawing attention to the pain of social isolation and to myriad forms of economic interdependence, for instance. Indeed, the basic public-health measures employed to prevent the spread of the virus are premised on recognition of our shared, interdependent existences and of our vulnerability in relation to one another: we have to recognize that we affect one another—for instance, through the very physical medium of the air we breathe in and out—in order to make sense of recommendations that we physically and socially isolate and wear masks.[4]

Yet many of the policies and practices implemented in response to the pandemic deny and divide vulnerability, relationality, and dependence; embrace a neoliberal framework of individual responsibility for risk; and thus amount to a "crisis of care" (The Care Collective, 2020). As much as the measures used to mitigate the spread of the coronavirus are necessary, they exacerbate structural inequalities and distort social relations, thus contributing to inequality in infection and mortality, as well as other adverse effects. Although the pandemic and measures for its mitigation have increased precarity on the whole, they affect people differently in virtue of the preexisting forms of oppression these people experience. People who are exploited and disempowered or who are, in Iris Young's terminology, "powerless" (Young, 1990, p. 56)—lacking control, authority, and status, especially with respect to their work—are rendered even more powerless, and

their exploitation is deepened. Being unable to control one's working conditions, to maintain autonomy, and to experience a basic level of respect directly affects one's health and life. Denied dependence makes the intensification of exploitation and disempowerment possible. Those who are marginalized—consigned to an "underclass…of social marginality" and "expelled from useful participation in social life" (Young, 1990, p. 53)—are marginalized even more so through isolation and are more likely to experience deprivation (of food and other necessities, of adequate health care, etc.).[5] Denied relationality further marginalizes those already relegated to the margins of society.

Exploitation and disempowerment have intensified because mitigation measures, which include the social distancing and stay-at-home orders that have led white-collar workers to work from home, rely upon structural economic and social inequality. The ability of middle-class white-collar workers to stay at home depends on the continued labour of low-wage workers (who are disproportionately women and people of colour) who pick produce, slaughter and process animals, deliver food and packages, keep grocery stores open, and maintain public transportation to enable others to get to work, and so on.[6] In the US, women, Black and Latinx people, and the women of colour at the intersection of those two groups make up the majority of such "essential workers" (Powell, 2020). These workers continue working because they must. Moreover, because their jobs were declared "essential," they are disqualified for unemployment insurance benefits if they leave their jobs because of safety concerns.[7] At times they have been required to work, as in the case of workers in slaughterhouses and meat processing facilities, which were ordered to remain open by the Trump administration in April 2020.[8]

Although in the US there has been an effort to acknowledge the work of "essential workers," it has been minimal and merely symbolic. The phrase "essential workers" refers first and foremost in the popular imagination to medical professionals and occasionally includes grocery workers but few other "essential workers." The term generally calls to mind hospital doctors and nurses, not the low-paid certified nursing assistants (CNAs) who primarily staff the nursing homes where the coronavirus has run rampant (and who are overwhelmingly women and disproportionately Black women).[9] The phrase has become the object of shared indignation in response to the disregard that so many workers face from their employers and governments. Sujatha Gidla, a New York City subway conductor, reports that the lack of personal protective equipment (PPE), inadequate facilities for hygiene and social distancing, and failure to provide paid sick and family leave have all led her colleagues to feel that "we are not essential. We are sacrificial" (Gidla, 2020). Food-justice activist Leah Penniman states, "There's a difference between having our work be declared essential and our lives be declared essential" (Penniman, 2020). By dismissing the label that attributes value to their work, but not to their lives, they reject the structural inequality that allows farm workers, transportation workers, and nursing-home attendants, among so many others, to be taken for granted and backgrounded while being absolutely vital to the persistence of human life in our

society. They call out the denied dependence on which the social and economic status quo depends, and now on which the health and well-being of those who benefit from that status quo (e.g., who can afford to stay at home) depends, and they seek to have their lives valued as much as their work.

Denying dependence is a way of denying relationality and, thus, of enabling the division of vulnerability. In this instance, the vulnerability of most "essential workers" to infection is underestimated or simply neglected. In the early months of the spread of the virus in the US, nonmedical essential workers were regularly denied PPE and told they didn't need to wear masks. Many teachers now find themselves in a similar position: in many cases, they have been mandated to return to the classroom but with no assurances that they will have PPE or that students will be required to wear masks. Why? Because they—their value and worth—are reduced to their work; their work may be necessary, but as persons they are consigned to the background, devalued. Moreover, their work is valued not because of its inherent value, but because of its instrumental role: it keeps society, reduced in a neoliberal hermeneutic to *the economy*, churning, and so it is the foundation for the continued enrichment of the economic elite. The lives of so-called essential workers are not valued because they are perceived as fungible by policy-makers along with the general public.[10] Denying vulnerability, relationality, and dependence in this way continues the trend of deepening economic inequality.[11] Indeed, the US economic recovery has been uneven: economist Raj Chetty has found that the best-paid US workers have "recovered almost all the jobs lost since the start of the pandemic. 'The recession has essentially ended for high-income individuals'….Meanwhile, the bottom half of American workers represented almost 80% of the jobs still missing" (Steverman 2020).

Whereas denied dependence is at the heart of the increased precarity of disempowered workers, denied relationality is at the core of the increased vulnerability of people who are marginalized. Although they are physically separated from others in society, people confined in prisons,[12] jails, immigration detention centres, nursing homes, and long-term care facilities face high rates of infection. One comprehensive study found that the rate of COVID-19 cases among incarcerated people was 5.5 times higher than among the rest of the population (Saloner, Parish, Ward, 2020). In the US, although only 8 percent of COVID-19 cases have occurred in long-term care facilities, these are responsible for over 40 percent of deaths.[13] These statistics have also been broken down by race. In testimony before the US Senate Special Committee on Aging, Tamara Konetzka noted that in her study of twelve US states,[14] COVID-19 cases and deaths were twice as likely in "nursing homes with the lowest percent white residents" as they were in "those with the highest percent white residents" (Konetzka, 2020, p. 3).[15] Yet again, vulnerabilities to harm can be attributed to preexisting inequalities. As Konetzka concludes, "the patterns of infections and deaths are not random. Consistent with racial and socioeconomic disparities, …nursing homes with traditionally underserved populations are bearing the worst outcomes" and reflect the vulnerabilities of neighbourhoods in which they are located (2020, p. 5).

These inequalities are exacerbated and fuelled by a devaluation of dependency in a neoliberal socioeconomic system. The devaluation of dependency includes a devaluation of those who need care *and* of those who perform purportedly unskilled care work (Kittay, 2011, p. 51). Poor pay and working conditions (such as a lack of paid sick leave) for CNAs and nursing-home staff mean that they are compelled come to work, increasing the risk of transmission. Underfunded and understaffed facilities have difficulty maintaining hygienic conditions and adequate care. For instance, staff must often care for both residents who have COVID-19 and those who don't, increasing the risk of transmission. The for-profit status of the majority of such facilities in the US, which is the direct result of neoliberal economic policies, compromises their ability to provide care (Rowan et al., 2020). When residents' needs and care are merely costs to a for-profit institution, the residents are further devalued and marginalized. Even as they are the epicentre of the virus, the cultural devaluation of dependence means that marginalization increases for elderly people and/or people with disabilities in long-term care facilities. The devaluation and stigmatization of dependence licences denied relationality just as it enables the backgrounding of low-income essential care workers. Although these workers may be essential to profit, the lives of workers and residents in these facilities are scarcely recognized as "essential."

