Exceptions and being human: 
Before and in times of COVID-19

As a much proclaimed ‘new normal’ accompanying the global pandemic, the suspension of certain rights to protect other rights returns our attention to notions of exceptions outside the law in terms of sovereign power and those hidden within the law, such as structurally embedded violations. The consent for the emergency rights accorded to the state to act for the greater protection and bio-survival of all occurs alongside certain contestations which also, in dramatic instances, include spaces for new protests against structural and physical violence on the person. The murder of George Floyd and the protests which followed signalled points of both convergence and dissonance in relation to the emergency rights of the state and the overlooking of other ‘less visible’ loss of rights.

In this regard, while projections of the new normal accompanying the global pandemic are meant to further naturalise the emergency exceptional spaces under the coronavirus, it is accompanied by intensified spaces to propel into vast public consciousness, knowledge of certain less evident and long-standing exceptional modes. The outpourings in the aftermath of Floyd’s killing provided for examples of such exceptions to be newly visible alongside the global restrictions as sudden and very publicly shared status of being human.1 The worldwide scale of suffering in the deadly pandemic, thus, appears aligned in some ways to such specific uncovering of structural and other kinds of inequalities. It also relates to differential understandings of personhood at collective and individual levels and how the person is un-made, as variedly constituted – thus, in the contexts here, to be ‘subsumed’ in pandemic-mandated collective personhood or appear outside this collective in dissonant gatherings.

The protests raised issues of a particular lack of consent to the law’s silences or omissions on these inequities – as newly expressive and in contrast to the pandemic-related control of public spaces. This is alongside the assumed wide-scale consent for emergency rights to states: such allowable exception also materialises as an overturning of doubts and criticism of the state’s overreach. The understandings of wide-scale
consent for the state’s emergency rights are not without reservation and questioning. It prompts, in particular, the Italian philosopher Giorgio Agamben (2020a, 2020b, 2020c) to question the new need for such levels of exceptions and normalisation. This follows Agamben’s (1998, 2005) work on ‘states of exception’, in an ‘extension’ of Foucauldian biopolitics securitisation. Agamben considers the panic fuelled by the global pandemic as another mode of imposing emergency measures, noting that with the exhaustion of terrorism, the epidemic offers new lease to allow for unlimited scaling of ‘emergency’ exceptions (2020a).

That Agamben’s latest intervention is not without interlocutory exchanges (see Foucault et al. 2020) comes out in differing views which, in some instances position the state as arrayed with the collective against the great pandemic threat. For instance, ideas of compassion for the forsaken (Dwivedi and Mohan 2020) and the need to suspend such concerns in the face of the vast bio-survival threat (Nancy 2020) serve to mediate the impacts of the state’s incursion into person-centred spaces and emergency suspension of certain rights in favour of a larger public good. This, again, extends to understandings of personhood in terms of collective and individual rights. Alongside the debates on further normalising of emergency powers of the state is a revisiting or particularised renderings of personhood, remade in one instance into ideas of a ‘global singularity’ and, in another, of the ‘non-exceptionality’ of persons living with inequalities and structural violence, as indicated. This is in tandem with understandings of *homo sacer* (sacred man), excluded from legal protection and, thus, constructed through an explicit non-recognition of being a person – a bare life, constituted outside of legal rights (Agamben 1998). Bare life cannot be sacrificed, but can be killed as a non-homicidal act. Agamben (1998: 91) expanding on the ‘bare life’ status of those sentenced to death or detention in camps, noted their liminal existence between life and death – they were outside rights and expectations usual to ‘human existence’. Under Nazism, the Jew was a ‘flagrant case of a *homo sacer*.’ He was to be killed as ‘simply the actualization of a mere “capacity to be killed” inherent in the condition of the Jew as such’ (Agamben 1998: 68). This indicates a pre-selection as a deliberately deployed non-exceptionality to unmake the person.

