



<http://social-epistemology.com>
ISSN: 2471-9560

The Emergence of Civil Libertarian Science in Pandemic Times

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Fuller, Steve. 2020. "The Emergence of Civil Libertarian Science in Pandemic Times." *Social Epistemology Review and Reply Collective* 9 (12): 10-13. <https://wp.me/P1Bfg0-4Wa>.

Introductory note: An abridged version of this paper appears as a response to the target article, ‘Corona Perspectives: Philosophical Lessons from a Pandemic’ by Yongmou Liu, Carl Mitcham and Alfred Nordmann, published in the 2021 edition of *Jahrbuch Technikphilosophie* (‘German Yearbook of Philosophy of Technology’).

As COVID-19 reaches its first year as a global pandemic, much has been made of the awkward fit between genuine scientific uncertainty concerning the course of the virus and the need for effective political communication and policymaking. In practice, the world has become a living laboratory, with each nation’s population serving as guinea pigs in rather different experiments based on largely the same science but applied under a variety of geographical, political and cultural conditions. Moreover, there are no agreed standards to make cross-national judgements about ‘success’ in handling the pandemic, though obviously the actions taken by governments have consequences for those outside of their formal jurisdictions. Indeed, every pronouncement by the World Health Organization that presumes such universal standards ends up striking one or more parts of the world as annoying backseat driving.

A useful albeit unexpected point of reference is the controversy over the meaning of *Volk* in *Volkswirtschaft* (‘national economy’) in early twentieth century Germany. On one side stood Werner Sombart and the Brothers Weber (Max and Alfred), who in their rather different ways regarded *Volk* as ‘concept’, roughly equivalent to the nation’s culture, understood as a kind of organism that evolves over time that exists semi-autonomously from the people who actually live within the nation’s borders at any given moment. On the other side stood Bernhard Harms, a founder of modern economic geography who recruited Ferdinand Tönnies to his institute of ‘world economy’ at Kiel. Harms defined *Volk* in terms of the actual residents in a nation-state at a given time—and the capacities they bring toward promoting the national interest (Plehwe and Slobodian 2019).

This distinction in conceptions of *Volk* is reminiscent of the one later drawn—for the centenary of the publication of Darwin’s *Origin of Species*—by the German-trained Harvard biologist Ernst Mayr (1959) between what he called ‘typological’ and ‘population’ thinking with regard to the nature of ‘species’. For Mayr, that ‘meta-scientific’ shift in conceptual horizons was Darwin’s ultimate achievement. In all this, we are ultimately talking about updated versions of the medieval scholastic distinction between ‘intensional’ versus ‘extensional’ definitions (Fuller 2020).

Most normative theorists have been biased toward the population side of *Volk* when dealing with the response to the pandemic, whereas the governments in charge across the world are more typological in orientation. Nevertheless, at a first order level, one can imagine that particular cultures might internalize population thinking as part of their collective self-understanding. What follows is an exploration of this prospect, which I call *civil libertarian science*.

The People or the Economy

A commonplace of political rhetoric across the world when dealing with the pandemic is that governments must balance people's health against the health of the economy. And of course, policymakers everywhere claim to be striking just the right balance. However, the task is made much harder when people's cultural self-understanding includes a strong sense of civil liberties. In their own interestingly different ways, the US, UK and Sweden have faced this issue squarely during the pandemic. I will simply sketch the different ways that I see them handling the matter, including some remarks about the larger theoretical issues that they raise in trying to achieve a philosophically perspicuous perspective on the pandemic.

Most of the media and scholarly focus relating to the US response has been on Donald Trump's near-denial of the pandemic's severity. Indeed, that may have tipped the balance against Trump in his otherwise surprisingly close-run 2020 re-election campaign. But let's think about this situation counterfactually. Suppose Hillary Clinton had managed to translate her three million popular vote victory into an electoral college win in 2016. What would she have done under the same circumstances—and would the results have been any different? It is easy to imagine that Clinton would have started lockdown earlier and tried to enforce it more uniformly across America. And what would happen at that point?

Here we need to recall that the US is a federal republic, which means that state governors have considerable discretion on how they handle matters under their jurisdiction. Put another way, Trump has been able to carry on as he has (until further notice) because a substantial number—perhaps 20 out of 50—of governors already think like him. The *de facto* result is a largely devolved approach to the pandemic, in which states that take the pandemic more seriously impose their own, often Europe-style lockdowns. Trump has allowed these more severe measures, probably because the US federal system offers him no viable alternative. Nevertheless he makes it clear that he doesn't like them.

Now imagine that Clinton was in Trump's shoes. Those twenty pandemic-denying governors would still be there. She would basically need to compel them to impose stricter measures to stamp out the virus. But how might she do this? It is difficult to see how she could avoid imposing some sort of 'martial law', which in turn would incite riots and violations, the participants in which would partially overlap with the people involved in comparable activities under Trump's actual rule. (Perhaps Clinton would take some lessons from Macron—for better or worse!) Arguably, the difference in outcome—at least as measured in terms of fatalities—would not be as big as the ideological differences between Clinton and Trump might suggest.