Physical separation from others is an obvious mechanism for denying relationality: lacking proximity to others erodes the possibility of relationship, diminishes the significance of existing relationships, and can curtail the responsibilities attached to those relationships. Not having to see or hear others' suffering makes it easier to do nothing to ameliorate it. A conscious denial of relationship occurs most frequently with respect to people who are conceived to be unlike oneself. Distance is not just physical but also psychic, emotional, and intellectual: those incarcerated in prisons and jails and detained in detention centres frequently are already regarded with contempt by others in society. To deny the ethical significance of their vulnerability to the virus is an easy next step: if they are regarded as deserving the punishment of incarceration, as well as the other forms of injury and dehumanization that accompany it, then exposure to the virus may be perceived as yet one more form of appropriate punishment.

Yet people who are marginalized and confined, in whatever form, experience the unique vulnerability that comes from the extremes of both isolation and crowding. In a description of intensive confinement practices, Lisa Guenther notes how "a forced isolation…excludes the possibility of genuine solitude, and…a forced relationality…excludes the possibility of genuine relationships" (2013, p. 147). With respect to the virus, crowded conditions are hotspots for infection, of course, but such "forced relationality" also creates harmful psychological vulnerability; it impedes people's ability to control their movement and contact with others and heightens anxiety about exposure to the virus, especially for those with preexisting respiratory and heart conditions, who are disproportionately represented in prison populations (Hawks, Woolhandler, and McCormick 2020). Social-distancing practices are all but impossible to maintain

within prisons. Social-distancing mandates, however, have meant ceasing any contact with people on the outside, including visitors and educators. Discontinuing educational programs redoubles isolation. Adamu Chan, who is incarcerated at San Quentin State Prison in California, expresses concern about how incarcerated people's attempts to build community and transform themselves have been curtailed: "I worry about people whom society had labeled as violent or wrong and who were actively working to take on new identities and new ways of being. And that's being interrupted now" (2020). So, on the one hand, people are unable to exit crowded conditions, to choose distance, to choose those with whom they come into contact, and, on the other hand, they are forcibly denied the contact and relationships that they have chosen. Although these vulnerabilities are most common in prisons, jails, and detention centres, "forced isolation" and "forced relationality" also characterize the experiences of those in nursing homes, who are deprived of contact with family and friends.

In all these ways and more, the measures taken to prevent the spread of the virus—however reasonable—exacerbate longstanding forms of oppression. Dramatically unequal socioeconomic conditions, inequalities in power and in authority, and vast discrepancies in whose lives are valued by those with power and authority all serve to distribute inequitably the benefits of practices such as social and physical distancing. The practice of maintaining a specified distance from others and the policy of refraining from all but the most necessary in person tasks, for instance, are imposed uniformly. Relatively advantaged people, however, are better positioned to follow them and so to protect their own health and well-being. These kinds of policies also fail to address the underlying inequity: the constraints people face in their choice of contact in the first place. Moreover, the widely enacted practice of working from home entails that white collar workers depend upon the (denied) labour and care work of myriad relatively disadvantaged people for whom social and physical distancing is impossible, impractical, and sometimes even disallowed. Ideas and practices that deny dependence, relationality, and vulnerability facilitate oppression. Such ideas and practices now recur in dominant responses to the coronavirus pandemic. Responsibility for individual and public health, financial stability, and education is assigned to individuals and households while public support is slashed or altogether eliminated.[16] Common responses to the pandemic have sought to maintain the ideology of neoliberal individualism, "center[ing] our attention on individual-level action, culture, or biology and away from the structural causes behind inequality as well as from the need for collective action" (Bonilla-Silva, 2020, p. 7), and to expedite a return to the prepandemic economy. Thus, they continue to sacrifice those upon whom the entire society rests or those whom mainstream society rejects.

III. EQUITY AND SOCIAL HEALTH

None of the foregoing critical analysis is meant to suggest that social and physical distancing and stay-at-home orders are not necessary. Rather, the point is that they are entirely inadequate on their own. They should be rooted in an adequate

ethical framework and accompanied by coordinated policies and practices. An adequate alternative ethical framework—such as that of a feminist ethic—deems dependence, relationality, and vulnerability to be fundamental facets of embodied, social life, facets that are not only unavoidable but also often important and meaningful. Policies and practices that sustain that acknowledgment are ones that support physical health *equitably* but also enable what can be thought of as ethical and social health: the ability to sustain and forge the kind of meaningful, healthy relationships with others that are central to the holistic well-being of individuals and communities. By this definition, ethical and social health would preclude the inequitable protection of physical health.

The coronavirus pandemic has highlighted not only the depths of inequality but also the mutability of habits. It has called for dramatic alterations to people's everyday lives and so reveals the ability to transform habits for the better in intentional ways. Just as people have deliberately formed new habits to protect individual health and the health of the broader public, so we must do so for ethical and social health. Creating habits, practices, and policies that foster ethical and social health amidst the pandemic inevitably involves navigating the ambiguity and ambivalence of vulnerability—namely, the ways in which connecting with others can put people at risk (of physical illness, most obviously) while also being the basis for living well. We cannot eradicate any vulnerability, nor should we aim to do so. Rather, in seeking ethical and social health as concomitants of physical health, we are seeking to eliminate and ameliorate the unjust patterns of vulnerability to harm that follow in the tracks of long-standing forms of oppression.

The domains analyzed above that are sites of injustice—and thus sites demanding justice—are so because of structural practices and institutional policies, which are abetted by personal habits, especially those of relatively advantaged people. The workplace in particular is a site of injustice because people, especially women of colour, are disproportionately affected by the virus because of the work they do, because of the status of that work (as "essential" yet low wage and low status in the social hierarchy), and because of the exploitation and disempowerment they experience through it. Low-wage essential workers are compelled to assume a heightened risk of infection because of the exploitative nature of the labour market, which offers them few alternatives, and because of the disempowering nature of their work, which preclude the kind of autonomy and control over working conditions that could mitigate risk and which may prevent them from taking on the individualized burden of responsibility effectively.

The alternative policies that would remedy these injustices are well known (paid sick time and paid family and medical leave, higher wages, a more equitable healthcare system rather than a multitiered one that benefits those who can pay, etc.). The alternative practices include the effectively anticapitalist practice of valuing both socially and economically the historically devalued, feminized work of caregivers rather than either devaluing it as "producing" nothing or

commodifying it as part of a system that operates for profit at the expense of life and health. That shift in what is valued—from objects and intangible markers of status to actual supportive relations with others—calls for alternative habits. Forming such habits means not allowing social distancing and staying at home to lead to increased isolation, individualism, self-interest, and suspicion. It entails finding meaningful, rather than merely symbolic, ways to enter into supportive relations with others, especially others who are situated differently from oneself and those who seek increased autonomy. The growth of mutual-aid projects, in which people organize in their community to help and support one another in meeting fundamental needs, is evidence of the necessity and meaningfulness of reconfiguring and valuing relationships of support.[17] Finally, it means crafting habits that support low-wage workers, especially care workers and service workers, and people who are marginalized by fighting for the aforementioned changes in practice and policy.

