



Introduction: A New Beginning

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The best apocalyptic movies (from *Mad Max* to *The Stalker*) are less about the apocalypse than what follows it. They focus on the systemic changes triggered by the apocalypse. About the apocalypse itself, little can be said. Speech begins again with survival. Likewise, in the middle of the current pandemic, we operate under the law of necessity. For this reason, nations with very different political systems have converged on the same practices of lockdown, social distancing, testing, and tracing. Nations that refuse to accept the law of necessity demonstrate not political strength, but weakness. They suffer the consequences, for the virus recognizes no excuses. Consider the ravages of the pandemic in Brazil and the United States.

Only when the end of the pandemic begins to come within view does a proper politics of reasonable analysis begin again. For those nations that held to the course during the worse of the epidemic, new political problems are just beginning to emerge. Contrary to the view expressed by Samuel Moyn in this volume, we do not believe that the pandemic will register as only a brief detour from which we now return to normal politics. Rather, it has been a world-historical event which has devastated economies, national institutions, global arrangements, and public health. Events of this magnitude can lead to dramatic reconsiderations of relationships among citizens and between them and the state. Citizens everywhere are beginning to reimagine their relationship with each other and to government. How and whether they act on those new imaginings depends very much on how political leadership responds. Leadership, too, must rethink what it owes to the members of the community.

These projects of national reimagination have been displayed most forcefully in the explosive growth of the Black Lives Matter movement in the United States. Before the killing of George Floyd by the Minneapolis police on May 25, 2020, few would have thought the middle of a pandemic likely to be a moment of dramatic, sustained, public protest. Even fewer would have thought that protests begun in the American

Midwest would rapidly spread around the world. This is a confirmation, even amid challenges to globalization, that politics too has turned global. Whatever the form that may take, from the cross-national fertilization of political movements and ideas to the development of transnational political spaces and organizations, politics has moved beyond the borders of states.

Just as nations are reconsidering the fundamentals of the social contract, so too is this a moment for reimagining the relationships among states and the performance of transnational institutions. Remarkably, political organs of the United Nations have had no visible role in the pandemic, while the World Health Organization's (WHO's) performance has spawned major controversy. The reimagining of globalization will have to consider whether the problems of transnational organizations have been internal and bureaucratic or a consequence of the gap between national and transnational politics.

For those who study law and politics, the pandemic has presented a sort of natural experiment on a global scale. It can seem as if everything has been simultaneously put at issue, from constitutional order to health care delivery, from due process to quarantine, from wealth redistribution to international trade. Different nations and transnational organizations have responded in different ways, providing tests in real time of competing theories, structures, and practices. Academics will be analyzing the variety of responses for a generation or longer. The world, however, does not operate on the academic calendar.

Responsible leadership has already begun to face the problem of drawing lessons from the experience of the pandemic. Released from the law of necessity, leaders everywhere will have to decide what to do in response to the devastation wrought. They will face tasks not just of economic recovery, but also of political recovery. Institutions that were "good enough" before the pandemic may not survive. In the short term, there will be a range of tactical issues of how to return people to work and reopen shuttered institutions, ranging from parliaments to universities. In the long term, serious attention will have to be given to addressing the failings of the old institutions and practices, in order to ameliorate the conditions under which we will deal with the next pandemic. Of this we can be certain – there will be a next.

The chapters in this volume have been written just at the moment when much of the world is tentatively beginning to reopen. By the time of publication, we are likely to know whether and which of those plans succeeded. We will also know whether we are likely to have a vaccine,

putting an end to the pandemic. Like politics itself, writing about politics before the virus is defeated can be risky. Nevertheless, each of the authors has tried to consider the present from the perspective of an imagined future. Only so can we learn from the pandemic. This is no less true of law and politics than it is of public health.

This volume offers a variety of inquiries into democracy in times of pandemic with a view to discussing democracy beyond the pandemic. We have brought together some of today's most creative thinkers. They represent different disciplines and different regions. They include scholars of law, politics, religion, and sociology. Fifteen authors imagine fifteen different futures. The authors have widely different dispositions, ranging from optimistic to pessimistic. Some are sympathetic to the performance of leadership; others critical. The debate is lively and ongoing. In this Introduction, we do not try to summarize their different views. Instead, we offer a preliminary account of the terrain within which they all operate.

Multiple Emergencies

We begin with a sketch of the many emergencies created by the coronavirus. These began with public health, but have spread across the multiple dimensions of our public lives. Government is operating in an emergency mode in virtually every dimension: Hospitals, schools, courts, legislative bodies, regulatory affairs, and economic transfers. In an interconnected world, these emergencies begin at the local level of delivery of services, but extend to the transnational as borders close while information flows.

