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Population Disease Prevention Under Sovereign and Disciplinary Pandemic Authority

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Abstract

The history of collective action aimed at disease prevention amongst populations is replete with complexity in the operation of political power which has transformed in its deployment over time. This article draws upon examples from pre-modern and from modern European states to examine variations in the operation of biopower under pandemic authority. It concludes by contextualizing comparable models of political authority responding to the contemporary COVID-19 pandemic including the operation of pandemic biopower in the United States.

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Introduction

The history of collective action aimed at disease prevention amongst populations is replete with complexity in the operation political power. The operation of power in this context has been historically transforming and has transformed over time. For example, there have been collective actions aimed at saving lives which have destroyed them. Compulsory land quarantines in pre-modern Europe failed to prevent the spread of bubonic plague for three hundred years but increased unnecessary mortality and suffering.¹ There have been the complex interactions of marshal and martial law when policing and surveillance have institutionalized enforcement. An example was the policing and compulsory isolation of victims of socially spread diseases, and their contacts, under Notification of Diseases Acts passed by numerous European, North American and Antipodean states from the end of the nineteenth century.² There has been an incessant contest of the rights of populations to be protected from epidemic disease and the rights of individuals to the legal, social, economic and political liberties afforded in civil societies. The latter was first noted in nineteenth-century Britain which is discussed below.³

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1. Slack, P. (1988a) Slack, P. (1988b)
2. Porter, D., and R. Porter (1989)
Porter, D. (2011)
3. See below Simon (1869)

The complexities of population disease prevention have operated whether epidemic invasion is within or across territorial borders. In this article epidemics in both contexts will be included in the analysis of “pandemic authority” in eras before and after institutions such as the WHO or CDC operated standards of pandemic measurement.⁴ It draws upon examples from pre-modern and from modern European states to examine variations in the operation of biopower under pandemic authority. It concludes by historically contextualizing comparable models of political authority responding to the contemporary COVID-19 pandemic.

Populations, Individuals and Pandemic Authority

Public health pioneers and reformers in mid Victorian Britain articulated sacrificing individual civil liberty for the right to population health.⁵ The first Medical Officer to the Privy Council, John Simon, argued that populations had the right to be protected from assault by infectious disease in the same way that the individual had legal right to protection from assault by violence.⁶ The conflicting rights of populations and individuals was acutely highlighted by the Victorian anti-vaccination movement which claimed that:

Against the body of a healthy man Parliament has no right of assault whatsoever under the pretense of public health.⁷

John Simon’s retort was that, since the “iron law of wages” could not be broken then public health disease prevention expanded the conditions under which a sustainable life was possible for the poorest.⁸ Structural sanitary reform in industrializing societies of Western Europe provided conditions under which infant mortality dramatically fell in the last quarter of the nineteenth century along with major declines in preventable premature adult mortality from infectious disease.⁹ Sanitary reform established conditions for epidemiological and demographic transition by the mid-twentieth century.¹⁰

However long before nineteenth-century sanitary revolutions, the political significance of population management was institutionalized in pre-modern Europe. As feudalism fractured under the incessant momentum of urbanization, diseases of population density increased.¹¹ The responses of European states to these demographic and epidemiological changes historically constructed population as an object of political management. For example, under the exponential spread of bubonic plague in all its forms between 1347-1353, 30%-60% of Europe’s populations perished.¹² From the time formal maritime

4. CDC (2020)

5. Rumsey, H. (1855); Simon, Sir J. (1869); Simon, Sir J. (1890)

6. Simon (1869) *passim*; see also Porter and Porter, *op.cit.* (1989), p. 104

7. Newman, F. M.(1896, June 1st) p. 16

8. Simon, (1869), *op.cit.* ; Simon, (1890), *op.cit.*

9. Porter, D. (1994); Winter, J. M. (1982).

10. Porter, D. (2007) For debate on public health and the modern rise of population see Szreter, S. (1988); McKeown, T. (1976)

11. Palmer, R, (1978) David, N. (1977)

12. Gottfried, R. S. (1983); Zeigler, P. (1969); Horox, R. (2013); See also for counter arguments about the Black Death and bubonic plague: Cohn, S. K. (2003); Benedictow, J. O. (2005) Park, C. (1993)

quarantines were instituted in 1348 secular political authorities expanded their power to control pandemic disease spread. Legitimated by the necessities of plague control, city-states in pre-modern Italy, for example, grew increasingly powerful as they institutionalized land quarantines enforced by martial law, intelligence gathering and policing of targeted populations believed to be morally corrupt which spread pestilences that corrupted the flesh.¹³ Imitated by regional and national political authorities throughout pre-modern Western Europe, plague controls allowed early modern secular states to maintain social order against the threat of anarchical disruption resulting from pandemic panic and depopulation.¹⁴