NOTES

[1] The subsequent analysis focuses on the situation in the United States because it is the context with which the author is the most familiar, but many aspects of the analysis are just as pertinent to other Western, capitalist societies, as well as to the relationships between these nations and other, less affluent ones.

[2] See Gilson (2021) for an argument to this effect.

[3] Denial of dependence can, of course, produce actual refusals of assistance, but what I have in mind here is the psychological, cognitive, and affective refusal to recognize that one actually is dependent in various ways and the refusal to recognize the others on whom one is dependent.

[4] Reactionary responses to mitigation and prevention measures thus indicate the opposite—that is, they are other ways in which vulnerability, relationality, and dependence are denied: when people refuse to preserve distance or wear masks, they effectively deny interdependence and relational connection. The chaotic and nearly deranged political context in the US politicized these basic public health measures, with the result that many people refuse to follow them. This choice may seem to be an embrace of risk, but that embrace of risk is actually premised on a denial of vulnerability: those who make this choice claim that the virus isn't that serious and doesn't warrant stay-at-home orders and business closures; they presume the virus isn't that dangerous or presume that they won't contract it or won't fall dangerously ill if they do contract it. In making these presumptions, they deny relationality and dependency (e.g., they deny that they could pass the virus to others), ignoring the myriad factors—health conditions, age, employment contexts and working conditions, etc.—that render others more vulnerable to the virus. This seeming embrace of risk, which is actually a denial of vulnerability and relationality, is made possible by differential precarity and denied dependence (some have to do the work that enables others to continue to shop for groceries, to get needed medical care, etc.). Furthermore, reactionary responses redirect concerns about risk and threat to the public-health measures themselves: masks are interpreted as infringements on constitutional rights; the reopening of businesses and continued economic growth are more important than people's lives and health.

[5] Young's well-known "five faces of oppression" also include cultural imperialism and violence. Although, for reasons of space, I discuss only marginalization, powerlessness, and exploitation here, the other two are equally relevant: exposure to intimate violence in homes, especially for children and women, is exacerbated when people are induced to stay at home, to isolate, or to quarantine. The pernicious stereotyping that is part of cultural imperialism is an easy gambit to scapegoat racialized "others" in a time of fear and risk (in the US, racist rhetoric has involved stereotyping Asian people as carriers of the virus and Latinx people as vectors for transmission).

[6] For empirical evidence indicating that, during the first few weeks of the COVID-19 outbreak in the US, wealthier people were quicker to begin staying at home while poorer people were slower to do so (given pressures to continue working), see Valentino-DeVries, Lu, and Dance 2020.

[7] See https://www.washingtonpost.com/outlook/2020/05/21/essential-workers-pay-wages-safety-unemployment/
In what has been termed a "racial justice paradox," Black and Latinx people are also likely to be unemployed (Powell, 2020).

[8] See https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/

[9] See https://www.cdc.gov/nchs/data/nnhsd/Estimates/nnas/Estimates_DemoCareer_Tables.pdf#01
Moreover, "of the 5.8 million people working health care jobs that pay less than $30,000 a year, half are nonwhite and 83 percent are women" (Robertson and Gebeloff, 2020).

[10] Tanya Beckford, a CNA at a Connecticut nursing home, states, "'the worst thing that I get upset about is hearing the word hero, hero, hero being thrown around for us. And no one is treating us as such. We feel disrespected.'" Beckford was "on sick leave since April 10 and

[was] still recovering from pneumonia caused by the virus" at the end of May. See https://time.com/5843893/nursing-homes-workers-coronavirus/

[11] It has become common to speak of "reopening" the economy after stay-at-home orders. This simple phrase highlights the pernicious assumptions that underlie this denial of dependence, relationality, and vulnerability. To "reopen" the economy presumes that it was shuttered, even though many people continued working to enable others to meet their basic needs. The phrase thus devalues the contributions of those who at the same time are deemed "essential," but so acknowledged (as "essential") only as background to those whose economic activity is believed to truly matter.

[12] See https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons

[13] See https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html

[14] Not all US states have collected data that includes race, nor have all states released such data publicly. Konetzka's research analyzes data from states that have collected and publicly reported it.

[15] *The New York Times* has also reported on these disparities: see https://www.nytimes.com/article/coronavirus-nursing-homes-racial-disparity.html

[16] A clear example is the inaction of the US Congress, which allowed the $600-a-week additional unemployment benefit that was provided through the CARES Act as part of Federal Pandemic Unemployment Compensation program to expire on July 31, 2020. Although many people were excluded from access to the benefit, including immigrants without social security numbers and their citizen spouses and children, it initially enabled over 30 million people to meet their basic needs.

[17] See https://www.vice.com/en/article/y3mkjv/what-is-mutual-aid-and-how-can-it-help-with-coronavirus and https://www.thenation.com/article/society/coronavirus-mutual-aid/ for discussion and examples of mutual-aid projects.

REFERENCES

Baldwin, James, *Collected Essays*, New York, Library of America, 1998.

Bonilla-Silva, Eduardo, "Color-Blind Racism in Pandemic Times," *Sociology of Race and Ethnicity*, July 2020, pp. 1–12. DOI: 10.1177/2332649220941024

Butler, Judith, *Precarious Life*, New York, Verso, 2004.

Chan, Adamu, "The View from Inside San Quentin State Prison," *Slate*, July 6, 2020, https://slate.com/human-interest/2020/07/san-quentin-coronavirus-outbreak-prison-diary.html

Chowkwanyun, Merlin, and Reed, Adolph, "Racial Health Disparities and Covid-19—Caution and Context," *New England Journal of Medicine*, no. 383, July 16, 2020, pp. 201–203. DOI: 10.1056/NEJMp2012910

The Care Collective, "COVID-19 pandemic: A Crisis of Care," Verso Books Blog, March 26, 2020, https://www.versobooks.com/blogs/4617-covid-19-pandemic-a-crisis-of-care

Gidla, Sujatha, "We Are Not Essential. We Are Sacrificial," *New York Times Opinion*, May 5, 2020, https://www.nytimes.com/2020/05/05/opinion/coronavirus-nyc-subway.html

Gilson, Erinn, "Continental Feminist Ethics", *in* Kim Q. Hall and Ásta (eds.), *The Oxford Handbook of Feminist Philosophy,* New York, Oxford University Press, 2021, pp. 261–271.

Guenther, Lisa, *Solitary Confinement*, Minneapolis, University of Minnesota Press, 2013.

Hawks, Laura, Woolhandler, Steffie, and Danny McCormick, "COVID-19 in Prisons and Jails in the United States," *JAMA*, April 28, 2020, https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2765271

Hoagland, Sarah Lucia, "Denying Relationality: Epistemology and Ethics and Ignorance," *in* Shannon Sullivan and Nancy Tuana (eds.), *Race and Epistemologies of Ignorance*, Albany, State University of New York Press, 2007, pp. 95–118.

