

## 6. Disregard of the empirical; optimism of the will: the abandonment of good government in the COVID-19 crisis

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We are grateful to the editors and the publishers of the book in which this chapter appears, for this publication is somewhat unusual. Save for the correction of slips and what it is hoped are some minor stylistic improvements, as well as two addenda included at the request of the editors, this chapter has been left as it was when it was given what the authors thought was a shape ready for publication sometime in early 2021. The central thinking of the chapter had taken shape sometime in late 2020. The wish to publish a chapter that will, then, be four or five years out of date when it appears would anyway require explanation, but this is *a fortiori* the case with a chapter on a topic so quickly and dramatically shifting as the evaluation of the UK government's response to the outbreak of COVID-19 in early 2020. In essence, such significance as the chapter possesses is that it shows that, *at the time* that what is in the chapter called 'inchoate communism' was generating lockdown, an immensely superior alternative was perfectly possible, had the UK government taken what can, consistent with the title of this book, be called a 'conservative' approach to regulation.

Though commissioned for a special issue of *The Northern Ireland Legal Quarterly*, the paper that now appears as this chapter was, after a nine-month process of review, rejected without, in the authors' obviously *parti pris* opinion, adequate justification of this decision. The paper was then much more briefly reviewed by *Social and Legal Studies*, and rejected without, in the authors' opinion, better justification. This led to Campbell resigning from the editorial position he held with that journal. The paper has, however, appeared as a Johns Hopkins working paper: (March 2022) *Studies in Applied Economics Working Paper 202*, Johns Hopkins Institute for Applied Economics, Global Health and the Study of Business Enterprise, Johns Hopkins University, USA.

We are pleased that the editors and publishers of this book now make it more widely possible for academic criticism to evaluate whether the paper is of a publishable standard.

This chapter criticises an approach to regulation that was and is, to the extent it is ever implemented, bound to reduce welfare to an extremely significant degree. In the view of its authors, the history of the attempt to publish the chapter is evidence that taking such an approach involves an unwise constriction of the consideration of alternative approaches.

When you cannot express it in numbers, your knowledge is of a meagre and unsatisfactory kind. (Lord Kelvin)<sup>1</sup>

Yes, and when you can express it in numbers, your knowledge is of a meagre and unsatisfactory kind. (Jacob Viner)<sup>2</sup>

## 6.1. INTRODUCTION

On 22 February 2021, the UK government began a process intended to end the ‘lockdown’ policy it had adopted in response to the outbreak of coronavirus disease 2019 (COVID-19) caused by infection with the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) at the beginning of 2020.<sup>3</sup> A month earlier, the Prime Minister had announced that ‘the number of deaths recorded from COVID in the UK has surpassed 100,000’ and promised a future commemoration of ‘everyone we lost’.<sup>4</sup> A month later, the anniversary of lockdown was itself commemorated.<sup>5</sup> As the government’s statements about the date of

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<sup>1</sup> Sir W. Thomson, ‘Electrical Units of Measurement’, *Popular Lectures and Addresses*, vol. 1 (Macmillan, 1889), p. 73.

<sup>2</sup> There are many accounts of Viner, sometime Professor in the Chicago School of Economics, saying this on seeing Kelvin’s observation as inscribed on the facade of the University of Chicago Social Science Research Building: e.g., H. S. Becker, *Evidence* (University of Chicago Press, 2017), p. 22.

<sup>3</sup> HC Deb 22 February 2021, vol. 689, cols 625–28 (The Prime Minister).

<sup>4</sup> G. Rayner, L. Fisher and S. Knapton, ‘I Am Deeply Sorry for Every Life That Has Been Lost’, *The Daily Telegraph* (27 January 2021), p. 1. The Prime Minister’s statement of 26 January 2021 no longer appears to be available on the Prime Minister’s Office website.

<sup>5</sup> The Prime Minister, ‘PM Statement at Coronavirus Press Conference’ (23 March 2021), <https://www.gov.uk/government/speeches/pm-statement-at-coronavirus-press-conference-23-march-2021#:~:text=and%20it's%20thanks%20to%20all,by%20the%20end%20of%20July>, accessed 7 March 2025.

the first lockdown,<sup>6</sup> the number of COVID-19 dead,<sup>7</sup> and having a ‘roadmap out of lockdown’,<sup>8</sup> with the implication that features of the map were reliably fixed, were grossly misleading,<sup>9</sup> these commemorations will prove to be occasions of lasting national shame. This was, however, entirely fitting, as in this they will be representative of the lockdown policy as a whole.

We will argue that the lockdown policy, with its immense costs, was a complete mistake. We do not mean this in the sense that its implementation involved unacceptable failures to meet targets, though this was chronically and acutely so, but that the policy was from the outset fundamentally misconceived and bound to gravely diminish welfare. We do not claim to fully explain the government’s mistake, not merely in the sense that a work on the scale of this chapter could not do this even were the necessary information available, which it decidedly is not, but because we do not understand how this mistake could be given effect on this quantitative scale.<sup>10</sup> In the end, the basic malfunctioning

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<sup>6</sup> See fn. 27 below.

<sup>7</sup> Very inadequately discussed changes to the procedures for recording death and notifying infectious disease and the use of statistical measures that all but negate any requirement of a causal connection between SARS-CoV-2 infection and death have amazingly inflated the statistical magnitude of the problem: Architects 4 Social Housing, *Manufacturing Consensus: The Registering of COVID-19 Deaths in the UK* (1 May 2020), <https://architectsforsocialhousing.co.uk/2020/05/01/manufacturing-consensus-the-registering-of-covid-19-deaths-in-the-uk/>, accessed 7 March 2025, and Architects 4 Social Housing, *Lies, Damned Lies and Statistics: Manufacturing the Crisis* (27 January 2020), <https://architectsforsocialhousing.co.uk/2021/01/27/lies-damned-lies-and-statistics-manufacturing-the-crisis/>, accessed 7 March 2025. The public perception of that magnitude has then again been inflated by an unremitting publicity campaign intended to promote fear as a tool of behavioural engineering: G. Rayner, ‘State of Fear: Ministers “Used Covert Tactics” to Keep Scared Public at Home’, *The Daily Telegraph* (3 April 2021), p. 4, and L. Dodsworth, *A State of Fear* (Pinter & Martin, 2021).

<sup>8</sup> Cabinet Office, ‘COVID-19 Response: Spring 2021’ (22 February 2021), <https://www.gov.uk/government/publications/covid-19-response-spring-2021>, accessed 7 March 2025.

<sup>9</sup> As this paper was about to be submitted toward the end of May 2021, the presence in the UK of the ‘Indian variant’ of SARS-CoV-2 seemed likely to postpone the ending of lockdown (S. Swinford, ‘Fears That Spread of Variant May End in Tiers’, *The Times* (18 May 2021), p. 1, though the occurrence of ‘variants of concern’ of a virus of this nature was entirely foreseeable from the outset.

<sup>10</sup> The contribution we believe we could make to explaining this would be to draw a comparison to the 2001 outbreak of foot-and-mouth disease based on the work of one of the current authors: D. Campbell and R. Lee, “‘Carnage by Computer’: The Blackboard Economics of the 2001 Foot and Mouth Epidemic” (2003) 12(4) *Social and Legal Studies*, 425, and D. Campbell and R. Lee, ‘The

of the institutions of national and international government will have to be addressed.

We believe we can, however, explain the qualitative nature of the mistake perfectly well. Lockdown was an irrational policy made possible only by the abandonment of the basic principles of good government that can be traced back to at least Adam Smith. As such, it was merely an, admittedly scarcely credibly exaggerated, example of the now typical style of complacent overestimation of governmental capacity to identify and implement welfare optimising policies that will here be called *ceteris paribus* reasoning. In this respect, the COVID-19 crisis is, in its qualitative aspects, a worryingly normal policy failure strongly indicative of an ‘inchoate communism’ informing regulatory practice; but in this case, the worry has, of course, been enormously magnified by the quantitative dimensions the crisis has assumed.

## 6.2. COASE, BLACKBOARD ECONOMICS AND *CETERIS PARIBUS* REASONING

It is remarkable that, given his achievements and reputation, the late Ronald Coase’s evaluation of the impact of his own work on economic theory was a pessimistic one. In the introductory essay he wrote for a selection of his papers published in 1986, he told us that ‘[his] point of view has not in general commanded assent, nor has [his] argument, for the most part, been understood’.<sup>11</sup> It has, however, undoubtedly been the case that one of the criticisms of the practice of government intervention that may be drawn from Coase’s 1960 ‘The Problem of Social Cost’ has had a considerable impact on the way in which proposals for intervention are presented.<sup>12</sup> Though it is not the most theoretically profound of Coase’s criticisms of intervention, his exposure of a logical error characteristic of such proposals is very telling.<sup>13</sup> Judging a state

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Power to Panic: The Animal Health Act 2002’ [2003] *Public Law*, 372. The slaughter policy adopted in 2001 was based on epidemiological modelling led by the remarkable figure of Professor Neil Ferguson, who now, it seems, has played an even more important role in formulating policy in response to COVID-19. Not only in a general sense but on a large number of specific points, the similarity of the two episodes shows the policy adopted in 2001 to have been, *mutatis mutandis*, adopted as lockdown in 2020.

<sup>11</sup> R. H. Coase, ‘The Firm, the Market and the Law’, in R. H. Coase, *The Firm, the Market and the Law* (University of Chicago Press, 1986), p. 1.

<sup>12</sup> R. H. Coase, ‘The Problem of Social Cost’, in R. H. Coase, *The Firm, the Market and the Law* (University of Chicago Press, 1986), p. 95.

<sup>13</sup> D. Campbell, ‘Ronald Coase’s “The Problem of Social Cost”’ (2016) 35 *University of Queensland Law Review*, 75, 88–97.

of affairs to be suboptimal because of the existence of an externality can never in itself be a sufficient justification for intervention. However bad one judges the existing state of affairs to be, intervention will optimise welfare only if government action will improve things. Deciding whether this will be the case should involve the most careful empirical investigation of the existing state of affairs and of government capacity to improve upon it. Coase argued that such 'patient study'<sup>14</sup> was typically not, or only very inadequately, made because there was a general assumption that the requisite government capacity was available or could be developed.