Population, Life and Death: Two Models of Biopower

From the late nineteenth century population health politics converged with philosophies of central and local state planning expressed in environmental discourses on salubrious “cities beautiful” in Europe and the United States.¹⁵ But population health planning in this period focused equally on the political management of human somatic life, biological evolution and behavioral interactions. It is this form of political management which the philosopher Michel Foucault identified as creating population as a definitional category of modern and post-modern governmentality through disciplinary biopower operating on the basis of a surveillance culture.¹⁶ Philosophical challenges have been made, however, to the modernity and type of political authority constituted by biopower.

In the first volume of *The History of Sexuality* Michel Foucault argued that sovereign power over life and death, for example under despotic monarchies, had been replaced by the power to institutionalize rationalities for legitimate somatic life under the modern liberal state.¹⁷ Sociologists such as Nikolas Rose have subsequently explored post-modernist mechanisms of biopower, for example, by analyzing cultural transformations governing subjectivity and the construction of the private self.¹⁸

Biopower as uniquely modern has been challenged by Giorgio Agamben in his analysis of the institutionalization of sovereign biopower through the normalization of states of exception. He questions Foucault’s analysis of biopower creating “modern man as an animal whose politics places his existence as a living being in question.”¹⁹ Agamben argues instead that rationalization of legitimate somatic life under biopower is inherently sovereign power over life and death. An argument reinforced by Achille Mbembe’s analysis of definitional structures of necropolitical power over who should live and die

13. Cipolla, C. M. (1973) Campbell, B. M. S. (ed.) (1991) Carmichael, A.G. (1993); Aberth, J. (2010)

14. Slack, P. (1981)

15. Porter, D. (1991)

16. Curtis, B. (2002)

17. Foucault, M. (1978)

18. Rose, N. (1989)

19. Agamben, G. (1998), 143; Agamben, G. (2005)

under slavery, its legacies, apartheid or lives not worth living in concentration camps.²⁰ Agamben developed his framework in contradiction to Carl Schmitt's proposition that martial law over life and death existed only under states of exception. Agamben argues by contrast that a state of exception is the normalized system of biopower operating on the basis of "bare life," which is existence without rights—comparable to the condition of the Roman legal state of *homo sacer*, who could not be ritually sacrificed but existed without a right to life.

There is no opportunity here to explore the outcome of these debates regarding the nature of biopower which have been extensively examined by others.²¹ However, the conceptual pluralities surrounding biopower are useful heuristic devices for interrogating the contemporary institution of pandemic authority in the face of a global pandemic of Severe Acute Respiratory Syndrome Coronavirus 2, or SARS-CoV-2 (called COVID-19 by WHO).

Convergent and Contrasting Pandemic Authority as Sovereign and Disciplinary Bi-opower Responding to COVID-19

From the first appearance of victims suffering from a novel pneumonia in Wuhan in December 2019, a pandemic of COVID-19 spread across all of the earth's continents with the exception of Antarctica by February 2020.²² Convergent and contrasting models of public health responses have emerged since that time. The global models of response to COVID-19 may be usefully examined within the historical continuum of pandemic authority as sovereign and disciplinary biopower over population plagues.

The institutionalization of mass land quarantines in postmodern authoritarian and democratic national states institutionalized sovereign biopower. The rhetoric offered by contemporary democratic states over the abuse of "human rights" under contemporary authoritarian regimes rang hollow as structures of power converged in legally imposed pandemic authority supported by the ultimate resort to militaristic violence for enforcing social behavior and restricting social interaction.

