

# Disregard of the Empirical; Optimism of the Will: The Abandonment of Good Government in the Covid-19 Crisis

David Campbell, Lancaster University Law School

Kevin Dowd, Durham University Business School

## **Acknowledgements**

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## **Foreword, May 2023**

We are grateful to the editors and the publishers of the book in which this chapter appears, for that manner of that appearance is unusual. Save for the correction of slips and what it is hoped are some minor stylistic improvements, 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 The wish to publish a chapter which will, then, be three years out of date when it appears would anyway require explanation, but this is *a fortiori* the case with a chapter on a topic so quickly and dramatically shifting as the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 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 which 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 to resign 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 [Microsoft Word - Disregard of the Empirical.docx \(jhu.edu\)](#) 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 which 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.

### **Abstract**

The 'lockdown' policy adopted in response to an outbreak of SARS-CoV-2 has been the worst example of government failure in peacetime history. Justified by the perceived grave emergency, lockdown was based on epidemiological and medical advice at the heart of which was a *Report* by the Imperial College Covid-19 Response Team. This *Report* predicted 510,000 deaths on the basis of absurd assumptions about a zero probability event, and advocated a 'suppression' policy the empirical possibility of implementing which was never remotely adequately assessed. But

though it had consequences of a quantitatively different order to other government failures, lockdown was qualitatively merely an example of the common form of such failures. The work of assessing empirical possibility is rarely adequately addressed, and difficulties of implementation are dismissed by what will be called the '*ceteris paribus* reasoning' which follows from, as the *Report* makes particularly clear, an inchoately communist belief in the capacities of pure political will.

### **Keywords**

Covid-19 pandemic – Ronald Coase - government failure – blackboard economics – *ceteris paribus* reasoning

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**David Campbell, Lancaster University Law School and Kevin Dowd, Durham University  
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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>

**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

<sup>1</sup> Sir William Thomson, ‘Electrical Units of Measurement’ in *Popular Lectures and Addresses*, vol 1 (Macmillan, 1889) 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: eg Howard S Becker, *Evidence* (University of Chicago Press, 2017) 22.

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

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 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 paper

<sup>4</sup> Gordon Rayner, Lucy Fisher and Sarah Knapton, “‘I Am Deeply Sorry for Every Life That Has Been Lost’” *The Daily Telegraph* (London, 27 January 2021) 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) <[PM statement at coronavirus press conference: 23 March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/pm-statement-at-coronavirus-press-conference-23-march-2021)>.

<sup>6</sup> See n 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 which 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) <[Manufacturing Consensus: The Registering of COVID-19 Deaths in the UK – Architects for Social Housing \(ASH\)](https://www.architects4socialhousing.org.uk/manufacturing-consensus-the-registering-of-covid-19-deaths-in-the-uk)> and Architects 4 Social Housing, *Lies, Damned Lies and Statistics: Manufacturing the Crisis* (27 January 2020) <[Lies, Damned Lies and Statistics: Manufacturing the Crisis – Architects for Social Housing \(ASH\)](https://www.architects4socialhousing.org.uk/lies-damned-lies-and-statistics-manufacturing-the-crisis)>. 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: Gordon Rayner, ‘State of Fear: Ministers “Used Covert Tactics” To Keep Scared Public At Home’ *The Daily Telegraph* (London, 3 April 2021) 4 and Laura Dodsworth, *A State of Fear* (Pinter and Martin 2021).

<sup>8</sup> Cabinet Office, ‘Covid-19 Response: Spring 2021’ (22 February 2021) <[COVID-19 Response - Spring 2021 \(Roadmap\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/covid-19-response-spring-2021)>.

<sup>9</sup> As this paper was about to be submitted at 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 (Steven Swinford, ‘Fears That Spread of Variant May End in Tiers’, *The Times* (London, 18 May 2021) 1), though the occurrence of ‘variants of concern’ of a virus of this nature was entirely foreseeable from the outset.

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 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 as an irrational policy made possible only by the abandonment of the basic principles of good government which 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 which 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 assumed.

### **Coase, blackboard economics and *ceteris paribus* reasoning**

It is a 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 ‘My point of view

<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 one of the current authors: David Campbell and Robert Lee, “‘Carnage by Computer’: The Blackboard Economics of the 2001 Foot and Mouth Epidemic’ (2003) 12 *Social and Legal Studies* 425 and David Campbell and Robert Lee, ‘The 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.

has not in general commanded assent, nor has my argument, for the most part, been understood'.<sup>11</sup> It has, however, undoubtedly has 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 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 which improve welfare.