Communities have faced natural disasters before. Even pandemics are not new. Plague shaped European history; smallpox initiated the European conquest of the New World. Disaster creates the conditions for political change. Nevertheless, facts alone, even terrible facts, do not themselves determine "what comes next." A crisis brings new problems, but it also offers new opportunities. Sometimes, we make good use of those opportunities; sometimes, we do not. It may help to begin by trying to understand the scope of the crises of governance.

The COVID-19 pandemic initially presented a public health emergency. Over the past several months, an expert consensus has emerged on treatment – perhaps because there are so few treatment options available. Six months in, there are still no pharmaceutical interventions that can do more than ameliorate the symptoms for some of those who suffer the

most. Doctors have, however, learned a lot about the proper administration of oxygen and the use of ventilators. They have also learned a lot about the way in which the disease spreads – none of it good. Silent transmission from asymptomatic carriers has made the disease notoriously difficult to contain. This is all common knowledge now, but so is the observation that populations subject to long-term lockdowns become increasingly restless – and increasingly desperate. The number of unemployed has reached figures not seen since the Great Depression of the 1930s.

Management of the public health emergency has raised issues of democratic governance. As social and economic desperation increases, politics comes to weigh more heavily on the decision-makers. We might imagine a sort of balance between expert advice and political pressure. That balance changes over time. An initial lockdown becomes more and more difficult to maintain as social and economic desperation increases. A population can become desperate under lockdown, but equally desperate as the infection numbers soar. The metaphor of a balance should not hide from view the simple reality that there may be no stable point of compromise between the disease and the economy, between experts and politics. This makes the interface between expertise and democratic authority dynamic, rather than static. We are learning, as well, that it does not move only in one direction, but may cycle through different phases.

A pandemic threatening death and destruction is a public health crisis similar to a national security crisis. In this crisis, however, we cannot turn to the military for help. The new generals are the public health experts, but are they subject to the political accountability upon which democracy depends? Civilian control of the military is a fundamental principle of democratic governance. We have hundreds of years of experience – and learning – in dealing with this problem. Public health experts may have even more power than traditional generals, but we have very little experience in the exercise of democratic control over them. They have made costly mistakes in some places, sometimes out of excusable ignorance, sometimes out of inexcusable bureaucratic failures. Our mechanisms of accountability have been weak, and are only just beginning to confront the problem.

In some nations, the pandemic has brought renewed trust in experts and support for their exercise of authority. In other places, public health experts have had to operate in an atmosphere of distrust: A legacy of populist movements that has long-targeted government by elites.

Resistance to wearing masks in some states grows out of this deep-rooted skepticism, which the often-changing recommendations of experts did little to decrease. It is enough to recall how the WHO's advice has changed on a multitude of issues from testing, to transmission, to masks. Because science develops through trial and error, new data will lead to new results. This might be good science, but it can be bad policy when the experts repeatedly change their advice on best practices.

When the advice has required sacrifices by a restive population, mistakes can fuel a political counterreaction. A destructive, downward cycle can set in, as we see with the large number of resignations of American public health officials who have found it impossible to operate in a hostile environment. This competition between trust and distrust will weigh heavily on the accountability mechanisms that have yet to be invented. We will no doubt need robust systems for evaluating how well the experts did, before we can settle on what their proper role should be in democratic politics in the future.

Experts contribute to democratic governance not just through offering rules, but also by contributing to the development of public opinion. A public health emergency, today, is always a public opinion emergency as well. Democratic governance requires the support of public opinion. We have witnessed a remarkable process of global education as citizens everywhere have learned about virology and public health. "Testing and tracking" have become part of our ordinary vocabulary. On the other hand, we also know that public opinion formation today can be driven by misinformation. There has been no lack of misinformation flowing through social media, sometimes encouraged by mistaken information flowing from official sources.

Democratic governance is both a product of and a contributor to public opinion formation. For this reason, the reformed politics coming out of the pandemic will sweep beyond the formal institutions of the state to include regulation of the sources of public opinion. The major tech companies – Facebook, Google, and Twitter – are all reconsidering their own policies and responsibilities for the democratic formation of public opinion. In the end, it may be harder to settle on a regime to control the viral character of misinformation than on a regime to control the coronavirus itself. The former will no doubt survive well beyond the demise of the latter.