My point is that the civil libertarianism legally embedded in American culture places limits on the 'effective' response that central government can make to a nation-wide, let alone global pandemic. The UK, which characteristically 'muddles through' any crisis, recognizes this as well. To his credit, Boris Johnson is much more self-conscious in his rhetoric and actions about his nation's civil libertarian tradition than Trump. Although the UK media discourse is very much focussed on 'lives vs jobs', the UK government is aiming for a more sophisticated approach. It 'nudges' rather than compels people to do the right thing, trailing its policies for several days before they are enforced (if they are), in order to enable people to get used to them.

Admittedly, this has led to considerable confusion in messaging, especially for people who don't regularly follow the news. But it is telling that 'Her Majesty's Loyal Opposition' is not calling for the government's downfall. Indeed, the UK Labour Party—now under new, more Fabian management—has been largely supportive of the government's efforts, complaining mainly about the lack of clarity in messaging. Interestingly, as I write, the Labour Party leader Keir Starmer has for the first time called for a second total national lockdown.

Unfortunately, it comes at the same time that the Labour Party Mayor of Manchester Andy Burnham declares that Boris has already gone down too far down that route, leading Burnham to threaten civil disobedience. If nothing else, in the UK, like the US, concerns for civil liberties persist, regardless of who happens to be in power during the pandemic.

Sweden provides a very interesting variation on this theme, given its early open endorsement of a 'herd immunity' approach to the pandemic, which the UK echoed in more muted terms—and then retracted, at least officially. At first, the relationship between herd immunity and a civil libertarian culture may not be apparent. However, it begins to make sense upon considering Sweden's self-understanding as a nation-state that raises people to be responsible individuals and then simply lets them get on with it, based on the information made available to them and a sense of mutual trust between the state and the individual. At a conference on children's rights, the Swedish journalist and Olof Palme biographer Henrik Berggren (2006) illuminated this sensibility in terms of the story of Pippi Longstocking, in which the state stands for Pippi's absconded parents, who nevertheless left her a chest of gold coins with which to manage her affairs. Pippi rises to the challenge with a strange combination of recklessness and generosity, according to the narrator, who is a more 'normal' child living next door—and is duly impressed.

On Civil Libertarianism

There is much to say about the relationship of the state and the individual implied here. It ultimately reflects the implicit Deist theology of civil libertarianism, what Voltaire ridiculed as *deus absconditus*: the divine perpetrator who flees from the scene of the first crime, Creation! (Here Voltaire was making fun of himself, since he too held this view but wasn't willing to cover up its absurdity in Biblical references. Little did he realize that Schopenhauer would take him seriously!) Such Deism is evident in the US Founding Fathers, who held that no human governor should be more powerful than the deity in whom the governed believe. This was their Locke-inspired civil libertarian response to Hobbes' challenge that God should simply be replaced by a secular state holding the monopoly of force in society.

The intuition here is Augustinian/Calvinist: The mark of humanity's fallen nature is that the problem of free will vs. determinism is not to be resolved intellectually (*à la* Hume) but rather is always lived through in high tension. Even if God is gone from the scene, humans—no matter how powerful—are always in less than absolute control over their own fate. It is easy to see how this plays into the emergence of probabilistic reasoning in the Enlightenment, and more specifically the incentive to take risks—what I have called the 'proactionary' attitude (Fuller and Lipinska 2014). After all, even on the Deist view, the fact that we're fallen and that the deity is 'gone' doesn't take away from our having been created *imago dei*. That's Pippi's gold chest, which is now courtesy of the welfare state. William

Beveridge, the liberal eugenicist economist who designed the UK welfare state thought similarly. I have described his aim as breeding ‘natural born liberals’ (p. 76). So what does this mean with regard to the current pandemic?

At the most basic and seemingly trivial level, it means that the state should trust itself that it has already sufficiently ‘raised’ its population that people will trust the state whenever it needs to issue any further instructions concerning their behaviour. As the agricultural metaphor of ‘raising’ (crops and livestock) suggests, what states provide is an expansive potential for response, based on some sense of ‘improved’ seeds and grounds. But in the end, the seeds must negotiate their relationship with the ground—and here the state’s role is no more than to minimize absolute failure. But there will be failures. The elderly and those with ‘underlying’ health conditions are more likely than others to die from COVID-19. In many such cases, all that additional state intervention would have achieved is a few months’ delay of an outcome that was largely overdetermined. Of course, one should not be too glib about this prospect, since as Keynes famously reminded us, we are all dead in the long run. Nevertheless, as the earlier counterfactual analysis of Trump vs Clinton on the pandemic suggested, the political science of civil libertarianism doesn’t allow that much wriggle room for saving lives. There will be blood whoever is in charge.

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