Kittay, Eva Feder, "The Ethics of Care, Dependence, and Disability," *Ratio Juris*, vol. 24, no. 1, 2011, pp. 49–58.

Konetzka, R. Tamara, "Testimony of R. Tamara Konetzka before the United States Senate Special Committee on Aging," May 21, 2020, https://assets.documentcloud.org/ documents/6935255/University-of-Chicago.pdf

Lorey, Isabell, *State of Insecurity*, New York, Verso, 2015.

McLaren, John, "Racial Disparity in COVID-19 Deaths: Seeking Economic Roots in Census Data," VoxEU/CEPR, August 11, 2020, https://voxeu.org/article/racial-disparity-covid-19-deaths

Miller, Sarah Clark, "Feminist Ethics," *in* Carol Hay (ed.), *Philosophy: Feminism*. Farmington Hills, MI, Macmillan, 2017, pp. 189–213.

Penniman, Leah, "Re.sourced: Episode 2—Feeding a Broken System," May 14, 2020, https://www.instagram.com/p/CALWM9qDwZW/

Plumwood, Val, *Feminism and the Mastery of Nature*, New York, Routledge, 1993.

Powell, Catherine, "The Color and Gender of COVID: Essential Workers, Not Disposable People," *Think Global Health*, June 4, 2020, https://www.thinkglobalhealth.org/article/color-and-gender-covid-essential-workers-not-disposable-people

Reilly, Katie, "'It's Getting Worse.' Nursing Home Workers Confront Risks in Facilities Devastated by Coronavirus," *Time*, May 29, 2020, https://time.com/5843893/nursing-homes-workers-coronavirus/

Robertson, Campbell and Robert Gebeloff, "How Millions of Women Became the Most Essential Workers in America," *New York Times*, April 18, 2020, https://www.nytimes.com/2020/04/18/us/coronavirus-women-essential-workers.html

Rowan, Patricia, Lester, Rebecca, Levere, Michael, Libersky, Jenna, Lipson, Debra, and Julie Robison, "A Study of the COVID-19 Outbreak and Response in Connecticut Long-Term Care Facilities: Interim Report," *Mathematica*, August 14, 2020, https://www.mathematica.org/our-publications-and-findings/publications/a-study-of-the-covid-19-outbreak-and-response-in-connecticut-long-term-care-facilities

Saloner, Brendan, Parish, Kalind, and Julie A. Ward, "COVID-19 Cases and Deaths in Federal and State Prisons," *JAMA*, July 8, 2020, https://jamanetwork.com/journals/jama/fullarticle/2768249

Selden, Thomas, and Terceira Berdhal, "COVID-19 and Racial/Ethnic Disparities in Health Risk, Employment, And Household Composition," *Health Affairs*, vol. 39, no. 9, 2020, pp. 1–6, DOI 10.1377/hlthaff.2020.00897

Steverman, Ben, "Harvard's Chetty Finds Economic Carnage in Wealthiest ZIP Codes," *Bloomberg Businessweek*, September 24, 2020, https://www.bloomberg.com/news/features/2020-09-24/harvard-economist-raj-chetty-creates-god-s-eye-view-of-pandemic-damage

Valentino-DeVries, Jennifer, Denise Lu, and Gabriel J. X. Dance, "Location Data Says It All: Staying at Home during Coronavirus Is a Luxury," *New York Times*, April 3, 2020, https://www.nytimes.com/interactive/2020/04/03/us/coronavirus-stay-home-rich-poor.html

Young, Iris Marion, "The Five Faces of Oppression", *in* Iris Marion Young, *Justice and the Politics of Difference*, Princeton, NJ, Princeton University Press, 1990, pp. 39–55.

UNIVERSALITY, VULNERABILITY, AND COLLECTIVE RESPONSIBILITY

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ABSTRACT:

Vulnerability theory as developed in the Vulnerability and Human Condition Initiative is an alternative to a rights-based or social contract paradigm for thinking about foundation concepts of state responsibility. One fundamental premise of the theory is that the individuals and groups currently described as "vulnerable populations" should not be labelled vulnerable, nor should they be sequestered in discreet categories for the purposes of law and policy. This plea for their inclusion in a larger whole is not to deny that discrimination, harm, and relative disadvantage arising from all sorts of circumstances and situations exist. Nor is it to suggest that particular instances of harm should not be addressed by appropriate state action. Rather, it is an argument that "vulnerability" is the wrong concept to use to define and isolate these groups, or any other specific group, from the whole of humanity. Human vulnerability is universal and constant, inherent in the human condition. Recognizing the theoretical mandates of accepting the universal, vulnerability theory presents a "vulnerable subject" as the only appropriate object of law and policy. This inclusive, universal legal subject incorporates the realities of the ontological body and its life-long dependence on social institutions and relationships, building a theory of essential (not voluntarily or consensual) social cohesion and reciprocity in which the state (or governing system) has the responsibility to see that these vital social institutions and relationships operate justly.

RÉSUMÉ :

La théorie de la vulnérabilité telle que développée dans l'Initiative sur la vulnérabilité et la condition humaine (*Vulnerability and Human Condition Initiative*) est une alternative à un paradigme fondé sur les droits ou le contrat social pour réfléchir aux concepts fondateurs de la responsabilité de l'État. Une prémisse fondamentale de la théorie est que les individus et les groupes actuellement décrits comme des « populations vulnérables » ne doivent pas être qualifiés de vulnérables ni être séquestrés dans des catégories discrètes aux fins de la loi et de la politique. Ce plaidoyer en faveur de leur inclusion dans un tout plus large ne consiste pas à nier l'existence d'une discrimination, d'un préjudice et d'un désavantage relatif résultant de toutes sortes de circonstances et de situations. Cela ne signifie pas non plus que des cas particuliers de préjudice ne devraient pas être traités par une action appropriée de l'État. C'est plutôt un argument selon lequel la « vulnérabilité » est le mauvais concept à utiliser pour définir et isoler ces groupes, ou tout autre groupe spécifique, de l'ensemble de l'humanité. La vulnérabilité humaine est universelle et constante, inhérente à la condition humaine. Reconnaissant les mandats théoriques de l'acceptation de l'universel, la théorie de la vulnérabilité présente un « sujet vulnérable » comme le seul objet approprié du droit et de la politique. Ce sujet juridique inclusif et universel incorpore les réalités du corps ontologique et sa dépendance à vie aux institutions et aux relations sociales en construisant une théorie essentielle (non facultative ou consensuelle) de la cohésion et de la réciprocité sociales dans laquelle l'État (ou le système de gouvernement) a la responsabilité de veiller à ce que ces institutions et relations sociales vitales fonctionnent correctement.