In 1964, Coase first used the term 'blackboard economics' to describe the derivation of 'conclusions for...policy from a study of an abstract model';<sup>15</sup> the policy will work on the blackboard, but unfortunately, as no or very inadequate inquiry had been made into the conditions of its implementation, it cannot be put into practice in ways that improve welfare. Coase's own demolitions of specific blackboard economic policies<sup>16</sup> are often excellent and highly amusing (if one can for a moment set aside the waste and misery involved) demonstrations of the general force of his criticism of what, as a corrective to exclusive focus on 'market failure', he called 'government failure'.<sup>17</sup>

Writing more than half a century after 'The Problem of Social Cost' appeared, one of the current authors, Campbell, observed that few proposals could any longer be directly criticised as blackboard economics. It had become *de rigueur* to enter reservations about the possibility of implementation of a policy. Campbell concluded that this, however, had not led to the improvement that might have been hoped, for these reservations generally amounted only to what he called '*ceteris paribus* reasoning'.<sup>18</sup> One did not ignore difficulties of implementation as in blackboard economics. One noted how the attempt to achieve desirable goals always encountered difficulties, but, *all things being equal*, this unfortunate fact of life should not hinder the attempt. Having entered this facile generality, no adequately detailed specific investigation of the state of affairs found to be suboptimal or the possibility of improving upon it typically was made, no revision or even abandonment of the intervention as

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<sup>14</sup> Coase, 'The Problem of Social Cost', p. 118.

<sup>15</sup> R. H. Coase in E. W. Williams Jr. and R. H. Coase, 'The Regulated Industries: Discussion' (1964) 54 *American Economic Review (Papers and Proceedings)*, 192, 195.

<sup>16</sup> E.g., R. H. Coase, 'Notes on the Problem of Social Cost', in R. H. Coase, *The Firm, the Market and the Law* (University of Chicago Press, 1986), pp. 179–85.

<sup>17</sup> Ibid.

<sup>18</sup> D. Campbell, 'Of Coase and Corn: A (Sort of) Defence of Private Nuisance' (2000) 63 *Modern Law Review*, 197, 204.

impossible was properly considered, and the policy proceeded along essentially the original lines after the recitation of the rhetorical preliminary.

In later work, however, Campbell came to properly appreciate that Coase had himself previously exposed a most important example of what he (Campbell) was driving at. Coase had directed his criticism of the externality at its formulation by A. C. Pigou, particularly in Pigou's *The Economics of Welfare*, first published in 1920 as a sort of revised and greatly expanded version of his *Wealth and Welfare* of 1912, and though the main text of *The Economics of Welfare* was settled in 1932,<sup>19</sup> there was a 1952 'fifth edition' in which there was new material added in appendices. In the course of a debate about Coase's treatment of Pigou to which Campbell contributed,<sup>20</sup> it became clear that there was an important difficulty in treating Pigou as a blackboard economist. For on occasion, Pigou had explicitly said that identifying an externality raised only a '*prima facie* case' for intervention, and this could 'become more than a *prima facie*' case only after consideration of 'the qualifications...which governmental agencies may be expected to possess for intervening advantageously'.<sup>21</sup> This did not, however, hinder Pigou from making extremely ambitious policy proposals in *The Economics of Welfare* (and elsewhere) because, though Pigou acknowledged failures in government, he then generally argued that, while 'regular governmental agencies' have 'disadvantages [that] are all serious':

all of them can be, in great measure, obviated... [They] can be overcome, perhaps even more effectively, by the recently developed devices of Commissions or ad hoc Boards, that is to say, bodies of men appointed for the express purpose of industrial operation or control. An example of a Commission for operation is afforded by the Railway Department of New South Wales or the Port of London authority in this country, and one of a commission for control by the Interstate Railway Commission of the United States.<sup>22</sup>

It is unarguable that his failure to address the *prima facie* case places a serious question mark against Coase's criticism of Pigou in 'The Problem of Social Cost'. But, without going into the detail,<sup>23</sup> Coase acknowledged this in his

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<sup>19</sup> A. C. Pigou, *The Economics of Welfare* (4th edn, Macmillan, 1932), pp. 131–35. Though Pigou gave the first general statement of the concept, the term externality and the associated vocabulary of welfare economics were not developed until the 1950s.

<sup>20</sup> The debate is summarised in D. Campbell, 'The Sense in Coase's Critique of Pigou' (2017) 13 *The Journal of Law, Economics and Policy*, 39.

<sup>21</sup> Pigou, *The Economics of Welfare*, p. 332.

<sup>22</sup> *Ibid.*, p. 334.

<sup>23</sup> Which is discussed in Campbell, 'The Sense in Coase's Critique of Pigou'.

1986 introductory essay mentioned above and tried to restate that criticism to show it was ‘essentially correct’:<sup>24</sup>

Pigou’s belief [in the capacity of the recently developed devices] was first expressed in *Wealth and Welfare* in 1912 and repeated in all [five] editions of *The Economics of Welfare* without change. Pigou never seems to have thought it necessary to inquire whether his optimistic opinion about these commissions was justified by events in the subsequent forty years (the 1952 reprint [of the fourth edition] is the last edition to contain new material). In all editions the Interstate Commerce Commission is referred to as the Interstate Railway Commission, and this body, created in 1887, is always described as ‘recently developed’, which does not suggest any real interest in the subject.<sup>25</sup>

Coase surely shows here that Pigou’s acknowledgement in his major work of the difficulties of implementation of policy was purely gestural and did not imbue his proposals with the caution that would follow from proper investigation of their empirical possibility. Rather, that acknowledgement was merely a rhetorical preliminary to carrying on regardless, with no meaningful investigation of the possibility of the intervention being a success.

We apologise for the length of these introductory remarks but believe they are necessary to prepare the reader for the burden of the coming argument: at the heart of the lockdown policy was a *ceteris paribus* argument as disdainful of the empirical and even more conceptually confused than the *prima facie* case, Pigou’s most prominent but nevertheless merely rhetorical attempt to address the problems of policy implementation. As lockdown has illustrated in a most graphic way, the inchoately communist political atmosphere in which policy formulation can possibly take this form is a grave threat to welfare.

## 6.3. LOCKDOWN AS CONCEPTUAL CONFUSION

### 6.3.1 Mitigation or Suppression?

The UK government’s response to COVID-19<sup>26</sup> was marked by an extremely hasty (indeed it seems panicked and chaotic) and profound change of policy that culminated in the first legally enforceable ‘lockdown’ on 26 March 2020.<sup>27</sup>

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<sup>24</sup> Coase, ‘The Firm, the Market and the Law’, p. 20.

<sup>25</sup> Ibid., referring to Pigou, *The Economics of Welfare*, p. 334.

<sup>26</sup> A basic timeline of the key steps taken between 31 January 2020 and 29 April 2020 is provided in National Audit Office, *Overview of the UK Government’s Response to the COVID-19 Pandemic*, HC 366 (session 2019–21) (21 May 2020).

<sup>27</sup> The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, SI 2020/350, reg. 1. The lawfulness of imposing lockdown under such

Though part of a four-stage, ‘phased’ strategy that always contemplated considerable possible escalation of the measures taken,<sup>28</sup> the government initially adopted a limited policy based on what we shall call, for a reason that will emerge, the ‘mitigation’ of COVID-19.<sup>29</sup> The limited nature of this policy is conveyed by its main feature, initially stressed to the public as the need for greater attention to personal hygiene<sup>30</sup> in order to deal with a disease ‘the advice for managing [which] will be self-isolation at home and simple over-the-counter medicines’.<sup>31</sup>

Policy was drastically revised in March 2020 because of the advice the government received from its various scientific advisory committees based on academic epidemiological research following what was believed to be the emergence of SARS-CoV-2 in Wuhan, the capital of the Hubei Province of the People’s Republic of China, and its suspected presence in the UK to an extent that was thought to constitute a national (and indeed international)

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primary and secondary legislation as has actually been passed is completely questionable: J. Sumption, ‘Government by Decree; COVID-19 and the British Constitution’, in J. Sumption, *Law in a Time of Crisis* (Profile Books, 2021) pp. 220–24. What is not questionable at all is that when at a press conference on 23 March 2020, the Prime Minister issued an ‘instruction’ to ‘stay at home’ in an ‘address to the nation’ (The Prime Minister, ‘Prime Minister’s Statement on Coronavirus [COVID-19]’, The Prime Minister’s Office, 23 March 2020, <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>, accessed 7 March 2025), none of the necessary powers had been obtained: Sumption, *ibid.*, pp. 224–26. When later responding to criticism that lockdown was delayed, the Secretary of State for Health and Social Care insisted that 16 March 2020 was ‘precisely when the lockdown was started’ (HC Deb 16 July 2020, vol. 678, col. 1788), and indeed the Secretary had in an odiously threatening manner been ‘advising’ in effect compliance with lockdown as early as that date: HC Deb 16 March 2020, vol. 673, col. 697.

<sup>28</sup> Department of Health and Social Care et al., *Coronavirus: Action Plan* (3 March 2020), <https://www.gov.uk/government/publications/coronavirus-action-plan/coronavirus-action-plan-a-guide-to-what-you-can-expect-across-the-uk>, paras 3.9, 4.35, accessed 7 March 2025. On the general measures previously put in place to provide for a ‘pandemic’, see Department of Health and Social Care, *UK Pandemic Preparedness* (5 November 2020), <https://www.gov.uk/government/publications/uk-pandemic-preparedness>, accessed 7 March 2025.

<sup>29</sup> The sense given to ‘mitigation’ in the *Coronavirus: Action Plan* is not clear, but it was initially defined as the care of the ill and the maintenance of essential services affected by illness: *ibid.*, para 3.9.

<sup>30</sup> *Ibid.*, paras 4.34, 4.43.

<sup>31</sup> *Ibid.*, para 4.34.



emergency.<sup>32</sup> The most important document informing this revision of policy, published on 16 March 2020, was a report by the Imperial College COVID-19 Response Team largely composed of members of the UK Medical Research Council Centre for Global Infectious Disease Analysis, which is the World Health Organization Collaborating Centre for Infectious Disease Modelling, and the Abdul Latif Jameel Institute for Disease and Emergency Analytics, both research units within the Faculty of Medicine of Imperial College London. Formed in January 2020, the Response Team from the outset exercised enormous influence on UK and international policy towards COVID-19.<sup>33</sup> Its 16 March report presented, as it claimed, ‘the results of epidemiological modelling which [already had] informed policymaking in the UK and other countries in recent weeks’.<sup>34</sup>

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<sup>32</sup> For lockdown to be plausible, the UK spread of known and reasonably suspected infection had to be sufficient to make only targeting identified cases alone fruitless and to justify action at the level of the entire population. On the other hand, the spread had to be insufficient to make lockdown pointless because the contact rate was unmanageable or unnecessary because the herd immunity threshold had been exceeded. An earlier report by the Response Team based on the outbreak in Wuhan had enormously influentially concluded that SARS-CoV-2 was capable of self-sustaining human-to-human transmission: Imperial College COVID-19 Response Team, *Report 3: Transmissibility of 2019-nCoV* (25 January 2020), <https://www.imperial.ac.uk/medicine/departments/school-public-health/infectious-disease-epidemiology/mrc-global-infectious-disease-analysis/disease-areas/covid-19/report-3-transmissibility-of-covid-19/>, accessed 7 March 2025. The Response Team estimated transmissibility to be such that 60 per cent of contacts had to be blocked to control spread: *ibid.*, p. 1.

