

LETTER TO THE EDITOR

PERENNIAL EMERGENCY

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<https://doi.org/10.55634/2.3.6>

The last four years have been full of extraordinary events.

An epidemiological emergency has left its mark on our bodies and minds.

And its management, first with confinements and then with forced mass vaccination, calls us above all to reflect on the differences between "closed space" (object of surveillance) and "open space" (object of control).

So let's start from here.

The closed space is that of confinement and surveillance, of the detailed rules that must be observed in that space.

The closed space during confinement is the space of the house transformed into a kind of house arrest with some more concessions.

This was the first phase of the pandemic marked by confinement, distancing, the evening ritual of the death toll published in online newspapers and shown on television, with the aim of stoking fear.

No one has managed to escape this type of disciplinary power, not even religion, which in the name of the new religion of science, has accepted the prohibition of religious services, even funerals in the Church, and has let those die, dying in hospitals without any type of religion or comfort.

We cannot forget how far the disciplinary

power went: identifying with the drone the rebel who had escaped into the forest, or chasing those who were running free on the beach, all this is ridiculous but it had to demonstrate that the surveillance was total.

However, we could not stay locked up at home forever, so a way out was in sight: the price to pay, however, was high, increasingly higher: swab test, green pass, reinforced green pass, mandatory vaccination, three mandatory vaccines. dose, an ultimately unsustainable price.

Yet, for many the vaccine was perceived as a kind of liberation: with it they could move freely outdoors again and, they say, safely.

But you had to undergo the expiatory rite of inoculation that makes you free again. With an electronic "pass" you can do everything you did before, but with a small difference compared to before, if you want to be free you have to accept the stamp not in your passport but on your skin, on your arm.

The mask is no longer enough, the "prick" is needed.

This is the transition from the surveillance society in closed spaces to the control society in open spaces. The electronic "pass" that is obtained under certain conditions becomes decisive, that "pass" no longer identifies an individual like an identity document but

rather regulates access to several things that only in possession of that "pass" can I do. There would be a lot to say about this transition from the surveillance society to the control society, but I will stop here.

And I wonder: how was all this legitimized?

With the emergency. I intend to focus on this. Jurists tend to distinguish between "emergency" and "exception" and say that the democratic form of government is compatible with the former, not the latter¹.

The "state of exception" is scary, reminiscent of tanks in the streets, but the emergency is not, at best, the use of masks even when it is not necessary, useless confinements, mandatory measures, vaccines, in some cases suspension of work and now other measures related to the energy emergency.

Well, you could say, at least not a little.

But the emergency is used to return to normality as soon as possible, only the exception aims to impose a new order.

¹For the distinction according to the Italian constitutionalists, I refer to G. Marazzita, *The constitutional emergency. Definitions and models*, Milan, Giuffrè, 2003; A. Cardone, *The "normalization" of the emergency. Contribution to the study of the extraordinary power of the Government*, Turin, Giappichelli, 2011; O. Spataro, *State of emergency and constitutional legality tested by the pandemic*, in "Federalismi.it", 11, 2022, pp. 158-186. See also, for a historical reconstruction, F. Rimoli, *State of exception and constitutional transformations: the constituent enigma*, in «Links. Magazine of German literature and

culture», Pisa-Rome, VI, 2006, pp. 1724-1685. See also, in reference to the pandemic, the remote controversy between the constitutionalist Zagrebelsky: It is not the emergency that undermines democracy. The danger is the exception, in « Repubblica », July 28, 2020, and the philosopher Agamben, *State of exception and state of emergency*, available at <https://www.quodlibet.it/giorgio-agamben-stato-di-exception-and-state-of-emergency>, July 30, 2020.

Thus, our constitutionalists, who these days have largely forgotten the Constitution, are willing to legitimize with their academic authority or with their decisions within the Constitutional Court everything that has been done during the health emergency, precisely because it is an "emergency" and is not an "exception."