In other examples, Divya Dwivedi and Shaj Mohan (2020) consider ‘non-exceptionality of exception’ in India, in pointing to multiple exceptions’ paradigms. They indicate the different forms of exceptions for high caste Brahmins, officiating over social order which also provided for their rigid distancing from the Dalits, the lowest of castes. As absolutely polluting, the Dalits ‘cannot be touched by the upper
castes.’ Separately, Jonathan Parry has noted how funeral priests, the Mahabrahmans while ‘regarded as bona fide Brahmans’, are treated as untouchables, occupying a ‘permanent state of death pollution’ (1980: 93–94). Such non-exceptionality is further indicative of forms of personhood where persons are made to appear outside of relations with others, as a collective through stated boundaries and difference.

However, the implied pre-selected category of a ‘non-exceptional person’ – not readily visible as a rights-bearer – to be one which would also legitimise killing shifted in the case of George Floyd to merit homicidal charges. Currently, the former Minneapolis police officer who fatally kneeled on Floyd’s neck for over nine minutes, allegedly, is on second-degree murder and manslaughter charges. The non-exceptionality which served to strip persons of their rights ‘within’ or without recourse to the law, in this instance, allowed for renewed attention to questions of how such structural problems have subsisted, pre-pandemic.

Seemingly unconnected forms of exceptions – that of the state’s sovereignty constructed within and outside the law – to be presented as emergency exceptions to the law and of the structurally embedded losses of rights as ‘unnoticeable’ by the law are implicated in the re-ordering of the physical public places through the protests. In the social-distancing protectionist modes of redefining the use of space and human contact, the world is assailed with images of those who are no longer to be contained bodily, seen converging in apparent senseless masses in public spaces. This is amidst predictions and related criticism of such actions as having their own ‘viral’ status’, in the potential to infect others. Thus, bypassing the apparent casualness of disregard for others in this public converging, some join in compelling images across cities, to protest centuries of inequities, forming virtually connected groups across the world as if the lockdown, by virtue of its ‘anchor’ in violations, must reveal and be attached to these pains in a kind of ‘truth and power’ reversals (see Foucault 1995).

These are ‘joined’ arenas through the state’s legitimised control of movements of people and the ‘splinters’ away from this ordering of large-scale congregating, in different outbursts, in the regulation-rich pandemic spaces. The current outbursts are indicative of provocations against the law’s silence and omissions – and different from the ‘horrifying spectacle’ of public punishments before such practices were phased out by the early nineteenth century (Foucault 1995: 7–14).

The approaches to COVID-19 might also be considered in terms of the contrasts to the disciplinary measures to contain contagion during
the seventeenth-century plague in a town. While dissimilar in modes, there are certain resonances in the control mechanisms and ‘disorder’ performances which arose around this plague. Foucault noted how the experiences became reconstituted as fictionalised festival of ‘persons and bodies’ in abandon, alongside new truths of regulatory incursions into intimate everyday settings. He noted:

A whole literary fiction of the festival grew up around the plague: suspended laws, lifted prohibitions, the frenzy of passing time, bodies mingling together without respect, individuals unmasked, abandoning their statutory identity and the figure under which they had been recognized, allowing a quite different truth to appear. But there was also a political dream of the plague, which was exactly its reverse: not the collective festival, but strict divisions; not laws transgressed, but the penetration of regulation into even the smallest details of everyday life... (1995: 197–198)

The interconnections of ‘non-exceptionalities’ and new challenges in the pandemic remain implicated in forms of violence on the body. The role/capacity of violence enacted on the body is also about rendering or uncovering intimate knowledge of persons both implicitly and explicitly so (see e.g. Appadurai 1998). This may be also considered in terms of varying appropriations of universal rights as culture, or of rights versus culture, as issues of increasing contemporary concerns. This can allow for an over-reliance on the distinctions between culture as rights and universal rights in claimed ‘West and rest’ divides. This serves to highlight or justify the levels of ‘acceptable violence’, against those found to be outside a particular collective. It becomes explicit violence where loss of personhood (such as expelling the person from the collectivity) leads to sanctioned violence such as ‘honour’ killings, for instance (see, e.g, Shah 2016). That the absolute positions can over-rely on stated boundaries – as demarcated rights emerges in the example of Islamic mercy in Iran as akin to human rights in views of corresponding practices, ingrained in the country’s ‘1,400-year-old Muslim identity’ (Osanloo 2006: 571–572).