<sup>33</sup> Imperial College COVID-19 Response Team, *2020–21 Report* (22 March 2021) [https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/Imperial-College-COVID-19-Response-Team-2020-2021-Report-\(22-03-2021\).pdf](https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/Imperial-College-COVID-19-Response-Team-2020-2021-Report-(22-03-2021).pdf), accessed 7 March 2025, and Stephen Johns, ‘The Global Impact of Imperial’s COVID-19 Response Team’ (11 August 2020), *Imperial College London News*, <https://www.imperial.ac.uk/news/198737/the-global-impact-imperial-covid-19-response/> accessed 7 March 2025. We are unable here to discuss the Response Team’s international influence though it would seem that this has been to an extraordinary degree central to the global response to COVID-19.

<sup>34</sup> Imperial College COVID-19 Response Team, *Report 9: Impact of Non-pharmaceutical Interventions (NPIs) to Reduce COVID-19 Mortality and Healthcare Demand* (16 March 2020), <https://www.imperial.ac.uk/media/imperial-college/medicine/mrc-gida/2020-03-16-COVID19-Report-9.pdf>, p. 1, accessed 7 March 2025. See further, J. Kelly, ‘Imperial’s Neil Ferguson: “We Don’t Have a Clear Exit Strategy”’, *Financial Times* (7 April 2020), <https://www.ft.com/content/61ed62b5-302f-43f1-b124-cbd614ebffbe>, accessed 7 March 2025. If we understand the genomic minutes of the Scientific Advisory Group for Emergencies,

The inevitable absence of a vaccine against the newly emergent SARS-CoV-2 meant that the situation, the report fundamentally claimed, was comparable to the 1918–19 flu epidemic, and, as then, it was therefore necessary to focus on ‘non-pharmaceutical interventions’.<sup>35</sup> The report compared two ‘fundamental strategies’ of such intervention. Mitigation ‘focuses on slowing but not necessarily stopping epidemic spread – reducing peak healthcare demand while protecting those most at risk of severe disease from infection’, while suppression ‘aims to reverse epidemic growth, reducing case numbers to low levels and maintaining that situation indefinitely’.<sup>36</sup> Having set out the two strategies, the Response Team did not think an actual choice between them was available. Suppression was ‘the only viable strategy’.<sup>37</sup> This conclusion was thought to follow from a prediction<sup>38</sup> that has proven to be as significant as it was alarming. Predicting 510,000 deaths,<sup>39</sup> the report concluded that:

mitigation is unlikely to be feasible without emergency surge capacity limits of the UK and US healthcare systems being exceeded many times over. In the most effective mitigation strategy examined, which leads to a single, relatively short epidemic (case isolation, household quarantine and social distancing of the elderly), the surge limits for both general ward and ICU beds would be exceeded by at least 8-fold under the more optimistic scenario for critical care requirements that we examined. In addition, even if all patients were able to be treated, we predict there would still be in the order of 250,000 deaths in GB, and 1.1–1.2 million in the US... We therefore conclude that epidemic suppression is the only viable strategy at the current time.<sup>40</sup>

Implementation of stronger variants of the suppression strategy was, however, predicted to lead to total deaths being reduced to the low thousands.<sup>41</sup>

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what became the report was, following previous discussions of non-pharmaceutical interventions, ‘commissioned’ by the Scientific Advisory Committee on Emergencies (SAGE) on 5 March 2020: SAGE, ‘Thirteenth Meeting on Wuhan Coronavirus (COVID-19)’ (5 March 2020), List of Actions, <https://www.gov.uk/government/publications/sage-minutes-coronavirus-covid-19-5-march-2020>, accessed 7 March 2025.

<sup>35</sup> Imperial College COVID-19 Response Team, *Report 9*, p. 3.

<sup>36</sup> *Ibid.*, p. 1.

<sup>37</sup> *Ibid.*, p. 16.

<sup>38</sup> See further the text accompanying fn. 58 below.

<sup>39</sup> Imperial College COVID-19 Response Team, *Report 9*, pp. 6–7. This prediction was selected from a range depending on assumptions about the reproduction number,  $R_0$ , set out in Table 4 of the report.

<sup>40</sup> *Ibid.*, p. 16.

<sup>41</sup> *Ibid.*, Table 4.

The Response Team identified ‘optimal mitigation policies’ as a combination of ‘home isolation of suspect cases, home quarantine of those living in the same household as suspect cases, and social distancing of the elderly and others at most risk of severe disease’.<sup>42</sup> By contrast:

suppression [would] minimally require a combination of social distancing of the entire population, home isolation of cases and household quarantine of their family members. This may need to be supplemented by school and university closures... these policies will need to be maintained until large stocks of vaccine are available to immunise the population – potentially 18 months or more.<sup>43</sup>

In terms of their being put into practice, the mitigation and suppression strategies are best seen not as alternatives but as a continuum of possible interventions that could be interwoven into an overall ‘adaptive policy’.<sup>44</sup> However, the strong differentiation of the strategies in the report allowed great emphasis to be placed on suppression encompassing a drastic amplification of intervention. At points throughout the report, suppression was described as possibly extending to, not merely schools and universities, but also other situations including ‘workplaces and...other community locations such as bars and restaurants’,<sup>45</sup> and it would seem right to regard the suppression strategy as from the outset contemplating the extraordinary range of measures that did indeed come to be included in lockdown.

### 6.3.2 Uncertainty and Invention

The distinction between mitigation and suppression turns on their intended effect on what the report calls the reproduction number,  $R$ ,<sup>46</sup> which expresses the expected number of secondary cases produced by a single infection and so whether that infection will spread ( $R > 1$ ), remain stable ( $R = 0$ ), or decline ( $R < 1$ ).  $R$  is a function of three parameters: transmissibility – that is, the probability of infection when an infected individual comes into contact with a susceptible individual; the duration of infectiousness; and the amount of contact.<sup>47</sup>

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<sup>42</sup> Ibid., p. 1.

<sup>43</sup> Ibid., pp. 1–2, 15.

<sup>44</sup> Ibid., p. 11.

<sup>45</sup> Ibid., p. 8.

<sup>46</sup> Ibid., p. 3.

<sup>47</sup> The basic reproduction number  $R_0$  denotes the expected number of secondary cases in a, save for the index case, completely susceptible population. Prediction of the course of an outbreak using the Susceptible-Infectious-Recovered (or Removed) model is based on the effect of acquisition of immunity on transmissibility and duration. In the report,  $R$  often denotes the effective reproduction

In the absence of a vaccine (or other pharmaceutical interventions), transmissibility and duration are biologically determined, and it was the socially determined amount of contact that the mitigation and suppression strategies sought to influence by purporting to model their effects against the course of disease in their absence.

While modelling at this level of technique incorporates inferential techniques that identify and deaden inconsistencies in data,<sup>48</sup> it, of course, fundamentally remains the case that the predictive value of modelling  $R$  depends on the quality of the data about its parameters. Though the medical and physical scientific literature on COVID-19 has already grown to astonishing proportions,<sup>49</sup> there has been drastically insufficient public debate about the quality of the data with which the Response Team worked. In March 2020, SARS-CoV-2 was an organism almost certainly newly emergent and certainly only extremely recently known to UK and international virology, and the experience of COVID-19 was very small. The report's models of transmission, disease progression and healthcare demand<sup>50</sup> were based on – one searches for the right word – a paucity of evidence about the outbreak.<sup>51</sup> The criticism we are trying to make of the report as fundamentally conceptually confused should be distinguished from a criticism of excessive reliance on extremely

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number,  $R_t$  or  $R_c$ , which seeks to take into account discontinuities of susceptibility within what inevitably is a mixed empirical population.

<sup>48</sup> Created in great haste by the adaptation of software developed over a decade earlier to model an outbreak of influenza (influenza is not a coronavirus) and not made public until Microsoft specialists had refined it months after it had been used to give advice, the Response Team's modelling process itself was subject to great criticism. This does not seem, however, to have fundamentally invalidated this modelling: D. Singh Chawla, 'Critiqued Coronavirus Simulation Gets Thumbs Up From Code-checking Efforts' (2020) 582 *Nature*, 323.

<sup>49</sup> J. P. A. Ioannidis et al., 'The Rapid, Massive Infection of the Scientific Literature and Authors by COVID-19' (16 December 2020), *bioRxiv*, <https://www.biorxiv.org/content/10.1101/2020.12.15.422900v1.article-info>, accessed 7 March 2025.

<sup>50</sup> Imperial College COVID-19 Response Team, *Report 9*, pp. 4–5.

<sup>51</sup> The report relies on a version of a previous paper by, in essence, the Imperial College research units, made available in preprint by medRxiv: Robert Verity et al., 'Estimates of the Severity of COVID-19 Disease' (13 March 2020), *medRxiv*, <https://www.medrxiv.org/content/10.1101/2020.03.09.20033357v1>, 4–5, accessed 7 March 2025. Essentially, this paper was subsequently published as R. Verity et al., 'Estimates of the Severity of Coronavirus Disease 2019: A Model-based Analysis' (2020) 20 *Lancet Infectious Diseases*, 669. We shall refer to the preprint version.

imperfect data, but it is necessary to ground our criticism by reference to such reliance, and we turn to an illustrative case.