<sup>11</sup> RH Coase, 'The Firm, the Market and the Law' in *The Firm, the Market and the Law* (University of Chicago Press 1986) 1.

<sup>12</sup> RH Coase, 'The Problem of Social Cost' in *Coase, The Firm, the Market and the Law*, *ibid* 95.

<sup>13</sup> David Campbell, 'Ronald Coase's "The Problem of Social Cost"' (2016) 35 *University of Queensland Law Review* 75, 88-97.

<sup>14</sup> Coase (n 12) 118.

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

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 diminution of welfare 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 which 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 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 AC Pigou, particularly in *The*

<sup>16</sup> Eg RH Coase, 'Notes on the Problem of Social Cost', in Coase, *The Firm, the Market and the Law* (n 11) 179-85.

<sup>17</sup> *Ibid.*

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



*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, whilst ‘regular governmental agencies’ have ‘disadvantages [which] 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

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

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

<sup>21</sup> Pigou (n 19) 332.

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

the detail,<sup>23</sup> Coase acknowledged this in his 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.

<sup>23</sup> Which is discussed in Campbell (n 20).

<sup>24</sup> Coase (n 11) 20.

<sup>25</sup> Pigou (n 19) 334.

## Lockdown as conceptual confusion

### *Mitigation or suppression?*

The UK government's response to Covid-19<sup>26</sup> was marked by an extremely hasty, indeed panicked and chaotic, and profound change of policy which culminated in the first legally enforceable 'lockdown' on 26 March 2020.<sup>27</sup> Though part of a four stage, 'phased' strategy which 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 which 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 being 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>

<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 (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 primary and secondary legislation as has actually been passed is completely questionable: Jonathan Sumption, 'Government By Decree; Covid-19 and the British Constitution' in *Law in a Time of Crisis* (Profile Books 2021) 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) <[Prime Minister's statement on coronavirus \(COVID-19\): 23 March 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/prime-minister-statement-on-coronavirus-covid-19-23-march-2020)>, none of the necessary powers had been obtained: Sumption *ibid* 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) <[Coronavirus action plan: a guide to what you can expect across the UK \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/441441/coronavirus-action-plan-a-guide-to-what-you-can-expect-across-the-uk.pdf)>, paras 3.9, 4.35. 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) <[UK pandemic preparedness - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441441/uk-pandemic-preparedness.pdf)>.

<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> Department of Health and Social Care *et al* (n 28) para 4.34.

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 which was thought to constitute a national (and indeed international) 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 Organisation 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>

<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) <[2020-01-25-COVID19-Report-3.pdf \(imperial.ac.uk\)](#)>. The Response Team estimated transmissibility to be such that 60% of contacts had to be blocked to control spread: *ibid* 1.

<sup>33</sup> Imperial College Covid-19 Response Team, *2020-21 Report* (22 March 2021) <[Imperial-College-COVID-19-Response-Team-2020-2021-Report-\(22-03-2021\).pdf](#)> and Stephen Jones, ‘The Global Impact of Imperial’s Covid-19 Response Team’ (11 August 2020) *Imperial College London News* <[The global impact of Imperial's COVID-19 Response Team | Imperial News | Imperial College London](#)>. 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) <[2020-03-16-COVID19-Report-9.pdf \(imperial.ac.uk\)](#)> 1. See further Jemima Kelly, ‘Imperial’s Neil Ferguson: “We Don’t Have a Clear Exist Strategy”

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’, whilst 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> which 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>

*Financial Times* (London, 7 April 2020) <[Imperial’s Neil Ferguson: “We don’t have a clear exit strategy” | Financial Times \(ft.com\)](#)>. If we understand the gnomic minutes of the Scientific Advisory Group for Emergencies, what became the *Report* was, following previous discussions of non-pharmaceutical interventions, ‘commissioned’ by SAGE on 5 March 2020: SAGE, ‘Thirteenth Meeting on Wuhan Coronavirus (Covid-19)’ (5 March 2020) List of Actions <[S0381 Thirteenth meeting on Wuhan Coronavirus Covid-19 .pdf \(publishing.service.gov.uk\)](#)>.

<sup>35</sup> Imperial College Covid-19 Response Team, *ibid* 3.

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

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

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

<sup>39</sup> *Ibid* 6-7. This prediction was selected from a range depending on assumptions about  $R_0$  set out in Table 4.