Further challenges to ideas of rights in terms of understandings of this divide occur in varying attentiveness to communities roles’ in sociocultural practices and relate to various debates (see e.g. Demian 2010). An overt tension between collective and individual settings, presented as distinctly bounded to lend to alternating claims of which kinds of rights are privileged, shifts in the on-the-ground relations and further impacts geopolitical constructs of rights poised on claimed demarcations.
These co-occupy spaces of other inequities to allow for structural forms of violence – now so tellingly visible after the deadly physical violence against George Floyd – where these settings become open to other related ‘testimonies’. Such protests occur alongside certain infringements of personal space also ‘violently’ affecting the integrity of the person. This is being much experienced in the pandemic to varyingly display as more universal, and through ideas of the common good, the new ‘collective person’ imagined and rendered through efforts to contain the viral nature of the disease. This collectivity necessarily becomes different from and arrayed against those who must be scrutinised and, or witnessed against, for failing to observe rules of the pandemic.

In the ‘public good ethos’ of the pandemic, the person as ‘visibly relational’ secures rights as an individual only where ‘they’ appear as part of the collective. This projected collective is the entire nation and, by extension, the entire global community. The state, to move from its conceived abstractedness, relies on a reconstituting of persons into the collective needing protection, which takes particular forms in the pandemic. This is while acknowledging different country approaches such as from China to the United States.

Thus, Agamben (2020b) points to this current reduction of the person to ‘bare life’ as constituted through the emphasis on biological survival. Reflecting on both church and jurists as failing the situation, he asks, also, how the church could forget its embrace of lepers. He questions how persons could be denied in death the rights of their loved ones to be present and the body disposed without a funeral. The searching discourses signal the constituting of persons in and out of the pandemic-mandated personhood. The idea of a collective good and personhood which includes exceptional rights and presence of the state becomes one to be scrutinised and differentially acknowledged.

Agamben (2020c) adds that while the emergency exceptions have been long normalised, in the reactive regimentation to the pandemic, sped-up normalisation rests on an overemphasis on bio-survival to the detriment of socio-political rights. He notes more ‘serious epidemics’ in the past which did not attract such consequential levels of emergency measures and restrictions. Agamben also calls it a ‘civil war’, with the enemy being within, to question the implications for the aftermath, where the state can implement certain experimental forms or continue these exceptions. This becomes an extended regulation of how persons might relate to each other, and institutions be ordered, in a remaking of the everyday.
These concerns emerge also as erasures of social intimacy, returning to how the person is to be made known or excluded, with Agamben (2020c) questioning whether universities and schools would remain closed and whether people may only interact virtually, with the possibility of machines substituting for ‘any contact – any contagion – between human beings’. As indicated, various others consider – in the face of the global pandemic and huge loss of human lives – through the debates, the extent to which concerns ought to be suspended about the state’s recourse to emergency exceptions and the pandemic-fuelled boost to its continuing normalisation. Dwivedi and Mohan (2020) remind us that caste barriers were contributory factors hampering the British colonial administration’s efforts to deal with the bubonic plague in Bombay in 1897. In excess of ten million people died during this plague.

Jean-Luc Nancy (2020) notes of the current pandemic: ‘We must be careful not to hit the wrong target: an entire civilization is in question, there is no doubt about it. There is a sort of viral exception – biological, computer-scientific, cultural – which is pandemic. Governments are nothing more than grim executioners, and taking it out on them seems more like a diversionary manoeuvre than a political reflection’. The very concern about the person must be mediated to render of less importance the questioning of the state’s increasing normalising of and experimenting with exceptions to rights.