In addition to various outright assumptions, the prediction of demand on intensive care was a function of the relationship of infection to hospitalisation and of hospitalisation to intensive care.<sup>52</sup> The former was ultimately derived from estimates of the time between onset of symptoms and death based on only 24 individual-level cases in Wuhan, and of onset and recovery based on only 169 individual-level international cases outside of mainland China.<sup>53</sup> The claim ‘that 30% of those hospitalised will require critical care (invasive mechanical ventilation or [extracorporeal membrane oxygenation]’ was anecdotal, being provided in a personal communication, to our knowledge never made public, from a single specialist in critical respiratory care who, despite his eminence, can have known very little indeed about the empirical situation.<sup>54</sup> On the basis of emerging but unspecified ‘experience in Italy and the UK’, this prediction of demand had been doubled ‘in the last few days’ prior to the report’s publication, a ‘refinement of estimates’ that surely shows that both the earlier and later predictions were subject to huge uncertainty.<sup>55</sup>

That the report shows the effect of being written in extreme haste is by no means denied; indeed, the report and the slightness of the evidence on which it is based is its justification as a ‘real-time’ response to emergency. When the main advisory committee, the Scientific Advisory Committee on Emergencies (SAGE) discussed the report, it was insisted (as it seems was SAGE’s practice with all such findings) that the report ‘should be viewed in context: the paper was the best assessment of the evidence at the time of writing’.<sup>56</sup> It was on this basis that the report played a major role in the formulation of the ‘reasonable worst-case’ planning scenario drawn up by the Cabinet Office in agreement with SAGE, which has been the basis of the lockdown policy.<sup>57</sup> Though we have seen the Imperial College COVID-19 Response Team report speak in

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<sup>52</sup> Verity et al., ‘Estimates of the Severity of COVID-19 Disease’ p. 5.

<sup>53</sup> Ibid., pp. 4–5.

<sup>54</sup> Imperial College COVID-19 Response Team, *Report 9*, p. 5.

<sup>55</sup> Ibid., p. 16.

<sup>56</sup> SAGE, ‘Details’, comments on ‘Reasonable Worst-Case Planning Scenario – 29 March 2020’ (3 July 2020), <https://www.gov.uk/government/publications/reasonable-worst-case-planning-scenario-29-march-2020>, accessed 7 March 2025.

<sup>57</sup> In particular, the age-related ‘severity assumptions’ in the final version of SAGE’s reasonable worst-case scenario were marginally worse but in line with Table 1 of the report: SAGE, ‘Reasonable Worst-Case Planning Scenario – 29 March 2020’ (3 July 2020), Annex, [https://assets.publishing.service.gov.uk/media/5eff03d6e90e075c50609e0e/S0089\\_Reasonable\\_Worst-Case\\_Planning\\_Scenario\\_-\\_29.03.pdf](https://assets.publishing.service.gov.uk/media/5eff03d6e90e075c50609e0e/S0089_Reasonable_Worst-Case_Planning_Scenario_-_29.03.pdf), accessed 7 March 2025.

terms of prediction of 510,000 deaths, it was insisted by SAGE that a scenario is not a 'prediction', nor even 'a forecast of what is most likely to happen'.<sup>58</sup> The scenarios SAGE presented were acknowledged to be based on information 'subject to significant uncertainty', with SAGE generally claiming that it merely advised government about those scenarios, with it being the government that decided what to do, and specifically claiming that it was the Cabinet Civil Contingencies Secretariat, overall responsible for the management of emergencies, that advised the government to 'plan based on the [reasonable worst case scenario endorsed by SAGE]'.<sup>59</sup> In this way, though the report itself noted that 'much remains to be understood about [the] transmission' of the 'newly emergent virus', this did not prevent it from proceeding on the basis that 'most of the countries across the world face the...challenge today [of] a virus of comparable lethality to H1N1 influenza in 1918', and so a 'global... public health threat [that] is the most serious seen in a respiratory virus since the 1918 influenza pandemic'.<sup>60</sup>

Though the extreme imperfection of the available information was, then, acknowledged, this has been given no weight in policymaking of the highest significance, which has, we are obliged to say, been based on alarmist claims of harm that do not invite but are insulated from scientific falsification because they are presented in such a way as to avoid giving an estimate of the probability of the harm. Though how the presentation of scientific advice in this way can have come to have such an influence on policymaking is a question of the first importance for the analysis of the political process, at the level of theory the adoption of lockdown is simply an example, differing from others only in scale, of the role the worst-case scenario<sup>61</sup> plays in the precautionary principle's general evasion of balancing the benefit of avoiding harm against the cost of doing so.<sup>62</sup> If a tendentious 'precaution', unbalanced by an appreciation of

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<sup>58</sup> SAGE, 'Details', comments on 'Reasonable Worst-Case Planning Scenario – 29 March 2020' (3 July 2020), <https://www.gov.uk/government/publications/reasonable-worst-case-planning-scenario-29-march-2020>, accessed 7 March 2025.

<sup>59</sup> SAGE, 'Reasonable Worst-Case Planning Scenario – 29 March 2020' (3 July 2020), p. 1, [https://assets.publishing.service.gov.uk/media/5eff03d6e90e075c50609e0e/S0089\\_Reasonable\\_Worst-Case\\_Planning\\_Scenario\\_-\\_29.03.pdf](https://assets.publishing.service.gov.uk/media/5eff03d6e90e075c50609e0e/S0089_Reasonable_Worst-Case_Planning_Scenario_-_29.03.pdf), accessed 7 March 2025.

<sup>60</sup> Imperial College COVID-19 Response Team, *Report 9*, pp. 1, 3.

<sup>61</sup> C. R. Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (CUP, 2009), ch. 3.

<sup>62</sup> F. B. Cross, 'The Paradoxical Perils of the Precautionary Principle' (1996) 53 *Washington and Lee Law Review*, 851, and I. M. Goklany, *The Precautionary Principle* (Cato Institute, 2001).

its costs, is to carry any of its natural meaning,<sup>63</sup> the precautionary principle is irrational, for it undermines or eliminates the balancing of costs and benefits.

As the precautionary principle adds only rhetoric to ‘the traditional approach’ of always striving to ‘restrain’ harmful effects that Coase rejected in ‘The Problem of Social Cost’ for failing to recognise ‘the reciprocal nature of the problem’,<sup>64</sup> the precautionary principle’s irrationality had been exposed long before the principle entered, much less became a cornerstone of, environmental policymaking. The rhetorical burden of identifying a ‘risk’ or a ‘harm’ is that we should avoid or prevent it. But any attempt to do so must be weighed against its costs, and an open mind should be kept about whether the attempt should be made. There is, in our opinion, nothing of fundamental substance to add to Coase’s argument that, though his argument addressed intervention more widely and he had never heard of the precautionary principle in these terms, completely disposes of that principle. To speak of taking precaution without weighing the costs against the benefits of doing so is meaningless for the formulation of policy, and it must result in such policy as is adopted having no rational goal, which has indeed been the identifying feature of the COVID-19 crisis.

This claim seems to fly in the face of what seems to be the obvious goal of the report, of avoiding huge loss of life, based on a scenario of 510,000 deaths. It is essential to now note that the 510,000 scenario was, in full, a prediction of what would happen ‘[i]n the (unlikely) absence of any control measures or spontaneous changes in individual behaviour’. It was extremely misleading to describe this scenario as ‘unlikely’, and its description elsewhere in the report as the result of ‘do[ing] nothing’ was even more so.<sup>65</sup> There was no possibility whatsoever that there would be no spontaneous changes in behaviour of the sort that would have taken place given an outbreak of, say, influenza or the common cold. Once COVID-19 was recognised as a significant respiratory disease, extensive spontaneous mitigation, certainly including what the report identified in its list of non-pharmaceutical interventions as ‘Social distancing

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<sup>63</sup> We set aside the many variants of the principle that defend it by weakening it to the point where it loses whatever concrete sense it ever had. At a certain point, these variants just express in a misleading vocabulary the proper modesty about what policy can do that we are advocating in this paper, captured by Coase as: ‘Until we realise that we are choosing between social arrangements which are all more or less failures, we are not likely to make much headway’: Coase, ‘The Regulated Industries: Discussion’, p. 195.

<sup>64</sup> Coase, ‘The Problem of Social Cost’, p. 96.

<sup>65</sup> Imperial College COVID-19 Response Team, Report 9, Figures 2, 3, Table 4. Do nothing is also plotted in Figures 1A, 2 and 3.

of those over 70 years of age',<sup>66</sup> would inevitably have taken place.<sup>67</sup> Nor was there any possibility of the government not taking some control measures, including steps to support such social distancing, perhaps, for example, by requiring and providing for the clinical examination of those who wished to enter care homes. In stating a worst-case scenario of 'an uncontrolled' or 'unmitigated epidemic' '[i]n the (unlikely) absence of any control measures' resulting in 510,000 deaths,<sup>68</sup> the report described a situation that could never obtain. Presented as 'the only viable strategy' in light of the magnitude of the threat, suppression was in fact a strategy to avoid something that could never possibly happen.

The incredible point remains, however, that in producing the 510,000 figure, the report *did* model a set of empirical circumstances that has never existed and could never exist. We again search for the correct word to describe just how troubling it is that this figure is presented as in some way connected with the empirical world, and indeed, all hawking about predictions and scenarios aside, as an empirical claim of the highest importance. Excessive confidence in the light of uncertainty and the shielding of this confidence from criticism by use of the word 'scenario' (in the context of the precautionary principle) do not remotely capture the mischief that was done. The 510,000 figure, which has turned the world on its head, was, unintentionally but uncomprehendingly, a fantasy number based on fundamentally flawed modelling of a zero-probability event.

### 6.3.3 Desirability and Possibility

Let us allow this alarmist fiction and examine the structure of the argument based on it that led to lockdown. The report claimed that even 'the most effective mitigation strategy [it] examined' would lead to 250,000 deaths, and as

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<sup>66</sup> Ibid., Table 2.

<sup>67</sup> The mitigation alternative that has received most public discussion is the 'focused protection' drawn up by three distinguished academic epidemiologists in a declaration internationally opened for public signature on 5 October 2020: M. Kulldorff, S. Gupta and J. Bhattacharya, *The Great Barrington Declaration* (4 October 2020), <https://gbdeclaration.org/#read>, accessed 7 March 2025. In an attempt to maintain some coherence in our argument in the face of the defining absence of this quality in the report, we confine to a footnote the way that an intervention similar to the Declaration was identified in the report, but included in the list of 'suppression strategies' (our emphasis). On the same assumption about  $R_0$  that generated 510,000 deaths, this option generated between 85,000 and 98,000 deaths: Imperial College COVID-19 Response Team, *Report 9*, Table 4.

<sup>68</sup> Ibid., pp. 7, 8, 10, 11, 19.



510,000 deaths are even less desirable than 250,000, this seemed to justify the conclusion that the suppression strategy was ‘the only viable policy’. But even allowing the 510,000 and 250,000 figures (and therefore a 260,000 figure), this conclusion is logically unfounded.

