

## THE ITALIAN APPROACH TO THE COVID-19 CRISIS: A STATE OF EXCEPTION RULED BY TECHNICIANS

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In mid-March, Paolo Flores d'Arcais, an Italian philosopher and journalist, wrote an article titled “Philosophy and coronavirus: the ramblings of Giorgio Agamben”, where he discussed about how philosophy (which translates from ancient Greek as ‘love for wisdom’) can and should guide our understanding of – and response to – the covid-19 crisis. According to him, however, the recourse to philosophic theories should indeed be aimed at spreading knowledge and wisdom, rather than what he calls “superstitions and / or theological ruminations”, “spiritual funambulism and/or anti-scientific exorcisms” and “the basking and rooting in mediocre delusions of narcissism.”<sup>1</sup> In saying so, he was explicitly targeting Giorgio Agamben, who, at the beginning of the adoption of emergency measures in Italy, wrote an opinion piece named “the invention of a pandemic”, in which he basically accused the Italian government of using the covid-19 crisis as an excuse to institute a state of exception, unreasonably suspending the normal functioning of life and work conditions in the country.<sup>2</sup> Three months later, Agamben’s target shifted to professors accepting the “new telematic dictatorship” by having online courses, who he compared (“they are the perfect equivalent”) to the university lectures who swore allegiance to the Fascist regime in 1931.<sup>3</sup> Despite Agamben’s apparent underestimation of the pandemic,<sup>4</sup> as well as his unfair dismissal of professionals trying their hardest to make the best out of a complicated situation, it is worthy to reflect on whether and to what extent his – as well as other’s – philosophic theories could come handy to make sense of the way in which the Italian government is dealing with the Covid-19 crisis. To this aim, this paper will first examine the legal framework governing the Italian response to the pandemic, it will then discuss the model of governmentality that such framework establishes, and it will finally reflect upon some exclusionary dynamics it produces.

### *Coronavirus Emergency: The Italian response*

On January 31<sup>st</sup>, the Council of Ministers adopted a resolution declaring a national health emergency for 6 months in relation to the spread of the novel coronavirus.<sup>5</sup> The resolution states that the emergency

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<sup>1</sup> Flores d'Arcais, P. (2020, March 16). *Filosofia e virus: le farneticazioni di Giorgio Agamben*. MicroMega. Available at: <http://temi.repubblica.it/micromega-online/filosofia-e-virus-le-farneticazioni-di-giorgio-agamben/> (the translation is mine).

<sup>2</sup> Agamben, G. (2020, February 26). *L'invenzione di un'epidemia*. Quodlibet. Available at: <https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia>.

<sup>3</sup> Agamben, G. (2020, May 23). *Giorgio Agamben - Requiem per gli studenti*. Diario della crisi, Istituto Italiano per gli Studi Filosofici. Available at: <https://www.iisf.it/index.php/attivita/pubblicazioni-e-archivi/diario-della-crisi/giorgio-agamben-requiem-per-gli-studenti.html> (the translation is mine).

<sup>4</sup> According to Tim Christaens “Agamben sound like coronavirus denialists such as Bolsonaro or Trump”, Christaens, T. (2020, March 26). *Must Society be Defended from Agamben?*. Critical Legal Thinking. Available at: <https://criticallegalthinking.com/2020/03/26/must-society-be-defended-from-agamben/>.

<sup>5</sup> Delibera del Consiglio dei Ministri del 31 gennaio 2020. *Dichiarazione dello stato di emergenza in conseguenza del rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili* (Resolution of the Council of Ministers of 31 January 2020. Declaration of the state of emergency as a result of the health risk associated with the onset of pathologies deriving from transmissible viral agents), published on the Official Journal n. 26 of 1<sup>st</sup> of February 2020, available at: <http://www.protezionecivile.gov.it/amministrazione-trasparente/provvedimenti/-/content-view/view/1227612> (the translation is mine).

situation cannot be addressed with means and ordinary powers, and that it is thus necessary to promptly issue extraordinary measures aimed at coping with the serious international situation that has arisen. Since then, the President of the Council of Ministers has issued several decrees to curb the spread of the pandemic. The containment measures, in particular during the first phase of the response,<sup>6</sup> strongly limited constitutional rights, and in particular, among others, the freedom of movement and assembly and the freedom of private economic initiative, insofar as a national lockdown was imposed, alongside the temporary closure of non-essential economic activities.<sup>7</sup> From a legal theory perspective, Agamben is certainly correct to trace back such massive rule by decree response, to the theory of “state of exception”, originating from Carl Schmitt’s theory in *Dictatorship*. In this regard, a state of exception is realized when the sovereign (the executive power) takes the decision to suspend the Constitution, or the juridical order, by issuing decrees which are not formal laws (since they haven’t been adopted by the legislative power) but that nonetheless hold force of law (due to the fact that they have its same effect). This leads to an exceptional situation where even though the law is still in force, it is not applied insofar as “acts that do not have the value [*valore*] of law acquire its force.”<sup>8</sup> In the Italian context, however, the fact that the normal juridical order was suspended, does not in itself imply that a dictatorship was instituted insofar as the measures were taken on a temporary basis – they have now indeed been relaxed<sup>9</sup> – to respond to a specific and real emergency situation.<sup>10</sup> Furthermore, the majority of the decrees adopting containing measures have now been converted into formal law by the Parliament.<sup>11</sup>