Secrecy, delayed epidemic containment and massive, draconian land quarantines converged structures of sovereign pandemic authority regardless of the authoritarian or democratic political organization of national states. In the Wuhan region the Chinese government shut down all public transportation and locked down 50 million people in their homes with only exceptions for essential worker commuting and twice weekly releases of a single household member to obtain food and medicine. Citizen journalists attempting to report

20. Mbembe, A. (2019)

21. Rabinow, P. and Rose, N. (2003)

22. Editor, *New Scientist* (2019); Berlinger, J. (2020, February, 26th); Taylor, A. and Pitrelli, S. (2020, March, 24th)

on conditions went missing and armed militia were posted to keep residents inside their homes. China also used systems of mass surveillance to restrict movement. In Italy nationally imposed land quarantine locked down 60 million allowing exit from homes only for necessities and carrying forms to justify the reason for travel. These orders were enforced by \$235 fines and up to three months in prison.²³ In France comparable orders were instituted and 100,000 police officers deployed to enforce lock down measures to limit social contact. Australia instituted fines and jail sentences for quarantine violations and Saudi Arabia leveled fines of up to \$133,000 for not declaring health information on entrance to the country.²⁴ A coronavirus task force in Russia was still declaring the number of infected to be 2337 by March 30 with 17 deaths though skepticism about these figures has been widespread both within and beyond the country. The Russian parliament passed a national state of emergency declaration March 31, 2020 and approved penalties for up to five years imprisonment for “knowingly” disseminating false information during “natural and man-made emergencies” and up to seven years in prison for breaking hygienic and sanitation regulations such as quarantine. In Russia’s Republic of Tatarstan an electronic code system was introduced to control the movements of residents during the region’s coronavirus lockdown.²⁵

In the heart of progressive leftist politics in the United States, the six counties of the San Francisco Bay Area were the first authorities to impose a comprehensive land quarantine order.²⁶ The order was legally mandated under California law with the penalty for disobedience of a misdemeanor, that can be punished with fines or imprisonment. This order was extended by California Governor Gavin Newsom to the entire state.²⁷ At the time of writing the same measures are in effect in 38 states, 48 counties, 14 cities, the District of Columbia and Puerto Rico. Two hundred and ninety seven million Americans currently remain under compulsory home quarantines with exit only permitted for essential purchase of food or medicines.²⁸ When the Bay Area Counties extended and expanded the order March 30, it included the potential for policed enforcement.²⁹ Newsom deployed the National Guard for assistance with food distribution but a formidable combined armed forces remains available in California for enforcements comparable to those imposed by authoritarian states such as China and Russia.³⁰

The historically emphatic culture of American rugged individualism initially collapsed almost overnight in the face of sovereign pandemic authoritative enforcement. Even as the gruesomely self-interested current White House administration attempted to appeal to fanatical right-wing libertarianism,

23. BBC (2020, March, 17); Crossly, G. (2020, January, 23)

24. Ibid., BBC (2020, March, 17)
Wilson, J. et. al. (2020, March 20)

25. Radio Free Europe (2020, March, 31) (The mission of Radio Free Europe/ Radio Liberty (RFE/RL) is to promote democratic values and institutions by reporting the news in countries where a free press is banned by the government or not fully established.)

26. Allday, E. (2020, March, 16)

27. Acruni, P. and Stryker, P. (2020, March, 19)

28. Mervosch, S., et.al. (2020, April, 2)

29. N. L. R. (2020, April, 1)

30. Office of the Governor (2020, March, 20)

public health bureaucratic collectivist pandemic authority initially prevailed. From mid-April, however, political manipulation by far right activists using land quarantines as a propaganda resource emerged.³¹ In the United States politically far-right groups exploited the institution of land quarantines as an opportunity to propagate their anti-“deep state” ideologies. These groups have also interwoven novel propagandas about COVID-19 such as claims that the epidemic was a political strategy originated by the Microsoft founder, Bill Gates.³²

The sporadic propaganda exercises of far-right activists, however, are not the only potential sources of unrest. The possibility of civil unrest provoked by social and economic stress in the U.S. remains unpredictable as numbers of unemployment claimants exponentially soar. Future consequences of land quarantines in increasing health vulnerabilities for other demographic strata on a global scale also remains a further uncertainty.³³

Contrasting models of COVID population prevention have relied upon the operation of pandemic authority as disciplinary biopower. The latter has utilized mass biological surveillance through voluntary and compulsory surrender of personal privacy to undertake comprehensive diagnostic testing and contact tracing enabling targeted quarantines. Having learned the catastrophic consequences of delayed response to MERS in 2015, South Korea implemented an emergency response system as soon as news of COVID infection was reported in the Wuhan region. A woman traveling to Japan was stopped at a fever monitoring station at Incheon Airport and removed to a quarantine hospital and confirmed positive January 20, 2020. This was the same day that the first case was confirmed in the United States. South Korea used extensive surveillance technologies including closed-circuit television and GPS smartphone data to track the movements of the infected and made it available for all Korean’s to follow the where the sick had been and where they currently were. Unlicensed testing was instituted from February 4 available to all the population and by February 26 over 46,000 had been tested compared to 1846 in Japan and 426 in the United States. Comprehensive surveillance and testing allowed the Korean government to contain the spread of the epidemic with targeted quarantine without shutting down the economy. Its measures received wide support by a population that retained the civil liberty of the non-infectious to travel, to socially interact and to work which prevented economic collapse.³⁴