Desirability, even the desirability of avoiding large loss of life, is, logically, an entirely separate issue to possibility, and the report does not address possibility at all in the sense of inquiring whether the governmental capacity necessary to bring about the desirable state of affairs exists or is able to be created. The very magnitude of the perceived desirable goal of avoiding such huge loss of life seems to itself have settled the ‘choice’ of suppression as ‘the only viable’ policy, but this is a *petitio principii* supplying the essential premise that the desirable goal can be achieved. No extent of desiring a goal logically entails that one knows what to do to realise it, and any strategy that can be rationally adopted must be one that it would be within the government’s capacity to formulate and implement. The failure to recognise this has meant that there is an acute paradox at the heart of the use made of the report.

Desirability may well be positively correlated to the work one will put in to finding out how to bring about the desirable, but the crucial thing is to do the work. The mark of blackboard economics and *ceteris paribus* reasoning is that this work is not done. Setting aside, we repeat, the pure inventedness of the 510,000 figure, and trying to focus on some general idea of suppression by non-pharmaceutical intervention, the practice of good government faced with the situation the report claimed to describe was to recognise the presence of highly imperfect information and the inevitable transaction costs this imposed – that is, to deal with ineluctable ignorance.<sup>69</sup> Measured steps and a process of learning in the light of experience were essential. Instead, the report advocated an intervention *ab initio* requiring the management of the entire society that could not have done more to maximise difficulties of implementation, but acknowledgement of these difficulties had no effect for they were nullified by *ceteris paribus* reasoning.

The patient study of institutional possibility insisted upon by Coase was bound to be missing in a report that acknowledged that suppression would have ‘enormous social and economic costs’<sup>70</sup> but explicitly stated that it would ‘not consider the ethical or economic implications of either [the mitigation or the suppression] strategy...except to note that there is no easy policy decision to be made’.<sup>71</sup> In taking an approach wholly contained in this truism about our lot in this vale of tears, the report completely disqualified itself from making a

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<sup>69</sup> F. A. Hayek, ‘The Theory of Complex Phenomena’, in *Collected Works of F. A. Hayek, Vol. 15: The Market and Other Orders* (Routledge, 2014), pp. 274–75.

<sup>70</sup> Imperial College COVID-19 Response Team, *Report 9*, p. 4.

<sup>71</sup> *Ibid.*

rational choice between the mitigation or suppression strategies (or formulating any rational policy), for such choice is entirely a matter of the valuation of its 'ethical' and 'social and economic' costs. One cannot rationally choose a policy without consideration of such costs for those costs are what the choice is about. To avoid pursuing too many arguments in the space available, we shall not directly address the 'ethical'<sup>72</sup> but focus on the consequences of recognising that the possibility of implementation is a matter of economic transaction costs. It seems simply to go without saying, and in the report it did go without saying, that one should avoid 510,00 deaths. But this is to assume one can avoid them – that is, one can bear the costs of avoiding them. But the possibility that the transaction costs of the suppression strategy exceeded the ability to bear them – that is, that suppression could not be effectively implemented – could not rationally be simply discounted, though, as the report explicitly eschewing consideration of economic costs emphasises, lockdown was possible only because these costs were effectively discounted in the *ceteris paribus* manner.

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<sup>72</sup> The report's attitude towards the ethical is another reason the 510,000 figure is spurious. In public debate, this figure has overwhelmingly been understood to mean 'additional' deaths of persons with an expectation of long, healthy life. This is fundamentally problematic given the report's own extremely strong correlation of severity and advanced age (*ibid.*, Table 1). The determinant of admission to hospital is the clinical decision to admit. This is never a simple function of, as it were, physical illness, but involves a valuation of the improvement in welfare to be gained by treatment – that is, it is intrinsically ethical. Leaving aside issues raised by admission to hospital in general, the intensive care provision that the report feared would be overwhelmed is of the most invasive kind, itself causing grave harm that can be justified only by a major gain in welfare. It may well be defensible to induce a young person into a coma for a week and to subject them to the consequent trauma if they can be expected to recover to lead many years of healthy life. It is completely questionable whether such treatment of a person who is vulnerable, typically due to advanced age, can be justified when that treatment either cannot be expected to succeed or will likely obtain for the patient a short prolongation of life (and a form of death), the quality of which is degraded by the treatment. This fundamental issue was not considered and remains completely unresolved, save in the sense that the report ignored it. The report could not have been expected to settle issues about the defensibility or otherwise of the prolongation of the life of the elderly vulnerable that call into question the wisdom of the prevailing pattern of NHS and social care expenditure, but to ignore the 'ethical' by making no reference to this in discussion of the 510,000 figure was deplorable. How much better would advice have been that did not predict a starkly alarmist figure but put the danger to public health in the context of the (quality of) life expectancy of those most vulnerable?

## 6.4. WHAT DID THE REPORT MEAN BY FEASIBILITY?

### 6.4.1 Feasibility as Political Will

It was not, however, the case that the report's choice of the suppression strategy was a simple instance of the commission of the logical fallacy Coase identified as blackboard economic arguments for intervention. The radical deficiency of the report is of a little more complex nature than it is essential to appreciate as it exemplifies the form that government failure now typically takes. When comparing the mitigation and suppression strategies, the report did not fail to address the capacity of the government to take measures that would improve welfare, and indeed this issue was in a sense the crux of the report. The immense costs of suppression meant, the report acknowledged, that only some 'high-income countries' could afford to undertake it.<sup>73</sup> More importantly for our concerns, the report further acknowledged that, within even these countries, the 'feasibility' of suppression, which would 'require... more intensive and socially disruptive measures than mitigation',<sup>74</sup> remained a question: 'The choice of interventions ultimately depends on the relative feasibility of their implementation and their likely effectiveness in different social contexts',<sup>75</sup> particularly because 'the impact of many of the [non-pharmaceutical interventions] detailed here depends critically on how people respond to their introduction'.<sup>76</sup> The report, then, by no means ignores the costs of intervention in the fashion of blackboard economics, but it dismissed them in the *ceteris paribus* way.

The report in fact contains no actual investigation of the empirical conditions of the implementation of suppression. In setting the formulation of the suppression strategy apart from consideration of its costs, the report prefigured the central feature of what has passed for public debate over lockdown, a separation of 'science' and 'politics'. The advice given to government on the basis of epidemiological and medical expertise is regarded as the ideal policy posited by physical science.<sup>77</sup> The implementation of that policy is then regarded as a matter of politics, with the inevitable implication that failures

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<sup>73</sup> Imperial College COVID-19 Response Team, *Report 9*, p. 4.

<sup>74</sup> *Ibid.*, p. 14.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, p. 3.

<sup>77</sup> We leave aside the many points of difficulty, such as flat inconsistency in the advice from just one source, the conflict of advice from different sources, and so on, for these have not essentially disturbed the extraordinarily deferential attitude taken by government and, undoubtedly, a clear majority of the public towards what presented itself as *the* physical scientific and medical advice.

of implementation are caused by political distortion of the ideal policy. What is needed is a political system that does not introduce such distortion and so adopts the ideal policy, and it is essential to grasp that the report raised the issue of feasibility because it saw such a system as in principle available.

In an astonishing act of credulousness given the state of the information even now and much less then available, the report maintained that suppression had been ‘successful to date in China and South Korea’.<sup>78</sup> More precisely, these countries had shown it was ‘possible in the short term’.<sup>79</sup> What of the suppression strategy in the long term given its costs? The report concluded by emphasising ‘that it is not at all certain that suppression will succeed in the long term; no public health intervention with such disruptive effects on society has previously been attempted for such a long time’.<sup>80</sup> This passage did not serve as a counsel of caution and restraint. It was merely a background to describing suppression as ‘the only viable strategy’. How could this be so?

Though acknowledging that the difficulties of implementing the suppression strategy were extreme, those difficulties were robbed of all weight, and any substantial consideration of their ethical and economic costs rendered unnecessary, because, conceived by the report as feasibility, implementation is merely a question of political will. The issue was never whether the suppression strategy *could possibly* be implemented; the issue was whether any political regime would take and persist with the necessary measures to do so. The report’s insistence upon consideration of feasibility did not, then, actually address the possibility of government failure in the Coasean sense of, in essence, taking on too much.<sup>81</sup> Feasibility was a question of whether a government would have the political will to adopt the ideal policy.

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<sup>78</sup> Imperial College COVID-19 Response Team, *Report 9*, p. 4; see also pp. 14–15. The report (*ibid.*, n. 7) refers to a 2005 paper by Professor Ferguson and others that argued that Thailand had earlier demonstrated how a weaker but similar strategy to lockdown had been possible in connection with pandemic influenza: Neil Ferguson et al., ‘Strategies for Containing an Emerging Influenza Pandemic in Southeast Asia’ (2005) 437(7056) *Nature*, 209.

<sup>79</sup> Imperial College COVID-19 Response Team, *Report 9*, p. 2. Of course, it is wholly unclear what could be meant by the success of suppression in the short term – that is, not determined by a length of term necessary to produce a stable satisfactory situation – other than a success in showing that suppression was possible at all. But it was only in this sense that the report was fundamentally interested.

<sup>80</sup> *Ibid.*, p. 16.

<sup>81</sup> R. H. Coase, ‘Economists and Public Policy’, in R. H. Coase, *Essays on Economics and Economists* (University of Chicago Press, 1994), pp. 62–63.

### 6.4.2 The Communist Example

Of the materials now known to us, the most important elucidation of the report's position over feasibility is an interview that the leader of the COVID-19 Response Team, Professor Neil Ferguson, gave in December 2020.<sup>82</sup> Ferguson and his colleagues '[o]f course...knew it was possible that social distancing could control a respiratory virus', but even after coming to believe that China had confirmed this theoretical possibility, they initially saw this as irrelevant: 'It's a communist one-party state, we said. We couldn't get away with it in Europe, we thought'. But '[f]ollowing China's example people's sense of what is possible in terms of control changed quite dramatically between January and March', and in particular after Italy adopted a lockdown policy in February 2020, what was not feasible became seen as such: 'We couldn't get away with it in Europe, we thought...And then Italy did it. And we realised we could'. In sum, China showed the feasibility of lockdown to be a mere problem of establishing the necessary political will to implement the ideal policy: 'If China had not done it...the year would have been very different'.