The pandemic has also created social and economic emergencies of national and global dimensions. Responses to the economic crisis will pit claims of nationalism and protectionism against policies of globalism and

free trade. They will put at issue fiscal and monetary policy, triggering huge domestic contests over how to manage the public debt within politically acceptable levels of unemployment. In Europe, for example, the current crisis may redefine the ethos of the European Union (EU). Fiscal discipline, the core policy of the Euro area, has been suspended and the EU has introduced new forms of risk-sharing, increased its budget capacity, and may, *de facto*, acquire tax powers. The political stakes in these decisions will be as high as they can possibly be, for a breakdown of economic security can lead to a breakdown of the state itself. We are all very aware of the political transformations that followed from the Great Depression. These were not minor adjustments of tax and welfare policies, but revolutions in the ends and means of governance. Reflecting these concerns, some of the chapters imagine a post-pandemic reconstruction of the social contract.

Finally, if the pandemic pushes us to a reconsideration of the nature of the political, it necessarily confronts us as an ethical emergency. The ethics of health care delivery has been very much on our minds, as nations have had to confront overwhelmed hospital facilities, shortages of medical personnel, and a lack of personal protective equipment (PPE) for those on the frontlines of response. Populations have been taught new lessons in interdependence as they have come to see that the truly “essential workers” are often those who were least appreciated before the pandemic. Democratic nations will have to confront difficult questions of redistribution and reward. To whom do we have a duty of care? How do these responsibilities fall on public and private actors? What are our obligations toward the worst-off at home and abroad?

The ethical crisis of the pandemic cannot be limited to social and economic responsibility. In our society which is increasingly digital and dependent on artificial intelligence (AI), responses to the pandemic have raised a series of concerns about privacy. How and to what extent should privacy concerns give way to the protection of health and life? Some of these questions parallel the concerns about misinformation. Others are unique. Our capabilities to deal with tracking, for example, may offer us the ability to go further than we dare go.

We confront here a variant of the traditional national security issue of “dual use” technologies: That which we do for public health reasons today may be used tomorrow not to keep us safe, but to keep us down. This is the cyber equivalent of the constitutional problem of government seizing extraordinary powers to manage the emergency, and then retaining those powers after the emergency ends. Where democracies may be

reluctant to deploy power commensurate with the crisis, authoritarian regimes may see the crisis as an opportunity for consolidation. Political and legal tools developed to control the spread of the virus may become tools simply to control us. This threat of dual use is raised in a number of the chapters in this volume.

These diverse forms of crisis raise multiple issues that sometimes coincide, but sometimes point in different directions. Preliminarily, they center around three themes: Power, knowledge, and citizenship. Democracy understands citizenship as a relationship between power and knowledge. Thus, relationships among these terms are necessarily at the core of the inquiries into leadership, expertise, institutions, and responsibility that follow. Power is found both wanting and abused by leaders and institutions. Expert knowledge must contend with public opinion – a relationship that can be conflicted or harmonious. Citizenship appears as both a claim for care and a responsibility to act.

Power, knowledge, and citizenship take center stage in democratic practice as well as in democratic theory. They structure responses to the crises of the pandemic, but they will also, no doubt, be reconstructed by the experience of the pandemic. We are confident in this prediction because it is already clear that, for many people in many places, democracy itself has become the subject of the pandemic. Issues of power, knowledge, and citizenship bear on leaders and citizens as we all decide, individually and collectively, how to move forward. Some responses may be transformative; others may only amplify or limit ongoing transformations. While we have no crystal ball, we do think that we are far enough along to begin a discussion of what we might learn for our future from our recent past.

Who Was Taking Care?

Why were we not prepared? By now, almost everybody has heard of Bill Gates's famous speech from 2015, warning that the biggest threat to humankind was not military conflict but a pandemic. Many political leaders (including the previous two American presidents) also identified prevention of a pandemic as a strategic priority. Nevertheless, there was very little strategic preparation. Indeed, there was not even much tactical preparation once the virus was on the radar screen. In December, when the virus was already known to be spreading in China, governments on other continents did little to prepare. They did not even check their

stockpiles of PPE, leaving many thousands of health care workers at risk of their lives.

Because this failure of preparation was nearly universal, an explanation cannot point to the personal failings of individual political leaders. Nor can we point to differences among political ideologies as an explanation. Spain had a Socialist government; Germany and Italy big or *sui generis* coalitions; the UK a Conservative government; Brazil and some states in eastern Europe populist governments; China and Russia variations of authoritarian regimes. None were prepared strategically; all fell into a desperate tactical effort only after the virus started killing their own citizens. Democratic states failed to take care of their most precious asset: Their people. Some argue that China, despite its authoritarianism, did a better job strategically and tactically, but that is increasingly put into question and the truth is that the nature of the regime prevents us from really knowing.

Most states – arguably all states – were not prepared for the pandemic, despite a decade of warnings. This widespread strategic failure indicates that, just like ordinary citizens, governments too have problems integrating future risk into public policy planning. The behavioral scientist will tell us that politicians are as susceptible to optimism bias as anyone else. But the political theorist will insist that politicians are responsible for planning in ways that overcome that bias. The constitutional lawyers will advise us on institutional structures that operate against the bias. All this expertise, but still governments failed. They failed on the most basic matter of life and death. They failed not just in preparations to fast-track production of vaccine; they failed in the production of paper masks that cost pennies.