This is notwithstanding the non-exceptional spaces of structurally embedded and other loss of rights alongside the explicit emergency exceptions of the state. Dwivedi and Mohan (2020) note the value of care of each life within communities ‘as precious’, and care for the person is in the shared plight of forsakenness so ‘that in the communities of the forsaken we can experience the call of the forsaken individual life which we alone can attend to’.

This shared plight is also conversely suggestive in the embodied co-optation of the state into the collective, ‘joined’ in the fears against the very real pandemic threat to human life. It is also the state’s (re)imagining of the collective and the levels of expected consent of people bolstered by understandings of large-scale bio-harm that vests the state with the extraordinary scale of normalising exceptions. The collective of persons to be protected, while achieving global singularity, has its precedence in multifaceted ways of how persons become differentially valued and or assembled/disassembled by laws, customs and norms, as indicated. That the state’s emergency-led powers of regulation to protect the bio-safety of the person by withdrawing or curtailing certain rights (legal/sociolegal) in the pandemic draws on these
different spheres also indicate how the state seeks the bounding off, as well as the larger connectedness, of persons.

The notion of the collective, itself, in engaging with its unraveling and re-assembling, draws our attention to how the person has to be unveiled, intimately so, in this rendering of personhood. While joined to compassion and further understood communities of the forsaken, the idea of state-led exceptions to be powerfully unexceptional, anew (despite other permanent kinds of non-exceptionality, as noted), can also lead to new violations. This might be considered within and beyond Agamben’s concerns about space for rampant continuity of the state’s ‘violatory’ powers, post pandemic. This leads to other efforts to continue or enact more extreme and different violations and to new challenges to forms of non-exceptionality as shown in the aftermath of the killing of George Floyd.

The reflections, here, complementing the forum in this issue, serve to show that in the constructed present of the pandemic, the concerns of ‘being human’ are very much about regaining social intimacy amidst distance while articulating loss, grief, lack of rights and protection for all. Alongside social distancing needs, the unfolding relations are also about finding ways to re-assert connectedness and bonds with each other, as well as to challenge newly visible ascriptions of ‘bare life’. This is while such relations also must attend to the primacy of the constituting of biological survival of life. The spaces which emerge to protest structural and physical violence to make more visible the embedded exceptions affecting the person also show that the pandemic-led normalising of emergency state exceptions must continually be assessed, drawing in ‘the before’ periods of COVID-19 and views of likely aftermaths to add to the present bio-social and political modes of being human.

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Notes

1. There is also the negative racial profiling of Chinese vis-à-vis the pandemic (see e.g. Dwivedi and Mohan 2020).

2. Seeking to extend or complete Foucault’s work on biopolitics, Agamben urges for a focus on the hidden convergence of the ‘institutional and the biopolitical models of power’. Agamben notes that Foucault, strikingly, did not engage with Hannah Arendt’s work or consider such ‘modern biopolitics’ sites as the camp (1998: 10–12). He identifies the camp as representative of the normalisation of such exception, noting that its inherent temporary status gave way to ‘a permanent spatial arrangement’ against the status quo (1998: 96).
3. For one of the critiques against Agamben, see Jill Jarvis (2014: 707), who considers a silence, in a particular non-interrogation of the usage of the term ‘Muslim’ for Auschwitz’s most bare figure – the most extreme ‘Jewish life.’

4. This is Derek Chauvin. Former police officers Thomas Lane, J. Alexander Kueng and Tou Thao also face charges of aiding and abetting second-degree murder, and aiding and abetting second-degree manslaughter. In July 2020, Lane applied to the court through his lawyer, to dismiss his charge, claiming he was unaware he was committing a crime when he held down Floyd’s legs and feet (Albert 2020).

References