The reliance on the example set by China is extremely troubling in both a narrower and a wider sense. The unproblematic reference to Wuhan in the report is possible only if one is all but completely uninterested in the real conditions of implementation.<sup>83</sup> Wuhan is, even by Chinese standards, an enormous and important city, the ninth largest in China with a population of over 11 million. One naturally thinks of a comparison with London. But, even if one accepts that the authors of the report knew what had happened in Wuhan, what is involved in containment by locking down that city, geographically isolated within a landlocked province in the immense landmass of China and with a population of only 0.75 per cent of China as a whole, is simply not comparable to locking down London, and so the entire UK, from any practical point of view. But the report eschews a practical point of view.

It was not, however, in any concrete sense that the example of China attracted the authors of the report. It was the prospect of unlimited political will offered by a 'communist, one-party state' that was attractive. But this prospect is itself based on, to put it as politely as possible, a woefully ignorant delusion about the transaction costs of governance under actually existing communism. It is the prospect of a political will that in a fantasy of omnipotence can overcome

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<sup>82</sup> T. Whipple, "People Don't Want a Lockdown So They Undermine the Scientists", *The Times* (26 December 2020), p. 44.

<sup>83</sup> Setting aside Verity et al., 'Estimates of the Severity of COVID-19 Disease', the articles on Wuhan that the report cites are all epidemiological models of disease suppression based on the scant data.

whatever obstacles arise to the implementation of policy that was found so desirable.

Having accepted the advice of the report, the UK government has done much to fashion itself into a regime capable of adopting the report's recommended policy. That suppression became at all possible has been the result of an extraordinary conjuncture of events, some of which are but distantly related to government policy – the ability of the Internet to mitigate the hardships of lockdown being the principal one. But two governmental decisions have been essential. The government has been prepared to generally weaken, and indeed on widely repeated occasions abandon, both the liberal democratic rule of law<sup>84</sup> and the budgetary constraint when determining specific public expenditures and the level of public indebtedness overall. Even the huge criticism that the consequent degradation of the economic, legal and political integrity of public institutions in a UK society subject to restrictions on liberty and hazard in public finance unprecedented in peacetime history has rightly drawn does not, however, capture the extent of the error in the very practice of government that has been perpetrated.

The worst episode so far has been literally tragic, as opposed to simply foolish and appalling, the reflexive consequence of lockdown for care home residents. Though no other than abstractly ideal hygiene measures could prevent hospitals inevitably becoming major loci of infection of a disease of this nature, in order to pursue the suppression policy directed at the entire population by vacating beds, the vulnerable elderly were removed from hospitals to care homes without inquiry into whether they were infected. Those in care homes, who were, of course, highly vulnerable to respiratory disease and would never have been treated in this way had spontaneous mitigation not been supplanted by the policy based on the report, have suffered gravely.<sup>85</sup>

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<sup>84</sup> Prior to the initial stages of vaccination, the government's only two 'successes' were easily securing the passage of by normal standards abhorrent and incompetent legislation (Sumption, 'Government By Decree: COVID-19 and the British Constitution'), and the manipulation of public opinion and conduct through the use of the authoritarian behavioural economics of 'nudging'. Valuable information about the use of nudging in the government's COVID policies is given in Dodsworth, *A State of Fear*, and its authoritarian character in general is described in D. Campbell, 'Cleverer Than Command? (Review of D. Halpern, *Inside the Nudge Unit*)' (2017) 26 *Social and Legal Studies*, 111.

<sup>85</sup> Between the first reported case and 5 June 2020, 47 per cent of deaths recorded by the Office for National Statistics as due to COVID-19 occurred in care homes: D. Oliver, 'Let's Be Open and Honest about COVID-19 Deaths in Care Homes' (18 June 2020), *British Medical Journal*, 369:m2334. Only approximately 5 per cent of those over 65 live in (widely defined) care homes.

The suppression strategy caused their premature deaths in a way that, unlike the general experience of COVID-19, turns on sensible definitions of ‘cause’, ‘premature’ and ‘death’.

As valuable official and unofficial commentary has pointed out, weakening and abandoning the rule of law and the budgetary constraint are extremely regrettable in themselves,<sup>86</sup> and some appreciation of this surely was part, if an unspecified part, of the report’s concern with feasibility. The report does not comprehend, however, that the rule of law and the budgetary constraint are not only desirable results of good government but are the necessary framework of rational policymaking. The response even to what is perceived as an emergency must take this into account. A government that forms its policy outside of the rule of law and the budgetary constraint can be guided only by expediency, and this requires it to be able to continually identify and implement what is expedient. As the government’s record of repeated failure illustrates, at the scale and scope of the suppression strategy necessarily aimed at control of the entire society, the problems of pursuing expediency have mounted uncontrollably.

The report’s longing look to ‘feasibility’ in ‘a communist one-party state’ based on the supposed example of Wuhan merely emphasises that the policy the report advocated turned on a romantic belief in central planning at the level of the entire society. What on earth has this got to do with actually existing communist societies? Every one of those societies has either produced a horror to which even lockdown cannot be seemly compared when it has actually

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<sup>86</sup> Perhaps the criticism of the government’s attitude to the rule of law that has met with the most deserved public recognition is that of Lord Sumption, ‘Government By Decree; COVID-19 and the British Constitution’. Professor Poole has argued that Lord Sumption failed to recognise that even the rule of law is subject to *salus populi suprema lex* (T. Poole, ‘A New Relationship Between Power and Liberty’ [23 May 2020], *Prospect Magazine*, <https://www.prospectmagazine.co.uk/ideas/philosophy/40247/a-new-relationship-between-power-and-liberty>, accessed 7 March 2025). In our opinion, Poole is right in principle, but the fundamental issue is not the relinquishment of rights, though this is, of course, of weight in itself, but whether the government is able to determine the *salus populi*. This can never be assumed, but in every case must be determined in the way upon which Coase insisted. In the case of lockdown, the government has lost its ability to justify its departures from the rule of law because it has gone far beyond its capacity to even identify welfare. This is only obliquely recognised in Lord Sumption’s reply to Poole: J. Sumption, ‘The Only Coherent Position is Locking Down Without Limit or Not Locking Down at All’ (26 May 2020) *Prospect Magazine*, <https://www.prospectmagazine.co.uk/ideas/philosophy/40252/lord-sumption-the-only-coherent-position-is-locking-down-without-limit-or-not-locking-down-at-all>, accessed 7 March 2025.

purported to implement central planning, or, paying ‘a tribute...to reality from a political point of view’,<sup>87</sup> has prolonged its existence only by in practice abandoning such planning.<sup>88</sup> China is, in fact, a particularly inapt example, for its achievements since 1979 have been a marked case of such abandonment.<sup>89</sup> The impossible ambition, the conception of citizens as merely objects to be manipulated, and the resort to authoritarianism as a response to inevitable policy failure that characterise central planning under actually existing communism have all already been seen in lockdown, and, as is only insufficiently grasped in public debate, the costs of lockdown have only just begun to manifest themselves. The UK government has ceded authority in policy formulation to the methods of the physical sciences in seeming, if scarcely credible, complete ignorance of the positivistic inadequacy of those methods to the comprehension of the social systems in which, *because of that inadequacy*, the physical sciences have sanctioned such drastic intervention. The resultant regulation is so inimical to the practice of good government that it must call to mind Bakunin’s description of communism as ‘the highly despotic government of the masses by a new and very small aristocracy of real or pretended scholars’.<sup>90</sup> In light of this, it is legitimate, indeed necessary, to ask whether lockdown is not the latest of those emergencies<sup>91</sup> that have led to the growth of inchoately communist government practices that are fundamentally inconsistent with liberal democracy.<sup>92</sup>

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<sup>87</sup> S. Malle, *The Economic Organisation of War Communism 1918–21* (CUP, 1985), p. 95.

<sup>88</sup> J. Kornai, *The Socialist System* (OUP, 1992).

<sup>89</sup> R. Coase and N. Wang, *How China Became Capitalist* (Palgrave Macmillan, 2013).

<sup>90</sup> M. Bakunin, *Statism and Anarchy* (CUP, 1990), pp. 178–79. Robert Dingwall, that *rara avis*, a social scientist who was a member of a ‘virus threat’ advisory body, has called rule under COVID-19 an ‘iatocracy – rule by medics’: R. Dingwall, ‘Waiting for Zero COVID Would Be a Foolish Error’, *The Daily Telegraph* (2 January 2021), p. 19. Iatocracy is, of course, a form of the ‘aleteioc-racy’, or rule of truth, which Kolakowski identified as the basis of the ‘ideological states’ that ‘achieved an almost perfect form’ in the USSR. ‘If you oppose such a state...you are an enemy of truth’: L. Kolakowski, ‘Politics and the Devil’, in L. Kolakowski, *Modernity on Endless Trial* (University of Chicago Press, 1990), p. 189.

<sup>91</sup> R. Higgs, *Crisis and Leviathan* (OUP, 1987). On the specific part, concerns about ‘safety’ have played a role; see R. Higgs, *Neither Liberty Nor Safety* (Independent Institute, 2012).

<sup>92</sup> D. Campbell, ‘The “Market” in the Theory of Regulation’ (2018) 27 *Social and Legal Studies*, 545.



## 6.5. CONCLUSION: DISREGARD OF THE EMPIRICAL: OPTIMISM OF THE WILL

The qualitative issues about the nature of good government, if not, thankfully, the consequences of abandoning it on the quantitative scale of lockdown, have always been central to the determination of the proper role of government in what are now the liberal democracies. The policy advocated by the report is merely quantitatively different from the policies of the ‘man of system’ identified by Adam Smith:

The man of system...seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces on a chessboard. He does not consider that the pieces upon the chessboard have no other principle of motion besides that which the hand impresses on them; but that, in the great chessboard of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might chuse to impress upon it.<sup>93</sup>

Smith’s main concern in advocating the ‘the obvious and simple system of natural liberty’<sup>94</sup> based on the principle of government that has come down to us as *laissez-faire*<sup>95</sup> was, we believe, with freedom as a good in itself. But the concern which dominates *The Wealth of Nations* is that general economic and social coordination is simply too complex to be consciously planned. Seeking to regulate according to the system of natural liberty means that:

[t]he sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient; the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interests of that society.<sup>96</sup>

In informed discussion it is unnecessary to argue that *laissez-faire* is never a question of doing nothing. It is a question of providing a legal and economic

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<sup>93</sup> A. Smith, *The Theory of Moral Sentiments (Glasgow Edition of the Works and Correspondence, vol. 1)* (Clarendon Press, 1979), p. 234.