1. INTRODUCTION

The pandemic has shaken some of the long-standing assumptions underlying political complacency on the part of many people. This is particularly the case in the context of social-welfare policy in the United States, as well as in some other neoliberal democracies. While this public health crisis has many dimensions, of primary interest to vulnerability theory is the shift taking place in the way in which people view the appropriate role of government. In a recent FOX News Channel poll, US voters who indicated government should "lend them a hand" rather than "leave them alone," rose from 37 percent in 2012 (it was 39 percent in 2016 when Donald Trump was elected US president) to 57 percent.[1] I expect that as the implications of the pandemic become even more manifest in the next months, the percentage will continue to climb. US citizens are learning what it means to have an intentionally ineffective state, ideologically reluctant to enact the mandates necessary to meet the demands of a public-health crisis that otherwise spins out of control.

Americans are not alone in underestimating both the necessity of law and its ubiquity, failing to recognize laws' actual influence in their everyday lives (even when there is no pandemic). Most individuals take for granted the social institutions and relationships upon which they rely, institutions and relationships that form the background stability necessary for a functioning society. The United States is actually less institutionally stable in this regard than many of its peers. It has never had as robust a welfare state or as comprehensive and as supportive institutional structures as have its democratic political kin. The consequential shallowness of the ways in which we have designed and operationalized our social relationships and structures has rendered the United States more susceptible to the paralyzing effects of institutional failure or collapse. Over the past decades, the institutions that should have formed a foundation for security in health have been robbed of resources and denied political support under a political rhetoric privileging "efficiency," in which privatization and personal responsibility are exulted and reified. State or collective action correspondingly has been vilified, undermined, and maligned in a rhetoric glorifying individual liberty, independence, self-sufficiency, and autonomy.

Vulnerability theory presents a different paradigm for thinking about the nature of the state and its social institutions and relationships, as well as a basis for defining state or collective responsibility, one that also moves us beyond the focus of either a human-rights analysis or a paradigm centred on equality and discrimination. Vulnerability theory is institutionally, rather than individually, focused. It begins by exploring the justification or legitimation for the existence of the state (or system of governance), rather than asserting the inherent value or worth of the individual.

Importantly, vulnerability theory is a legal/political theory in that it centres on the role and function of law and the institutions it constructs and maintains as the mechanism of state authority. Viewing law as central to the reproduction of soci-

ety, vulnerability theory concedes the inevitability of law, as well as some form of governing authority, while also appreciating the potential of the state as a unique mechanism for the construction of a just society. While it is a critical theory, the recognition of the necessity for and inevitability of governance and law and the positive potential this represents distinguishes vulnerability theory from other "progressive" approaches that seem unable to move far beyond a focus on an oversimplistic notion of an abusive or punitive state.

2. LAW AND THE "IMAGINED ORDINARY" SUBJECT OF LAW

Law is a system of rules applicable to all and is fundamental to organizing human society. Laws both form the compulsory systems that govern the relationships we have with each other and define the relationship between the governing system and those who are governed. Law establishes and reflects generally shared principles, norms, and values.

Significantly, laws apply to everyone, whether we express that principle by maxims such as "rule of law," sayings such as "no one is above the law," or doctrines like "equal protection." This principle of universality is central to law's legitimacy and acceptance, as well as to claims of justice and fairness.

The comprehensive, all-encompassing nature of law mandates the construction of a universal legal subject, an imagined ordinary being around whom law and policy are crafted. This being is the human subject of law. Since the effectiveness, appropriateness, and justness of specific laws ultimately will be judged by how well they reflect and address the lived reality of real human beings, the authenticity and integrity of this invented being is crucial. As a result, defining this imagined ordinary human being—the subject of law—represents a fundamental challenge for legal and political theory.[2]

Vulnerability theory approaches this definitional task by positing two fundamental and related questions:

> [1] "What does it mean to be human?"
>
> [2] "Given our understanding of what it means to be human, what institutions, relationships, and rules are required for the construction of a just society?"

The first question is a descriptive or empirical question and in asking it we begin to define the legal subject. The second question is a normative or political question, asking for reflection on what is necessary to build a just and responsive state. This second question also falls within the domain of law. Law is the mechanism by which we construct and through which we maintain our social institutions and relationships.

In response to the first question—what does it mean to be human?—a vulnerability theorist would respond as follows, "To be human is to be vulnerable." Vulnerability constitutes *the* human condition; human beings are universally, consistently, and constantly vulnerable. This understanding of vulnerability as universal is *not* where most discussions begin, however. In fact, vulnerability is often inserted as a substitute for weak, disadvantaged, discriminated against, helpless, marginalized, or oppressed.

3. VULNERABILITY

Most contemporary uses of the term *vulnerability* refer to a possibility of injury or harm arising due to the limitations or inherent deficits of our physical bodies. Human beings are deemed naturally defenceless in many circumstances, capable of being wounded or harmed. This is perhaps the most common understanding of vulnerability today. A variation of the body-as-deficient perspective views the body as vulnerable to corruption. Individual bodies may be degraded and weakened as the result of fate or chance. Others may be corrupted through individual choices or the assumption of risks. Vulnerability viewed as the possibility of bodily corruption introduces a mind/body split, along with the idea of individual choice.

In both of these instances, vulnerability theoretically applies to every human body. Significantly, however, the bodily manifestations of vulnerability are conceptualized as only specific possibilities—individual, intermittent, perhaps avoidable, a fall from grace. This suggests that human beings may have greater or lesser degrees of vulnerability, be more or less or only intermittently vulnerable, or perhaps even avoid the harmful consequences of vulnerability. The idea of vulnerability as the episodic potential impairment of individual bodies is rejected by vulnerability theory, which defines it as universal and constant. I come back to this distinction below.

However, there is a more problematic use of vulnerability, one not so easily rehabilitated for theoretical purposes. This second use of the term highlights certain demographic differences in bodies, associating them with distinct social, economic, or political disadvantages. Vulnerability in this category is plural and "contingent." It is theorized not as universal, but as designated, individual, subjective, and mutable. It is frequently the product of social forces and biases and is often unjustly imposed.

This idea of distinct or special vulnerabilities is common in professional discourses, such as law and public health, where there are frequent references to specific "vulnerable populations." Sometimes these populations are perceived as lacking in ability, capacity, or character. Quite often they are stigmatized as a result.

One conventional designation of vulnerable populations references select physical or mental health conditions. In this group are age-related groupings (the elderly or children) and also those deemed "disabled." Other proclaimed distinct vulnerabilities are deemed situational or status related; some people or groups have been negatively affected by circumstances, including refugees, the poor, and the incarcerated. In addition, victims of prohibited discrimination or intentional mistreatment resulting in diminished economic, political, or social opportunities are often labelled as belonging to a vulnerable population. The designation is also applied to victims of destructive environmental forces, be these natural or contrived. The position of these "populations" as "vulnerable" is the basis for arguing that they deserve special legal and political consideration, some reparations for the diminished social, political, economic, or legal position they innocently occupy.

3.1. Vulnerability Theory

The fundamental realization of vulnerability theory is that the individuals and groups described as "vulnerable populations" should *not* be labelled vulnerable, nor should they be sequestered in discreet categories for the purposes of law and policy. This plea for their inclusion in a larger whole is *not* to deny that discrimination, harm, and relative disadvantage arising from all sorts of circumstances and situations exist. Nor is it to suggest that particular instances of harm should not be addressed by appropriate state action. Rather, it is an argument that "vulnerability" is the wrong concept to use to define and isolate these groups, or any other specific group, from the whole of humanity. Human vulnerability is universal and constant, inherent in the human condition.