Mass screening with diagnostic and serological testing of 5% of its population in Iceland has facilitated containment without draconian land quarantine and

31. Far Right, American Libertarian anti-state individualist rhetoric could be superficially compared to nineteenth-century anti-vaccinationism in Victorian Britain (for the latter see, Porter, 1988). However, American Libertarianism fueling contemporary far right politics in the United States appeals not to Victorian liberal individualism but propagates totalitarian white supremacist politics (J.L.S. passim) (Hoffe, (2001). Victorian anti-vaccinationism is not to be confused with the political construction of anti-vaccinationism in the United States in the twentieth century. (Conis, 2014)

32. Stanley-Becker. I and Romm, T (2020, April 23rd); Wakabayashi, et.al. (2020, April 17)

33. Hoffman. J. (2020, April 13); Shumaker, E. (2020, April 14)

34. Kim, H. J. (2020, March, 20)

the collection of vital data on levels of asymptomatic infection.³⁵ Furthermore the existence of medical genotype data on half of the island's population has allowed virus mutation analysis that may be key to understanding different responses amongst individuals from mild cold symptoms to lethal respiratory distress. Aggressive targeted quarantine of infected and suspected infectious individuals has allowed Iceland minimize COVID impact.³⁶

By the end of April, a selection of political authorities within the United States began planning a shift from sovereign pandemic land quarantine enforcement to a surveillance model facilitating targeted quarantine containment. The six counties of the San Francisco Bay Area had “crushed the curve,” according to Dr. Warner Green, Director of San Francisco's Gladstone Institute.³⁷ Since early April similar epidemiological patterns began to appear throughout the state of California.³⁸ On April 14 Governor Newsom announced “six critical indicators” needed to be in place to begin modifying the land quarantine order.³⁹ These included the reduction in the rate of ICU admissions, daily testing rates at 60,000 per day and a contact tracing infrastructure consisting of personnel and electronic tracking of the infected and their contacts.⁴⁰ What Newsom termed a shift from a “surge” to a “suppression” model of containment is intended to replace universal land quarantine. Newsom explained that California aims to use the “suppression” model of mass testing and compulsory targeted quarantine to achieve herd immunity without the need to return to “stay at home” orders until a vaccine becomes available.⁴¹

Newsom's announcement of April 14 was made on behalf of the Governors of three western coastal states, Washington State, Oregon and California all of which have Democratic governors and majorities in state legislatures. Republican led U.S. states are currently announcing lifting land quarantines with or without infrastructures for testing and targeted quarantine. The outcome of these conflicting political pandemic strategies remains indeterminate at the time of writing.

Conclusion

Comparative models of COVID containment offer a window into the impact of pandemic authority exercised as sovereign and disciplinary biopower upon democratic rights. In a small number of democratic states, disciplinary biopower through surveillance to facilitate targeted quarantine limited the necessity for the exercise of sovereign pandemic authoritarian power through mass land quarantines.

Grotesquely abject failures to respond to the emergence of a new lethal

35. Brown, J. (2020, April, 5)

36. John, T (2020, April, 1)

37. ALT 105.3 (2020, April 23rd); Greene, W. (2020)

38. Bollag, S. and Sheeler, A. (2020, April 7)

39. Office of the Governor (2020, April 14 a)

40. California's Road Map (2020, April 14 b); Ho (2020, April 22)

41. Office of the Governor (2020, April 14 b)

infectious disease left both authoritarian and democratic governments by late February 2020 with only the most draconian implementations of pandemic authority as an option. By this date universalized land quarantines offered the only measure available to mitigate the impact of soaring epidemiological curves from overwhelming health systems. Population disease prevention models in Korea and Iceland, however, illustrate efficacious early pandemic response that resists the momentum of public health authority toward pandemic authoritarianism. The historical impact of variable models of population disease prevention in the epoch of COVID for the future of democratic structures of power remains impossible to anticipate.

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