<sup>94</sup> A. Smith, *The Wealth of Nations (Glasgow Edition of the Works and Correspondence, vol. 2)* (Clarendon Press, 1976), p. 687.

<sup>95</sup> D. Stewart, ‘Account of the Life and Writings of Adam Smith LL.D’, in A. Smith, *Essays on Philosophical Subjects (Glasgow Edition of the Works and Correspondence, vol. 3)* (Clarendon Press, 1980), p. 322.

<sup>96</sup> Smith, *The Wealth of Nations*, p. 687.

framework that necessarily is itself highly complex and dynamic,<sup>97</sup> but which intrinsically respects the limit that it must be only a framework, within which spontaneous action will optimise welfare.<sup>98</sup> Intervention, as Smith himself certainly allowed,<sup>99</sup> is in principle permissible, but it must be, as Popper put it, ‘piecemeal’,<sup>100</sup> because the greater its scale and scope, the greater the governmental capacity needed to ensure it optimises welfare, and this capacity is exceeded long, long before general coordination is attempted. Lockdown is but the latest of the policies that the liberal democracies have adopted that far exceed government capacity, and so inevitably diminish welfare.

The report’s repeated reference to feasibility in the context of a mere acknowledgement of the difficulties of the policy it proposed makes unusually clear how this gross excess of ambition can possibly be entertained. The *ceteris paribus* reasoning behind lockdown nullified the difficulty of what was to be attempted, and the report shows such reasoning to follow from seeing the universal solution to policy problems as a simple act of faith in political will. In the simultaneously ridiculous and horrific case of lockdown, the disregard of the empirical work necessary to identify and implement a policy that will improve welfare is astonishing, but it is the general approach that replaces Coase’s ‘patient study’ with faith that must be abandoned.

Having sufficient perception and objectivity to acknowledge that the predictions of ‘inevitable’ capitalist ‘breakdown’ that were central to Marxism during the time of its greatest political success in Western Europe had been empirically refuted, and yet still believing communism to be desirable, Antonio Gramsci made dogma seem attractive by adopting the call for ‘pessimism of the intellect’ to be balanced by ‘optimism of the will’.<sup>101</sup> No parallel objective perception of the empirical world characterises the dogmatism of the report. Quite the opposite is central to that report. Difficulties of policy implementation are noted in what is not, then, simple blackboard economics. But those difficulties are, through *ceteris paribus* reasoning, effectively ignored by being reduced to a question of the ‘feasibility’ of the originally desired policy when feasibility is understood in the most general way as command of political will, which takes the place of the specific empirical analysis of possibility. The

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<sup>97</sup> D. Campbell and M. Klaes, ‘The Principle of Institutional Direction: Coase’s Regulatory Critique of Intervention’ (2005) 29 *Cambridge Journal of Economics*, 263.

<sup>98</sup> Campbell, ‘The “Market” in the Theory of Regulation’.

<sup>99</sup> Smith, *The Wealth of Nations*, p. 723.

<sup>100</sup> K. Popper, *The Open Society and Its Enemies*, vol. 1 (5th edn, Routledge and Kegan Paul, 1966), p. 158.

<sup>101</sup> A. Gramsci, ‘Address to the Anarchists’, in A. Gramsci, *Selections from the Political Writings 1910–20* (Lawrence & Wishart, 1977), p. 188.

maxim of the report, in observance of which the practice of good government has been abandoned, is 'disregard of the empirical; optimism of the will'.

## ADDENDUM 1: COASE AND THE PHILOSOPHY OF THE CRITIQUE OR WELFARE ECONOMICS

The editors have asked us to expand on why we placed such reliance on Ronald Coase, rather than others, when framing our criticism of *ceteris paribus* policymaking.

Ronald Coase's *métier* was to draw lessons of the first importance for the formulation of economic policy, not from abstract theory but from detailed institutional analysis of economic arrangements. In perhaps his most perfectly realised paper, 'The Lighthouse in Economics', the use of the lighthouse as an axiomatic example of a public good is ridiculed by showing that British lighthouse construction had largely been a matter of private investment until 1842, when under the authority of an Act passed in 1836 all lighthouses remaining in private hands had been acquired by what would now be called a quango, and that the price paid for those lighthouses reflected the fact that they were thriving concerns.<sup>102</sup> And though things of value are, of course, said in them, Coase's rare forays into the philosophy of economics are not of outstanding interest, and they would not draw great attention were their author not also the author of 'The Problem of Social Cost'. Coase would have disavowed any attempt to directly compare his contribution to those made by, say, Buchanan, Hayek, and Michael Polanyi, who locate government failure within an explicit philosophy establishing liberal democracy as a uniquely valuable form of human association, though Coase, of course, took this view.

As a matter of economic theory, there are, in fact, considerable difficulties integrating Coase's approach in 'The Problem of Social Cost' into thoroughly market economics. Coase's criterion for 'choosing the appropriate social arrangement'<sup>103</sup> is the 'maxim[isation] of the value of production',<sup>104</sup> an objective criterion irreconcilable with the subjective determination of prices, as Buchanan pointed out.<sup>105</sup> But at the fundamental level, there is no real

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<sup>102</sup> R. H. Coase, 'The Lighthouse in Economics', in R. H. Coase, *The Firm, the Market and the Law* (University of Chicago Press, 1986), p. 191.

<sup>103</sup> Coase, 'The Problem of Social Cost', p. 118.

<sup>104</sup> *Ibid.*, p. 153.

<sup>105</sup> J. M. Buchanan, 'Rights, Efficiency, and Exchange: The Irrelevance of Transaction Cost', in *Collected Works*, vol. 1 (Liberty Fund, 1999). Buchanan was early to recognise 'The Problem of Social Cost' as a 'notable exception' to the axiomatic acceptance of Pigouvian welfare economics (J. M. Buchanan, 'Politics, Policy and the Pigouvian Margins', in *Collected Works*, vol. 1, p. 60, n. 1), and

difficulty integrating Coase's approach into a philosophy of human association based, in Hayek's words, on ascertaining that 'the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends'.<sup>106</sup> There certainly are passages in Polanyi, who shared elements of Coase's prose style, that could have been written by Coase.<sup>107</sup>

For the purposes of this chapter, it is in fact helpful that Coase took this objective approach, for this directly aligns his position with that of Pigou and all subsequent welfare economics, and in this respect a particular purchase is gained for Coase's criticisms of those economics.<sup>108</sup> Coase's views on transaction costs were in part reached by considering and rejecting the possibility of complete planning, and he would not have regarded a generally planned economy as a permissible governance structure.<sup>109</sup> But when deciding policy on those occasions when Popper's piecemeal public intervention might be a possibility, Coase's approach required him to weigh the narrowly 'economic' transaction costs of that possibility against the costs of private alternatives, and it is surely significant that the criticism he has received for displaying a right-wing bias about this fails to take into account that, to the extent the 'The Problem of Social Cost' makes any concrete policy suggestion, it is that it 'would seem particularly likely' that 'governmental...regulation [would] lead to an improvement in economic efficiency' in the case of the 'smoke nuisance [when] a large number of people are involved and the costs of handling the problem through the market or the firm may be high'.<sup>110</sup>

In sum, though starting from a position importantly similar to that of welfare economics, and being required by the approach set out in 'The Problem

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he referred to it in fulsome terms throughout his work. But he came to see it as inconsistent with Coase's earlier contribution, of which Buchanan approved at a fundamental level, to what Buchanan called 'the LSE' or 'London' tradition in cost theory based on subjective opportunity cost: Buchanan, 'Rights, Efficiency, and Exchange', p. 263.

<sup>106</sup> F. A. Hayek, *The Constitution of Liberty*, in F. A. Hayek, *Collected Works*, vol. 17 (University of Chicago Press, 2011), p. 80.

<sup>107</sup> E.g., M. Polanyi, *The Logic of Liberty* (Liberty Fund, 1998), p. 230 (first written in 1950): 'there is a considerable literature today which displays much ingenuity in suggesting improvements of the economic optimum, while hardly paying any attention to the question of their institutional implementation. The theoretical formalisation of economic tasks lends us the power to define precisely a whole range of such tasks, quite irrespective of manageability'.

<sup>108</sup> E. Bertrand, 'An Underrated Originality of "The Problem of Social Cost": The LSE Source' (2015) 23 *History of Economic Ideas*, 3, 38.

<sup>109</sup> Campbell and Klaes, 'The Principle of Institutional Direction'.

<sup>110</sup> Coase, 'The Problem of Social Cost', p. 118.

of Social Cost' to weigh the transaction costs of piecemeal public intervention against private alternatives without taking into account any wider political and social considerations, Coase nevertheless concluded that the normal form of welfare economics was blackboard economics. Of course, adequately explaining how this could possibly be the case requires an account of the social forces that have created the interventionist state, and while incisive comments about this, such as the one noted in our chapter, are to be found throughout Coase's work, it ultimately requires a general theory of liberal democracy of a kind he did not attempt.

## ADDENDUM 2: 'INCHOATE COMMUNISM'

The editors have also asked us to expand on our use of the term 'inchoate communism'.

Though numerous commentators just cannot bring themselves to acknowledge it, it is undeniable that Friedrich Hayek allowed for a welfare state that provided certain public goods, including 'that minimum of sustenance which the community has always provided for those not able to look out for themselves', and acknowledged 'a clear need for financing them by taxation'.<sup>111</sup> Eschewing pursuit of all the concerns of the welfare state was 'a position which is defensible but has little to do with freedom'.<sup>112</sup> Hayek could take this position because he believed that 'some of the aims of the welfare state can be realised without detriment to individual liberty'.<sup>113</sup> It follows that a desirable welfare state must satisfy two conditions. It must first be able to distinguish aims that are compatible with liberty from those that are not, and to refrain from pursuing the latter. Second, it must be possible to refrain from pursuing all aims, even those that could be pursued in a way compatible with liberty, 'by methods inimical to liberty'.<sup>114</sup> For, Hayek told us:

The chief danger today is that, once an aim of government is accepted as legitimate, then it is assumed that even means contrary to the principles of freedom may be legitimately employed [because] [t]he unfortunate fact is that, in the majority of fields, the most effective, certain and speedy way of reaching a given end will seem to be to direct all available resources towards the now visible solution. To the

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<sup>111</sup> Hayek, *The Constitution of Liberty*, p. 374. See also F. A. Hayek, *Law, Legislation and Liberty*, in *Collected Works*, vol. 19 (University of Chicago Press 2021), p. 288.

<sup>112</sup> Hayek, *The Constitution of Liberty*, p. 377.