The injuries should not be the occasion for separating the injured from others, but for recognizing the general, shared fragility of human wellbeing. The specific harms from targeted exclusion and marginalization justify distinct responses, which are appropriately guided by generally applicable remedial principles, including equal protection. Individual or group damages may be appropriate; so may affirmative action, emergency relief, or injunctions. However, the desire to remedy these specific harms should not obscure the recognition of the possibility of a different, more communal type of harm, one not necessarily linked to intentional or direct actions by others, nor aimed at a particular group in society.[3] Nor should the desire to remedy specific group harm eclipse the search for a coherent theoretical vision of state or collective responsibility for injuries that reach beyond discrimination and disaster. In other words, vulnerability theory argues that it is important to develop a universal social-justice project that reaches beyond specific oppressions and marginalization, one that considers state responsibility for injury or harm conceived as general and structural, not only individual or group based.[4]

To explain this further, I'll return to the question of what it means to be human. Recall that there are two related concepts that are fundamental to understanding vulnerability as inherent in the human condition:

[1] We are *embodied* beings.

[2] The realities of the body necessitate that human beings will be *embedded* in social relationships and institutions throughout the life course.

The body as a theoretical concept must be understood as existing prior to the political, the ethical, or the moral. While the body is the basis for social arrangements, it does not dictate their specific forms.[5] The shape and form of social arrangements are not consistent across history, culture, geography, and so forth. Particular social institutions and relationships within societies have been constructed in a multiplicity of ways in response to a variety of historic and contemporary forces.

By contrast, the body in vulnerability theory is an ontological or anthropological concept, a fundamental reality, consistent over time, place, and space. Vulnerability is intrinsic to the body, actually indistinguishable from the body, and, therefore, an element of the ontological. Note that I am using "ontological" not to assert the existence of God or some supernatural creator or to refer to some inherent, abstract, endowed quality bestowed on the individual, such as "dignity." Rather, I am arguing instrumentally for acceptance of a manifest logic of collective responsibility. This is an argument for a radical "ethics of care" as the foundation for governance, an argument that recognizes that human vulnerability provides the primary legitimating justification for the coercive ordering of human relationships and endeavors through law.[6] Under this logic, the failure to respond to social discord, injustice, or inequality would constitute a harm demanding governmental action and redress.

3.2. The Ontological Body

The body requires that we be communal and political beings. The body necessitates the creation of social units, be they called families, communities, civil society, nations, or international organizations. This unavoidable and indispensable social embeddedness is the foundation for an alternative to Western, liberal social-contract theory exemplified in the work of John Rawls, which is based on ideals of rationality and consent.[7] In other words, vulnerability theory is a theory of essential (not voluntary or consensual) social cohesion and reciprocity. It is based on the recognition and acceptance of human beings' inevitable dependence on social relationships and institutions and the collective responsibility for those relationships and institutions that dependence entails.

When the current configuration of liberal legal theory does make a concession to the idea of social dependency, it does so in the context of the contingent categories discussed above, considering certain differences across society as requiring special or exceptional legal treatment due to the inappropriate actions of others or to understandable calamities. It is not the general human condition that gives rise to state responsibility to act, but the presence of a victim or sympa-

thetic supplicant. This notion of remedial responsibility is where most legal, political, and theoretical attention has been centred: state responsiveness to the individual is defined and therefore confined by reference to equality, impermissible discrimination, and unique disadvantage. This differentiation among individuals is not the foundation for a comprehensive or coherent theory of state responsibility, but one limited by a fragmented legal subject in which vulnerability is viewed as exceptional. In addition, this approach implicitly sets up a binary, with "invulnerability" as the preferred and attainable status, also serving as the measure for those aspiring to full legal subjectivity.

Currently, the universal or ontological body is a largely neglected site of serious inquiry. As a result, the realities of the ontological body have largely been disregarded, which has had profound implications for our perception of justice, as well as deterred the development of a theory of collective or social responsibility. A limited view of the human condition has had consequences for defining the theoretical connection between the individual and the state. In vulnerability-theory terms, the impoverished notion of what it means to be human that underlies contemporary political and legal theory tolerates only a limited, constrained vision of appropriate state responsibility, encompassing only part of the lifespan and only some individuals when they are able to claim specific injury or harm. The rest are left to a largely privatized society, within a restrained state.

3.2.1. Embodiment, difference, and change

While the ontological body is universal, vulnerability theory must also account for undeniable differences among bodies. However, in ontological terms the relevant differences for vulnerability theory are those that are found within, not among, bodies—differences associated with developmental changes in the ontological body. The concept of the ontological body is and must be comprehensive, encompassing all possible variations in the body. It is theoretically important that it also be understood as cohesive and integrated, not fragmented into distinct entities. This means it is as important to incorporate different developmental stages into our construction of the ontological body as it is to include variations in capacity, physicality, ability, and so forth. The ontological body changes over time, inevitably evolving and declining.

The ontological body's inescapable susceptibility to change is the core of our vulnerability:

> Our bodies are inevitably and constantly susceptible to changes—both positive and negative, developmental, and episodic over the life course, and this has implications for our social well-being as well.[8]

This susceptibility to change applies to every human body and encompasses, but is not confined to, the possibility of harm or injury, of being wounded.

It is important to emphasize the bodily processes involving positive changes. Unlike the typical uses of vulnerability noted in section 2, which focused only on one moment in time in making comparisons across individuals, vulnerability theory adopts a life-course perspective, which inevitably also highlights positive developmental changes inherent in the ontological body's intellectual, emotional, and physical evolution over time. So, while it is true that negative changes can arise from the passage of time or from events such as illness or accident or from environmental harms, it is important to realize that changes to the ontological body are both negative and positive.[9]

Significantly, from a public policy perspective, positive changes can be encouraged and negative changes deterred. Some specific changes may be predictable, such as those often associated with aging, which also provides the occasion (responsibility) for policy and program development. While some changes may be difficult to foresee and external to individual control, they can still be anticipated and addressed with forecasting and informed strategy.[10]

3.2.2. The Embedded Body

The most important insight of vulnerability theory is that we need to recognize a new legal subject, one that is more reflective of the realities inherent in the human condition. Prevailing legal, as well as political, theory ignores or contradicts the implications of vulnerability and, in doing so, only very narrowly defines the interests and legitimate province of the state. Law is not alone. The liberty-seeking reasonable man in law is also the rational actor in economics, the autonomous consenting being in ethics, and the competent rights holder, capable of pursuing and protecting his interests. These subjects as currently hypothesized are typically not concerned with dependency and vulnerability, but defined by abstract references to independence, self-sufficiency, liberty, and autonomy.