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

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>

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 in practice, the mitigation and suppression strategies are best seen not as alternatives but as a continuum of possible interventions which could be interwoven into an overall ‘adaptive policy’.<sup>44</sup> However, the strong differentiation of the strategies in the *Report* allowed great stress 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 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 which did indeed come to be included in lockdown.

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

<sup>42</sup> *Ibid* 1.

<sup>43</sup> *Ibid* 1-2, 15.

<sup>44</sup> *Ibid* 11.

<sup>45</sup> *Ibid* 8.

### *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, ie 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> 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 which the mitigation and suppression strategies sought to influence by purporting to model their effects against the course of disease in their absence.

Whilst modelling at this level of technique incorporates inferential techniques which 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

<sup>46</sup> *Ibid* 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 number,  $R_t$  or  $R_e$ , 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: Dalmeet Singh Chawla, 'Critiqued Coronavirus Simulation Gets Thumbs Up From Code-checking Efforts' (8 June 2020) 582 *Nature* 323.

<sup>49</sup> John PA Ioannidis *et al*, 'The Rapid, Massive Infection of the Scientific Literature and Authors by Covid-19' (16 December 2020) *bioRxiv* [The rapid, massive infection of the scientific literature and authors by COVID-19 | bioRxiv](#).

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 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

<sup>50</sup> Imperial College Covid-19 Response Team (n 34) 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. 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.

<sup>52</sup> *Ibid* 5.

<sup>53</sup> Verity *et al* (n 51) 4-5.

<sup>54</sup> Imperial College Covid-19 Response Team (n 34) 5.



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’ which 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 *Report* speak in 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

<sup>55</sup> *Ibid* 16.

<sup>56</sup> SAGE, ‘Paper by the Imperial College COVID-19 Response Team’ (16 March 2020) <[Impact of non-pharmaceutical interventions \(NPIs\) to reduce COVID-19 mortality and healthcare demand - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434222/Impact_of_non-pharmaceutical_interventions_NPIs_to_reduce_COVID-19_mortality_and_healthcare_demand_-_GOV.UK.pdf)>.

<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 – 29/03/2020’ (29 March 2020) Annex <[S0089 Reasonable Worst-Case Planning Scenario - 29.03.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434222/S0089_Reasonable_Worst-Case_Planning_Scenario_-_29.03.pdf)>.

<sup>58</sup> SAGE, ‘Research and Analysis: Reasonable Worst-case Planning Scenario 29 March 2020’ (3 July 2020) <[Reasonable worst-case planning scenario, 29 March 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434222/Reasonable_worst-case_planning_scenario_29_March_2020_-_GOV.UK.pdf)>.

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 policy-making of the highest significance, which has, we are obliged to say, been based on alarmist claims of harm which 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 policy-making 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 its costs, is to

<sup>59</sup> SAGE (n 57) 1.

<sup>60</sup> Imperial College Covid-19 Response Team (n 34) 3, 1.

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

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

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 which 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 become a cornerstone of, environmental policy-making. The rhetorical burden of identifying a ‘risk’ or a ‘harm’ is that we should avoid or prevent it. But any attempt to do so has to 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 which, 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

<sup>63</sup> We set aside the many variants of the principle which 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 which 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 (n 15) 195.

<sup>64</sup> RH Coase, ‘The Problem of Social Cost’ in Coase (n 12) 96.

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 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 which 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 have 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

<sup>65</sup> *Ibid* Figures 2, 3 Table 4. Do nothing also is plotted in Figures 1A, 2 and 3.

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

<sup>67</sup> The mitigation alternative which 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: Martin Kulldorff, Sunetra Gupta and Jay Battacharya, *The Great Barrington Declaration* (4 October 2020) [Great Barrington Declaration \(gbdeclaration.org\)](https://www.gbdeclaration.org). 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 (n 34) Table 4.

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

some way connected with the empirical world, and indeed, all havoring 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.

### *Desirability and possibility*

Let us allow this alarmist fiction and examine the structure of the argument based on it which led to lockdown. The *Report* claimed that even ‘the most effective mitigation strategy [it] examined’ would lead to 250,000 deaths, and as 510,000 deaths is 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 has to be one which 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, ie 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 which 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* which 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

<sup>69</sup> FA Hayek, 'The Theory of Complex Phenomena' in *Collected Works*, vol 15 (*The Market and Other Orders*) (Routledge 2014) 274-75.

<sup>70</sup> Imperial College Covid-19 Response Team (n 34) 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, ie 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, ie 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.