Even war, a true state of exception, is passed off today under the guise of emergency. No one declares a state of war anymore, although declarations of states of emergency are frequent, they would have the limited objective of quickly overcoming a particular situation. When institutions declare an emergency it means that they can no longer manage a particular situation with normal means and therefore, for a defined period of time, they proceed with exceptional measures. An emergency that has no end, or whose end is postponed from time to time indefinitely and that continues even when the conditions no longer exist, even in a milder form, is no longer an "emergency", or rather the limits between "emergency" and

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L"exception" are blurred. The emergency ends, but with a simple ordinance a minister can decide, entirely at his discretion, to extend the use of the mask in certain places and not in others. Not at concerts, for example, but at the polls. We can respond, but is this the "exception," the exception that steps in to fill the power vacuum?

Or is it simply not yet a banal "emergency" measure?

Perhaps both words - "emergency" and "exception" - are taking on a different meaning and the reality they describe has something to do with the emergency and at the same time with the exception.

The emergency acquires the characteristics of the exception, without formally transforming into an exception, without ever completely exceeding the level of emergency.

A state of emergency is traditionally declared on the basis of a present danger, a danger that exists at the time it is declared, which is distinct from the possibility that it may arise in the future.

But today is different, today is about stabilizing the emergency, governing through a permanent state of emergency and, in the limit, not even because there really is an emergency, but because, as they say, "we should never let our guard down."

It is important to declare the emergency and if necessary more than one at the same time. In this way, however, we end up making the legal institution of the declaration of a state of emergency formally meaningless, which only makes sense to the extent that it remains the exception and does not become the rule.

No one suspended the existing order and imposed a new order that replaced the previous one, but neither can it be said that everything simply returned to the way it was before.

Nothing has ever been the same, even though everything seems not very different from before.

This is because the health emergency and now the war emergency have culminated a process that was already underway, at least

since the 1970s.

Today everything has become clearer. I explain. The surveillance of the population needed laws that would last over time, for the control of the same administrative acts the following were enough: the provisional provision, the decree of the civil protection department, the ministerial order, the ministerial decree, the inter-ministerial decree, the decree of the Prime Minister, at most the decree-law that is to be converted.

The only thing left of the law, in the case of the decree-law, is the rite of "conversion", which has very little religious, especially because it occurs almost automatically.

In this way the law becomes uncertain, unpredictable, insecure.

In short, it loses the characteristics that the law had.

Mask yes or no and what type, in which places is it mandatory and where is it optional?

Is the third dose of the vaccine sufficient, or is the fourth also necessary, is the fourth sufficient, or is the fifth even better?

Furthermore, for the need for security to be fueled, there must be a basic, constant and generalized insecurity.

To offer security, insecurity must become a permanent existential condition.

And that's what's happening.

For this reason, the government no longer even traditionally has to "maintain order", but must be able to manage the disorder that generates insecurity.

The exception decided by the sovereign aims to remedy the chaos by establishing a new order. Emergencies, on the other hand, serve to stabilize the existing order by modifying it sufficiently. It is no longer necessary for the sovereign to decide, the "support administrator" is sufficient for emergencies.

Managing emergencies - an epidemic, a flood, an earthquake, a collapsed bridge, a terrorist attack, a war, a great migration, an energy crisis - becomes the government's main task.

The phenomena that generate emergencies are real - denying the existence of the virus would be as absurd as denying the existence of the war in Ukraine - but the ability of governments consists of building a narrative around each emergency to legitimize themselves through them.

This is the new "method" of government.

Your success or failure depends exclusively on this, knowing how to manage emergencies.

Of course, managing an emergency, from the government's point of view, does not mean normalizing the situation in the shortest time possible.

Far from there.

That's why this is a new type of emergency.

The emergency must be used to modify normality, to create a "new normal."

In short, we must know how to take advantage of emergencies.

Naturally, in the face of events such as the pandemic, it will be necessary to monitor the total mortality curve in particular, trying to direct it towards the therapeutic objective that the government intends to achieve.