<sup>113</sup> *Ibid.*, p. 375.

<sup>114</sup> *Ibid.*, p. 376.

ambitious and impatient reformer, nothing short of the complete abolition of that evil by the quickest and most direct means will seem adequate.<sup>115</sup>

Whether it is possible to have a welfare state in which both of these conditions are normally met is the truly live issue of all liberal democratic politics, and at the heart of this is determining the cumulative impact that pursuing interventionist policies will have on what common citizens come to think it is legitimate to require of government. With specific features of lockdown in focus, this chapter raised the issue by reference to Higgs' *Crisis and Leviathan*, but that the pursuit of increased welfare through intervention would undermine the commitment of common citizens to liberty, which ultimately is liberty's only ground, was, of course, a constant theme of Hayek's work, *The Road to Serfdom* being one of the most effective general warnings about it ever written.<sup>116</sup> In this chapter, the extremely undesirable maximalist form of the interventionist welfare state is called 'inchoate communism',<sup>117</sup> and, though other reasons were in fact more important, one of the reasons this concept was developed was to avoid what is believed to be a misstep in Hayek's approach, the general thrust of which, it is supererogatory to add, is completely endorsed.

The socialism that Hayek addressed when forming his opinion of it was 'of the frankly collectivist kind',<sup>118</sup> and he, of course, played his part in the pre-war 'socialist calculation debate' that established that such socialism was not merely undesirable but impossible. But the socialism Hayek subsequently faced could not be so described, and, as he put it in prefaces to later editions of *The Road to Serfdom*, 'the hot socialism against which [his book when originally published in 1944] was mainly directed...is nearly dead in the Western world',<sup>119</sup> for socialism now meant 'the extensive redistribution of incomes through taxation and the institutions of the welfare state'.<sup>120</sup> The adamant opposition to socialism that Hayek maintained to the end of his life<sup>121</sup> was based on seeing the same danger being posed by socialism in all its forms, their outcomes being 'very much the same'.<sup>122</sup> But this surely requires, given

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<sup>115</sup> Ibid.

<sup>116</sup> F. A. Hayek, *The Road to Serfdom*, in *Collected Works*, vol. 2 (University of Chicago Press, 2007).

<sup>117</sup> Campbell's coinage of the term is mentioned in the chapter, and after the chapter was written, the concept was elaborated upon in D. Campbell, *Contractual Relations* (OUP, 2022), pp. 398–407.

<sup>118</sup> Hayek, *The Constitution of Liberty*, p. 375.

<sup>119</sup> Hayek, *The Road to Serfdom*, p. 44 (preface to 1956 edn).

<sup>120</sup> Ibid., pp. 54–55 (preface to 1976 edn).

<sup>121</sup> F. A. Hayek, *The Fatal Conceit*, in *Collected Works*, vol. 1 (Routledge 1988).

<sup>122</sup> Hayek, *The Road to Serfdom*, p. 55.

that Hayek allowed the welfare state a legitimate function, a strong separation of socialism from the welfare state, and this is the thrust of Chapter 17 of *The Constitution of Liberty* headed 'The Decline of Socialism and the Rise of the Welfare State'.

Without claiming to fully argue the case for saying so, this is very unconvincing. One might reject the entire movement from merely legal to social citizenship that has created liberal democracy; but this is not what Hayek does. One might allow that, if one can define terms as one wishes, a strong separation of socialism and the welfare state is perfectly possible; but what has this got to do with the issues as they have emerged from the actual history of the welfare state? It is not only that the welfare state emerged under 'the pressure of socialist ideas',<sup>123</sup> but that this pressure could be and was successful only because 'new' or 'social' liberalism was the development of a 'socialist' dimension that classical liberalism always possessed,<sup>124</sup> which in turn required the affirmation of the classical liberal dimension of any socialism that could hope to gain real purchase in the liberal democracies. The key theme of the most theoretically profound such affirmation in the 'revisionist' socialism led by Eduard Bernstein was that 'with respect to liberalism as a historical movement, socialism is its legitimate heir, not only chronologically but intellectually'.<sup>125</sup> Orwell's views were the opposite of theoretically profound, but in part for this reason were a very telling expression of a most important political sentiment: socialism's 'only possible justification' is that it is necessary to 'preserve and even enlarge the atmosphere of liberalism'.<sup>126</sup> In terms other than those used by Hayek, in a most important sense the welfare state *is* socialism.

In the liberal democracies based on social citizenship, there was, to be frank, little prospect of success for a criticism of socialism that lectures 'well-meaning but unthinking people' that they did 'not understand that they were undermining the foundations of impartial justice' just because they believed

<sup>123</sup> J. Barzun, *From Dawn to Decadence* (Harper Collins, 2001), p. 688.

<sup>124</sup> L. Siedentop, 'Two Liberal Traditions', in A. Ryan (ed.), *The Idea of Freedom* (OUP, 1976).

<sup>125</sup> E. Bernstein, *The Preconditions of Socialism* (CUP, 1993), p. 147. Restating Bernstein's contributions to the fundamental and vexed debate within organised socialist movements over the preceding two years, the book *The Preconditions of Socialism* was first published in 1899.

<sup>126</sup> G. Orwell, 'Inside the Whale', in *Complete Works, vol. 12: A Patriot After All* (rev. edn, Secker & Warburg, 2000), p. 110. Orwell earlier had written: 'Socialists...have never made it sufficiently clear that the essential aims of socialism are justice and liberty': G. Orwell, *The Road to Wigan Pier*, in *Complete Works*, vol. 5 (Secker & Warburg, 1986), p. 199.

there to be substance in Anatole France's 'famous phrase' about sleeping under bridges, begging and stealing bread.<sup>127</sup> There was even less such prospect after one goes on to say that it is possible to establish institutions of social citizenship that are compatible with liberty, just so long as one calls them, not socialism, but the welfare state. Hayek was, with respect, able to maintain his position only because 'his views on the welfare state are very underdeveloped in terms of being incorporated into the coherent picture of the neo-liberal state that he has given us'.<sup>128</sup> It will not be possible to engage with the welfare state in a way that, going beyond warning about its dangers, says something of value about how we might avoid those dangers *in a fundamentally legitimate welfare state* unless one's argument encompasses a distinction between revisionist socialism as opposed to socialism as communism.

The purpose of these overlong comments is to point to a specific cost of Hayek's failure to establish joint cause, or even a point of contact, with the socialism of the liberal democracies. This socialism's attempt to actualise liberal freedom involves a thoroughgoing rejection of what Hayek has always rejected, but in the terms of the only attempt to completely abolish the market that requires and repays serious intellectual attention, that of Karl Marx, what is rejected is not socialism but communism, and the two are fundamentally opposed. The most important of the ways in which Engels and Marx conceived of the relationship of socialism and communism was of the first as a stage of transition from capitalism towards the second as a final goal.<sup>129</sup> Engels' and Marx's conception of communism has been found attractive because it is blissful, for it is a society in which, to focus on its 'economic' dimension, scarcity is abolished, and so all competition over resources is meaningless.<sup>130</sup> In such circumstances, the state has no reason to exist,<sup>131</sup> because all the problems of human existence that in the liberal democracies are addressed by rational economic calculation, justice, and democracy, no longer exist.

It is unnecessary to argue that, despite Engels' and Marx's claim that they had put the case for it on a scientific basis being the core of all their work,<sup>132</sup> and despite that claim being grounded in an analysis of humankind's

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<sup>127</sup> Hayek, *The Constitution of Liberty*, p. 343.

<sup>128</sup> R. Plant, *The Neo-liberal State* (OUP, 2010), pp. 190–91.

<sup>129</sup> For example, K. Marx, *The Class Struggles in France 1848–50*, in K. Marx and F. Engels, *Collected Works*, vol. 10 (Lawrence & Wishart, 1978), p. 127.

<sup>130</sup> K. Marx, *Critique of the Gotha Programme*, in K. Marx and F. Engels, *Collected Works*, vol. 24 (Lawrence & Wishart, 1989), pp. 86–87.

<sup>131</sup> F. Engels, *Anti-Dühring*, in K. Marx and F. Engels, *Collected Works*, vol. 25 (Lawrence & Wishart, 1987), p. 268.

<sup>132</sup> F. Engels, *Socialism: Utopian or Scientific?* in K. Marx and F. Engels, *Collected Works*, vol. 24 (Lawrence & Wishart, 1989).



relationship with its natural environment of profound interest, communism is a utopian fantasy. But it is necessary to see how this fantasy relates to socialism. Conceived as a transitional stage, socialism intrinsically has links to capitalism, from which it is developed or, to stress the point, derived. Conceived as a state of bliss, communism must have no such links to capitalism, and so *also cannot have links to socialism*. Socialism may, let us allow, reduce exploitation. It is not only exploitation, however, but the (improved) rationality, (improved) justice, and (improved) democracy that reduce exploitation that are merely ‘defects...inevitable in the first phase of communist society’,<sup>133</sup> which, like the state, will have no reason to exist in, and indeed must be eliminated from, communism proper.

All communism is inchoate in that attempts to actually abolish the market but preserve an industrial economy, exemplified by War Communism, are attempts to do the impossible, but communism is at least clearly based on the claim that it is in principle possible to move beyond ‘economics’. In the liberal democracies even now, we hesitatingly trust, no policy proposal based on a clear, express claim to this effect could be adopted. But disregard of scarcity in the form of an unbounded willingness to take on any policy that the political process identifies as desirable is now the normal form of intervention. Proper evaluation of the possibility of a policy succeeding would prevent this. But there is normally no remotely adequate such evaluation because success is believed to be a matter only of marshalling sufficient political will. The accumulation of desirable, impossible policies has reduced state intervention to, or perhaps it is better to say expanded it into, inchoate communism. A trade-off between welfare and freedom no longer captures the issues. It is normal for policies to be pursued that, far from improving welfare, have no rational justification of any sort. A fundamental increase in welfare in what has become ‘an age of fiasco’<sup>134</sup> now absolutely requires the welfare state to be made capable of rejecting such policies, at which point the current welfare state will increase welfare by shrinking. Our attempt to create this situation would very much benefit from the lessons learned in the course of liberal democratic socialism’s definition of itself in active opposition to communism.

## ACKNOWLEDGEMENTS

We are grateful to Robert Dingwall for his comments.

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<sup>133</sup> Marx, *Critique of the Gotha Programme*, p. 87.

<sup>134</sup> M. Moran, *The British Regulatory State* (OUP, 2003), p. 171.