<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, ie it is intrinsically ethical. Leaving aside issues raised by admission to hospital in general, the intensive care provision which the *Report* feared would be overwhelmed is of the most invasive kind, itself causing grave harm which can be justified only by a major gain in welfare. It may well be defensible to induce a young person into coma for a week and to subject her or him to the consequent trauma if he or she 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 expectation of those most vulnerable?

## What did the *Report* mean by feasibility?

### *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 which it is essential to appreciate as it exemplifies the form which 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 which 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

<sup>73</sup> Imperial College Covid-19 Response Team (n 34) 4.

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

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

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



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 of implementation are caused by political distortion of the ideal policy. What is needed is a political system which 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>

<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, etc, 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.

<sup>78</sup> *Ibid* 4; see also 14-15. The *Report* (*ibid* n 7) refers to a 2005 paper by Professor Ferguson and others which 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 (n 34) 2. Of course, it is wholly unclear what could be meant by the success of suppression in the short term, ie 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 is only in this sense that the *Report* was fundamentally interested.

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

This passage did not serve as a counsel of caution and restraint. It merely was 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.

### *The communist example*

Of the materials now known to us, the most important elucidation of the *Report’s* position over feasibility is an interview which the Leader of the Covid-19 Response Team, Professor Neil Ferguson, gave in December 2020.<sup>82</sup> Ferguson and his colleagues ‘Of 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 ‘Following China’s example people’s sense of what is possible in terms of control changed quite

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

<sup>82</sup> Tom Whipple, “‘People Don’t Want a Lockdown So They Undermine the Scientists’” *The Times* (London, 26 December 2020) 44.

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% 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

<sup>83</sup> Setting aside Verity *et al* (n 51), the articles on Wuhan which the *Report* cites are all epidemiological models of disease suppression based on the scant data.

communism. It is the prospect of a political will that in a fantasy of omnipotence can overcome 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 occasion 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 which 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 a literally tragic, as opposed to simply foolish and appalling, 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

<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 (n 27) and the manipulation of public opinion and conduct through 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 (n 7) and its authoritarian character in general is described in David Campbell, 'Cleverer than Command? (Review of D Halpern, *Inside the Nudge Unit*)' (2017) 26 *Social and Legal Studies* 111.

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> The suppression strategy caused their premature deaths in a way which, 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 policy-making. The response even to what is perceived as an emergency must take this into account. A government which 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.

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

<sup>86</sup> Perhaps the criticism of the Government’s attitude to the rule of law that has met with most, deserved, public recognition is that of Lord Sumption (n 27). Professor Poole has argued that Lord Sumption failed to recognise that even the rule of law is subject to *salus populi suprema lex* (Thomas Poole, ‘A New Relationship Between Power and Liberty’ (23 May 2020) *Prospect* <[A new relationship between power and liberty - Prospect Magazine](#)>. 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: Jonathan Sumption, ‘The Only Coherent Position is Locking Down Without Limit Or Not Locking Down At All’ (26 May 2020) *Prospect* <[Lord Sumption: the only coherent position is locking down without limit—or not locking down at all - Prospect Magazine](#)>.

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 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 which 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

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

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

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

<sup>90</sup> M Bakunin, *Statism and Anarchy* (CUP 1990) 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': Robert Dingwall, 'Waiting for Zero Covid Would Be a Foolish Error' *The Daily Telegraph* (London, 2 January 2021) 19. Iatocracy is, of course, a form of the 'aleteocracy', or rule of truth, which Kolakowski identified as the basis of the

is legitimate, indeed necessary, to ask whether lockdown is not the latest of those emergencies<sup>91</sup> which have led to the growth of inchoately communist government practices which are fundamentally inconsistent with liberal democracy.<sup>92</sup>

### **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 to the policies of the ‘man of system’ identified by 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 which has come down to us as *laissez faire*<sup>95</sup> was,

‘ideological states’ which ‘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 *Modernity on Endless Trial* (University of Chicago Press 1990) 189.

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

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

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

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

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

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:

The 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 framework which 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 which the liberal democracies have adopted which 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

<sup>96</sup> Smith (n 94) 687.

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

<sup>98</sup> Campbell (n 92).

<sup>99</sup> Smith (n 94) 723.

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



difficulty of what was to be attempted, and the *Report* shows such reasoning to follow from seeing the universal solution to policy problems to be 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 which will improve welfare is astonishing, but it is the general approach which 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' which 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 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'.

<sup>101</sup> Antonio Gramsci, 'Address to the Anarchists' in *Selections from the Political Writings 1910-20* (Lawrence and Wishart 1977) 188.