For example, the constant decline of the Italian population, which is already underway, could be further facilitated by new epidemics, by the use of "imperfect" vaccines, by wars and famines as effects of global crises.

Being born, living and dying will then no longer be natural events, but "constructions" of the government that, with the help of "technical-scientific committees", now also takes care of the "body" of the population.

And the government can do it by any means.

The objective is not - as it might seem at first glance - health, but population control. And this end justifies any means.

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The objective is not - as it might seem at first glance - health, but population control. And this end justifies any means. What does it mean to govern today?

Governing today means deciding on the state of exception².

Whoever has the power has it because he is the one who has decided what is an emergency and what is not, he is the one who has decided that you have to stay inside the house and under what conditions you can leave the house again.

The health emergency, better than any other emergency, has made it possible to address this process. Let's focus on this now.

There are several ways to approach the topic.

The approach I will follow is purely philosophical.

All modern legal organizations are based on one fundamental right: the right to life. And all power is based on a kind of trade-off between protection and obedience. Those who cannot protect cannot even demand obedience, and without obedience there is no power.

Now, the good to be protected is above all natural life and to guarantee this protection the State is authorized to impose a series of restrictions on individual freedoms and rights and citizens usually accept these restrictions and obey.

Why they obey is a good question, out of trust, out of fear, there could be many reasons, but the fundamental thing is that the State protects their lives.

This is a State that, for example, says: to protect the right to life, to protect your health and that of other associates, I have to suspend other rights, I have to limit a whole other series of rights and I can only count on consent.

Therefore, it is necessary to protect "life" not only from a threat that comes from outside - a flood, a terrorist act, a civil war, for example - but also from within, from diseases that attack and undermine the body. social, and here a viral disease, was exactly what was needed to pose the general philosophical question:

"Can a government impose solidarity on its citizens?" This is the question that Jürgen asks himself Habermas in a recent writing³ and his answer is very clear, although the argument is not at all convincing.

Below I would like to explain the reasons for my disagreement.

In the pandemic - according to Habermas - we must distinguish the political level from the legal one.

"The law is the tool to guarantee subjective freedoms," but in the face of the health emergency "politics is the means to achieve

the collective objective that, in exceptional cases, requires priority"⁴.

On the basis of this distinction he reaches the following conclusion: "without the possibility of basing legal coercion on the solidarity of citizens, the democratic rule of law cannot have political existence. "The State must appeal, in the event of war or catastrophe, or as in the case of a pandemic, a challenge launched by an uncontrollable natural process, to the solidarity of citizens required in an extraordinary measure"⁵.

Let's also leave aside the discussion about the origin of the virus, which seems to have very little natural, and let's get to the point.

Solidarity between human beings is certainly important, but it is usually spontaneous, although it is true that, for example, our Constitution speaks of "obligatory duties of political, economic and social solidarity (art. 2). But how far can solidarity go? solidarity when it is no longer free but imposed, no longer spontaneous but forced and concerns the body itself?

Habermas answered this question quite simply: when it comes to life, everything else takes a backseat and in the foreground is solidarity, which loses its voluntary character and must be imposed by law.

A State cannot pursue policies that take into account an increase in infections and therefore also in probable deaths that could be avoided.

In short, "protecting life", this is the main task of a State and, therefore, how can we blame it prima facie?

Among the inviolable rights of man, the right to life occupies first place.

It should be noted, however, that the great German sociologist did not even address the doubt that confinements and forced vaccinations could have been inadequate measures or that different measures could have been used, proportional to the health emergency. In short, there is no doubt that life could be "protected" in another way.

⁴Ibid., p. 105.

⁵Ibid., p. 106.

The decisions that have been made are correct. Period.

In the event of an emergency, the protection of the health of the population would constitute a kind of "superfundamental right".