These subjects of theory are taken out of social relationships, which are the structures both in which we experience vulnerability and upon which we depend for the resources to ameliorate it. They are radically individualized entities, abandoned to legal tools and devices such as consent, contract, independence, self-sufficiency, self-reliance, and rights, which are woefully inadequate to address the inescapable and lifelong dependence on society and its institutions that our vulnerability produces. In particular, the realities of the ontological body are neglected in theories in which the state is considered appropriately restrained and limited and social institutions and relationships are deemed a "private," rather than a collective responsibility. The abdication of state responsibility attending this designation of "private" also can create a decisive social harm. Such harm could be labelled "profound neglect" or "callous indifference," but abandonment of the implications of the ontological body goes beyond mere inattention. It is a violation of the very rationale for the existence of governance and law, a rejection of the principles that legitimate constituting the state in the first instance.

Recall here the second question that vulnerability theory asks us to consider—what are the legal, institutional implications of our understanding of what it means to be human? What is the purpose of, the rationale for the state? This brings us to the concept of dependency and its relationship to state responsibility and constitutional legitimacy.

3.3 Dependency

In vulnerability theory, dependency is not a variation or example of vulnerability but the unavoidable manifestation of it. The fundamental reality is that the physical and developmental realities of our bodies render us inescapably dependent on social relationships and institutions. These relationships and structures provide the resources that cumulatively give us the ability to adapt, adjust, survive, even thrive, given our vulnerability. In vulnerability theory we call this ability "resilience."

Importantly, no one is born resilient. Rather, resilience is acquired over time, within social institutions and relationships. Therefore, dependency on institutions and relationships is not deviant or exceptional. Like vulnerability, dependency is inherent to the human condition. However, it is important to distinguish between dependency and vulnerability. They are often confused but are different in important ways that underscore why it is imperative not to theoretically confuse the body (embodiment) and the social or institutional (embeddedness) it necessitates. Understanding the relationship between the two requires us to leave behind the universality of vulnerability and consider the particularity of dependence.

Vulnerability is universal and constant, located in the body. Dependency, while constant, also varies and fluctuates over time and in terms of the need for connection to specific social institutions and relationships. For example, because we are embodied beings, we are inevitably dependent on care from within social institutions and on relationships to provide that care—we are inevitably dependent. This is most evident in infancy, where the family is the social institution primarily responsible for our care. Families and caretakers are dependent on arrangements in the workplace and on the welfare state, but also on the healthcare system, financial industry, the market, the employment system, and so on. In other words, there are two related sites from which to assess dependence: the individual and the institutional (which includes the derivative dependency that may be associated with social identities[11]).

From the perspective of the inevitably dependent individual—the one initially needing care—the birth family recedes, and other institutions typically become more prominent later in life when the need for care arises only occasionally, such as when we are injured, ill, or disabled. In other words, individual dependence on specific institutional arrangements, like the family, can be thought of as episodic, alterable, and circumstantial. However, it is important to recognize and

theoretically address the reality that dependency on some set of social institutions and relationships is inevitable and ongoing for everyone throughout life.

Vulnerability theory urges that the individual always be placed within institutional contexts as we advocate law and policy. In addition, we must recognize that these institutions are complex, and their relationship with each other symbiotic. In order to effectively provide resilience, they must be designed to work together. The family and the educational system will determine the success in later encounters with the employment and political systems, all of which will have implications for the ability to form one's own family, as well as for well-being in retirement and old age. Social institutions ideally operate both simultaneously and sequentially to produce resilience over the life course.

4. CONCLUSION

Vulnerability theory begins by presenting the vulnerable subject as the only appropriate object of law and policy. A vulnerable legal subject incorporates the realities of the ontological body and its life-long dependence on social institutions and relationships into a theory of essential (not voluntarily or consensual) social cohesion and reciprocity in which the state (or governing system) has the responsibility to see that these vital social institutions and relationships operate justly.

Vulnerability theory rejects the fragmenting of the ontological body into various populations, an all-too-common practice that has significant public health and political implications. While the official responses to the pandemic did not only focus on specific populations and targeted the population as a whole, it became clear that specific populations raised specific concerns. Official bodies often emphasized those particularized concerns specifically, after giving the universal guidelines. This reference to distinct vulnerable populations, differentiating some individuals from others, was evident in the very first official responses to the coronavirus pandemic. An emphasis on specific populations (for example, the elderly) can distort analysis of the real extent and nature of the threat that the virus presented, which can also narrowly direct policy. Ironically, even as the cumulative totals of assorted "vulnerable populations" expanded from the elderly to those with underlying conditions to members of racial and ethnic minorities and approached the totality of the national population, those individuals left out of a vulnerable-population designation may feel free to ignore recommendations for distancing, masking, and so on.[12] Rather than seeing themselves as part of a vulnerable humanity, the danger is that some individuals considered themselves distinctly differently vulnerable, or perhaps even invulnerable.[13]

Accepting vulnerability and asking the question of what the realities of the body mean for how we must structure social institutions and relationships so that they operate justly recognizes not only the indispensability of institutions, but also the necessity or inevitability of the need for authority over them to achieve that end. That authority (and the responsibility it entails) is held by the governing entity

given the power of legitimate coercion (the "state" in vulnerability theory). It is important to highlight the fact that this governing entity is always active, always acting through law, even though some would vigorously deny this in an effort to curtail and diminish the scope of ultimate state responsibility for the status quo.

Law inevitably shapes and directs the form and consequences of social institutions, such as those that constitute the family, the market, and financial, healthcare, and other systems, besides defining the nature and shape of the relationships within them.[14] Even if law is not actively engaged at any particular point in time, its past engagement affects the present and its present "inaction" reflects a preference or, perhaps, an active negation of the responsibility to act.

We should be asking, in whose interests do these intuitions and relationships as currently constituted act? And, if we want a more just society, we must also ask, in whose interests should they act? We need rules and structures that are responsive to the social implications of ontological vulnerability—to a vulnerable legal subject. What values and objectives should inform those rules and structures? These questions are brought to the fore when we apply a vulnerability analysis.

NOTES

[1] Beacon Research and Shaw & Company Research, Fox News Poll. Fox News (Aug. 13, 2020). static.foxnews.com/foxnews.com/co… (last accessed Aug 21, 2020).

[2] I recognize that there are exceptions to a designated primary legal subject as legal subjectivity is currently constructed. For example, children are typically set aside as an exception (and a vulnerable population). As a result, they are assigned an incomplete or diminished legal subjectivity, which is justified by their deemed inferior capabilities and capacities. The creation of this "special" legal subjectivity impacts our idea of the extent and nature of state responsibility to children, but also has implications for the way in which the dominant legal subject can plausibly be constructed as an independent and autonomous rights holder. Only when the "exceptions" are marginalized or ignored can what remains be considered to represent the whole. By contrast, vulnerability theory imagines a unified, comprehensive legal subject, incorporating all variations in human development, as well as capacities, characteristics, and abilities. See section 3.

[3] Vulnerability theory is not a supplement to an antidiscrimination/equality approach. Rather, it is a conceptually distinct perspective that begins by focusing on institutions and structures. It does not preclude exploration of disparate impacts or discrimination, but it asks different questions that suggest a more universal and inclusive approach to social justice than would gender, racial, economic, or other modified notions of justice founded on a discrimination paradigm. Vulnerability theory does not deny discrimination occurs or that it should be remedied. However, it does recognize that inclusion (the remedy for discrimination) in a fundamentally unjust institution, while it may provide some minimal benefit (by equalizing access) to the individual, does little to further the goal of social justice. Social justice may require institutional or structural reform.