The failure of anticipation and preparation was broad and deep. There were failures to pay attention as well as failures to respond. The failure of preparation extends to prevention, treatment, vaccines, and protection. More broadly, it includes a failure to prepare citizens for the possibility of a pandemic; that is, it includes a failure in the pedagogic responsibilities of the democratic state. How many states spent as much effort teaching their citizens of the risk of pandemic as teaching them to fear traditional enemies? Moreover, few populations had been prepared for the basic steps of a public health response: Quarantine. The result was panic and hoarding in some places, and a lack of preparation for a long lockdown virtually everywhere. The few states that were better prepared were those who previously experienced the SARS illness which emerged in 2003. That they did better is a visible sign that social learning is possible. But this will

not happen if governments fail to take responsibility. Democratic populations will not hold their governments accountable when it counts most – before the crisis – if they have not been taught that the crisis is coming.

Can We Deal with Risk?

Democratic regimes will have to do a much better job of incorporating science into their planning and policy choices. This will be difficult because of a structural misalignment of benefits and costs. We prepare for the risks of tomorrow's pandemic by investing today. Political leaders must ask today's citizens to pay for protections they may never need. Bill Gates's prediction might not have come true for decades.

Of course, governments make similar investments in the future all the time. National security investments, for example, assess risks over several decades. Consider a decision made in the Middle Ages to build a cathedral: Construction could take a hundred years. Communities were effectively investing today to prevent risks to future generations. Stockpiling PPE might be today's equivalent of building a cathedral – a point supported by Stanley Hauerwas's claim that health has taken the place of faith in modern politics.

To notice that governments do make investments for future generations is hardly to say that they do so easily. As in so many other things, expectations are institutionalized. A society comes to have a normal range of investments. Bill Gates's speech was a reminder of the need to reconsider what falls within the range of "normal." The absence of response offers a lesson in how difficult it is to move the norm. Those with entrenched interests in existing investments will not easily support a shift of resources to respond to some other threat. Who in a democracy is watching out for the greater good of the future community? Bill Gates? But then he can afford to be future-regarding, and no one elected him.

What would have happened if governments had diverted resources in December 2019 into tactical preparations? Many people at that point still thought that the pandemic would "stay in China." What if government leaders had enforced an economic and social lockdown well before its inevitability was obvious to all? Scientists recommended these preventive measures, but were they politically feasible?

Citizens may literally need to see for themselves before they can support such harsh measures. Even today, many ordinary citizens disregard social-distancing rules in communities that have not yet *seen* the ravages of the virus. US President Donald Trump was not alone in his

assessment that it was politically impossible to close down the country before anyone had even died of the virus in the US. Of course, closing down the country is one thing; stockpiling PPE is another. Still another is long-term preparation. Our failings, however, were across the board.

How to assess leadership's response to the uncertainty of the pandemic is a theme of several chapters, including those of Michael Ignatieff, Olivier Beaud, Daniel Innerarity, and Neil Walker. All emphasize the danger of hindsight – an omniscience bias. Just like political actors, we have to be careful to counter our own biases in assessment. Still, we must judge, if only to do better in the future.

The pandemic renders sadly visible the problem of insufficient internalization of future risks in today's policy choices. As we think about the shape of the problem and the proper response, we would do well to put the problem in the context of our longer discussion of climate change. For many years, scientists have been telling us that we are not doing nearly enough to prevent disastrous climate change. We have had many Bill Gates. Nevertheless, the structure of political incentives has undermined effective political action. The asymmetry between the long-term nature of the benefits and the immediate costs of preventive action short-circuits effective policies. Only when the effects start to appear to the community does political action become possible. As the pandemic has taught us, that is likely to be too late.

Bill Gates's warning was for naught. We need to introduce into the political system mechanisms that force the internalization of long-term risks. Only in doing so will we overcome our biases. These mechanisms may take the form of independent health and environmental agencies. They may also take the form of "signaling instruments" in the public space, such as environmental or health ratings or alerts. Whatever mechanisms we settle upon will have to have a strong transnational component, for the risks we face today are global. How to advance along these lines while maintaining democratic accountability within the organization of the nation state may be the defining question of constitutional construction for the next generation. These problems of institutional construction are taken up in the chapters by Roberto Gargarella, Olivier Beaud, and Kim Lane Scheppele and David Pozen.

Who Forms Public Opinion?

Democracy depends on the formation of the collective will. Today, that means the formation of public opinion. Because of the close relationship