Now, what is at stake is not the duty of the State itself to protect the lives of its citizens, but beyond the fact that it is controversial whether the way in which it was intended to do so was also effective (there are States like Sweden that have proportionally had lower mortality without resorting to particularly invasive measures on the freedoms of citizens) the question that must be asked is the following: to what extent should it be done, to the point of denying them their freedoms, their individual rights, imposing on them the duty of solidarity? Take the hot case of vaccination of citizens who openly reject it. The state of health emergency should justify forced vaccination, since in this case the individual right to their own body would be suspended by a decision.

Policy intended to protect life and public health?

Or, without going to this extreme, should the disobedient be punished, for example, with suspension from work and perhaps house arrest, if they do not agree to be vaccinated?

Let us also admit that the goal of vaccination was beneficial.

From the Kantian point of view (of course, other points of view can also be followed) one could say that the individual individual can never be reduced to a mere means, not even for a beneficial end such as the defense of public health.

The Kantian imperative is categorical.

And this is human dignity: a principle superior to life itself and which demands that we never treat a human being simply as a means.

A widespread and forced vaccination, without the free and informed consent of those concerned, therefore constitutes a clear

violation of human dignity⁶.

In fact, everything can be said about how that consent was obtained except that it was free. Of course, in extreme cases we can also reach extreme solutions.

In philosophical-legal terms we speak of a "state of necessity" such that if contagion and disease were so widespread as to endanger the existence of an entire community we could justify the obligation of vaccination and even the use of force to impose it.

Think, for example, of the Black Death that killed at least a third of the population of the European continent, but despite the deaths that occurred in much of the world, these are certainly not the proportions of the current Covid-19 pandemic.

Every year there are eight million deaths due to smoking and five million due to obesity, but so far no one has banned smoking (except in some public places) or eating junk food.

It will be said that smoking and eating are not contagious, a virus is, but these vaccines do not even immunize those who have been vaccinated and in fact present a series of side effects, which can even lead to death.

The vaccination mandate, whatever it may be, is not proportional to the real danger of extinction other than that of the species on earth or at least of some human communities. Even assuming (but not admitting) that there was excess mortality due to Covid-19, this would not be a sufficient reason to impose mandatory vaccination.

The appropriate response to the challenge of the pandemic would have been to balance the interest of the community first with the right to life of the individual and then with all other fundamental rights, or if we want, the real challenge would have been to reconcile freedom and solidarity and not make one prevail over the other. I speak here of the individual's right to life because the paradoxical thing about this vaccine is that to protect the life of the social body, individuals

⁶ See in this regard, P. Becchi, *The principle of human dignity*, Brescia, Morcelliana, 2022.

have been forced to be vaccinated even if this could cause serious side effects and even death.

“Primum vive”, or rather survive, this is the imperative that has replaced the principle of human dignity.

But how much hypocrisy regarding life.

It was enough to go from the health emergency to the war emergency and the narrative changed completely.

The protection of life, which previously had priority over everything else, is now subordinated, in the official narrative, to the fight to defend freedom.

The freedom that previously had to be subject to solidarity to "protect life" now becomes more important than life itself because one can die for it.

To put it bluntly: forced to be vaccinated to protect life, but free to die and soon go to Ukraine to be killed? Even if this causes a long trail of death and pain.

The same people who sacrificed everything on the altar of life today defend the war that generates death.

I quickly come to the conclusion.

Just as the pandemic has enormously changed men's lifestyles, the same will happen with a war like the one in Ukraine, which risks expanding, to which the one in the Middle East has recently been added.

Wars - as we know - enrich a few and impoverish many.

However, the consumer society of the liberal and social democratic utopia has ended and with it also the work destined to radically transform itself.

We are entering not only the society of control but also the society of hunger, where new forms of deprivation await us.

The era of poverty becomes increasingly poorer, more extreme.

From pandemic to war, from war to famine, one world is dying and a new one is struggling to emerge.

It is up to us, free spirits, to make this new emergency emerge, the emergence of our dignity and our freedom.