[4] The unaddressed harms are those that arise when the state ignores the implications of the universal or ontological body—its vulnerability—in creating and maintaining social institutions and relationships. We could call this state abdication of its responsibility "profound neglect" or "malignant indifference," but it represents a violation of the duty to maintain institutions responsive to human vulnerability, which forms the theoretical justification for the state's very existence.

[5] Although the institutional form is not consistent across time and space, there are some universal societal functions that must be performed in reproducing any society: a social unit to care for the young, ill, and disabled, for example. In addition, most societies will devise distribution systems (including market, economic, and labour units), health and welfare systems, value systems, dispute-resolution systems, penal systems, exchange systems, and so on.

[6] Feminist ethics-of-care theories are based on individual relationships of care and do not extend to defining a general collective ethic on a societal or governmental level. They are also contextual, based on establishing caring relationships. By contrast, vulnerability theory centres on the institutional, not the individual, and the corresponding responsibility to care is the governmental obligation to care for everyone subject to the structures and mechanisms of governance. This obligation forms the foundation of governmental legitimacy.

[7] In vulnerability theory, John Rawls's heuristic of a "veil of ignorance" used to support the idea of a social contract is nonsensical. In the first instance, it is unduly focused on the individual and a corresponding commitment to rationality and objectivity. This creates a perspective that is doomed to generate far too narrow a sense of justice. Further, the premise that it is possible to ignore personal circumstances in defining justice is hardly desirable, even if it could be achieved. In order to approach justice, an appreciation of the complexity, interrelationship, and range of vital tasks necessary to accomplish the reproduction of society is essential. In particular, it is essential that in ordering society we recognize the inevitability of dependency on social arrangements across the life cycle for everyone. The idea of centring the individual that is inherent to constructs such as consent and contract minimizes the collective emphasis of vulnerability theory. Vulnerability theory focuses on imagining and imple-

menting the "responsive state," a state in which the foundation for its legitimacy is tied to its unique ability (and therefore, responsibility) to respond to human vulnerability. By the same logic, Rawls's principles of liberty and equality of opportunity (without unduly infringing on liberty), in spite of differences, are not only incompatible with each other, but inconsistent with a collective sense of social justice in which social relationships and positions are often necessarily and appropriately unequal.

[8] Martha Albertson Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *in* Martha Fineman (eds.), *Transcending Boundaries of Law: Generations of Feminism and Legal Theory* 161, pp. 166–170.

[9] Significantly, the capacity to learn is an aspect of vulnerability. In fact, recognition of the change inherent in a vulnerability analysis is the necessary condition of learning. An "invulnerable" subject is unaffected (or an unchanging self)—the economic man or social-contracting figure set forth in economic theory or in Rawls's social contract. The invulnerable subject projects a self that predates and survives entry into society, while the vulnerable subject is seen as the basis for the construction of that society and its institutions.

[10] Importantly, in vulnerability theory the legal subject is not broken down into life stages, such as the elder or the child, which then define both the legal subject's status and the nature and correspondingly differing levels of state responsiveness. The universal vulnerable legal subject is not based on particular characteristics of a specific individual or group. Rather, the legal subject is an abstract composite, ideally encompassing all possible variations in the body over time, including all manifestations of reliance on social institutions and relationships that humans can experience. It recognizes the inevitability of social dependence that vulnerability entails over the life course. See subsection 3.3 below.

[11] Social identities are identities based not on individual characteristics, such as gender or race, but on social functions and duties, structured by laws, such as those that form and regulate the family, employment, the corporation, or health and educational systems. The idea of social identities introduces the theoretical notion of "inevitable inequality" (such as the inequality that is designed into complementary social identities and often considered desirable as well as inevitable given the different social roles each complementary identity occupies). For example, consider the obviously unequal complementary relationship of parent/child. However, inevitable, even desirable, inequality also describes relationships such as teacher/student, employer/employee, shareholder/consumer, doctor/patient, and so on). Addressing this concept fully is not possible in the number of pages allocated here but can be explored in various other publications: see generally Jonathan Fineman, "A Vulnerability Approach to Private Ordering Employment," *in* Martha Albertson Fineman and Jonathan W. Fineman (eds.), *Vulnerability and the Legal Organization of Work*, Routledge, 2017 (for the employment context).

[12] The basis for measuring harm was also a failure of the public health system. Death statistics were the primary unit of measurement for assessing "harm" due to the virus. Even as nonlethal physical and mental effects, some of them quite severe and with life-long implications, came to be understood, it was the daily death count that dominated assessments of progress (of lack thereof).

[13] This effect is currently evident in some discussions about opening schools for in-person education in the United States. Not only are children (in the absence of evidence) considered less vulnerable, they are as a group considered separable and independent from the society in which they live. Their risk is assessed as though the only issue were their participation in education as individuals, not as members of interrelated social systems from which they could not be isolated or exempt.

[14] Here I am thinking of social relationships like parent/child, employer/employee, shareholder/consumer, and so forth. See note 7, *infra*.

SELECT VULNERABILITY THEORY BIBLIOGRAPHY FROM THE AUTHOR

Articles

"Beyond Equality and Discrimination," *SMU Law Review Forum*, vol. 73, 2020.
"Vulnerability and Social Justice," *Valparaiso Law Review*, vol. 53, 2019.
"Vulnerability and Inevitable Inequality," *Oslo Law Review*, 2017.
"Equality and Difference—The Restrained State," *Alabama Law Review*, vol. 66, 2015.
"Vulnerability and LGBT Youth," *Temple Political and Civil Rights Law Review*, 2014.
"Feminism, Masculinities and Multiple Identities," *University of Nevada—Las Vegas Law Review*, vol. 13, Symposium Issue on Masculinities, 2013.
"'Elderly' as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility," *The Elder Law Journal*, vol. 20, 2012.
"Beyond Identities: The Limits of an Anti-discrimination Approach to Equality" *Boston University Law Review*, vol. 92, 2012.
"The Vulnerable Subject and the Responsive State," *Emory Law Journal*, vol. 60, Symposium Issue on "The New New Deal", 2011.
"Evolving Images of Gender and Equality: A Feminist Journey," *New England Law Journal*, vol. 43, 2009.
"The Vulnerable Subject," *Yale Journal of Law and Feminism*, vol. 20, 2008.

Book Chapters

"Reasoning from the Body," *in* Chris Dietz, Michael A. Thomson and Mitchell Travis (eds.), *Jurisprudence of the Body*, Palgrave Press, 2020.
"The Limits of Equality: Vulnerability and Inevitable Inequality," *in* Cynthia Bowman and Robin West, (eds.), *Feminist Jurisprudence*, Elgar Press, 2019.
"Injury in the Unresponsive State: Writing the Vulnerable Subject into Neo-Liberal Legal Culture," *in* Anne Bloom, David Engel and Michael McCann (eds.), *Injury and Injustice: The Cultural Politics of Harm and Redress*, Cambridge University Press, 2018.

Book

The Autonomy Myth: A Theory of Dependency, The New Press, 2004.