### *The Italian approach: combining discipline and bio-power*

If asserting that the Italian response to the emergency created a dictatorship is clearly an overstatement, this does not mean that the government policies should not be scrutinized and criticized. In this light, particularly interesting is, in my view, the fact that – despite the adoption of such intrusive measures – the government appears not to accept the political responsibility arising from its decisions, but it rather places it on technical experts or on the citizenry itself. In my opinion, this is possible because – if we adopt Foucault’s theory of power as a framework of reference<sup>12</sup> – the mode of governmentality adopted

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<sup>6</sup> On the 16<sup>th</sup> of May 2020, many of the initial measures have been relaxed, allowing inter-regional travelling and re-opening several economic activities. For an overview of the measures currently in place, see: FAQ - Covid-19, questions and answers published in English on the Ministry of Health website, available at: <http://www.salute.gov.it/portale/nuovocoronavirus/dettaglioFaqNuovoCoronavirus.jsp?lingua=english&id=230#11>.

<sup>7</sup> *Coronavirus: Italy extends emergency measures nationwide*. (2020, March 10). BBC News. Available at: <https://www.bbc.com/news/world-europe-51810673>.

<sup>8</sup> Agamben, G. (2005). *The State of Exception*. The University of Chicago Press, at 38.

<sup>9</sup> See note n. 6.

<sup>10</sup> At the time of writing (29 of May), Italy has almost 232.000 confirmed cases of COVID-19, and more than 33.000 deaths. Data retrieved from: <https://www.worldometers.info/coronavirus/country/italy/>. For a comparison with the flu, which was mentioned by Agamben, as well as by a number of influential politician to deny the dangerousness of the COVID-19, the Italian Superior Institute of Health estimates that from 2007 to 2017, the deaths directly caused by the flu amounted to an average of 460/year, and the ones indirectly caused by flu (meaning that the flu was accompanied by previous serious health issues) ranged from 4.000 to 10.000/year. Data retrieved from: <https://www.agi.it/fact-checking/news/2020-02-26/coronavirus-influenza-stagionale-7231278/> (the translation is mine). Furthermore, it is necessary to recall that the containment measures were also justified in light of the difficulty of the Italian health system to cope with the increasing number of patients needing hospitalization, rather than the death rate per se.

<sup>11</sup> For an overview of the converted decrees and of the decrees in the process of being converted, see the website of the Italian Parliament, available at: [http://www.parlamento.it/leg/ldl\\_new/v3/sldlelencodlconvers.htm](http://www.parlamento.it/leg/ldl_new/v3/sldlelencodlconvers.htm).

<sup>12</sup> In his work, Foucault distinguished between three forms of power: sovereign, disciplinary and biopower. The last two are the respectively the focus of *Discipline and Punish* (1975) and *The History of Sexuality*, Volume I (1976). A comprehensive

to respond to the pandemic in Italy is based on a hybrid model that juxtaposes obvious elements of disciplinary power with several features of biopower and neoliberal governmentality. With regard to the disciplinary mode of governmentality, Foucault describes it as a repressive form of power characterized by a strong state intervention and an “over-regulatory” police apparatus entrusted with the task of controlling the territory and its subjects.<sup>13</sup> In this context, power is “exercised on the bodies of individuals”,<sup>14</sup> who are harshly punished if they fail to conform to the norms and act with docility. To this aim a “series of adjacent, detective, medical, and psychological techniques” of surveillance are put in place to find and punish the “culprit”.<sup>15</sup> Applying this framework to the Italian case, it springs to mind that the containment measures enacted have been described as having put “60 millions of Italians under house arrests”.<sup>16</sup> Furthermore, to ensure their compliance, politicians, public figures and the media encouraged the creation of an environment characterized by an invasive culprit's search. Indeed, alongside the displacement of law-enforcement officers surveilling almost every street – even with drones<sup>17</sup> – and fining people for violating the lockdown rules, several mayors started personally patrolling their cities sending people home and making Facebook videos scolding the disobedient population for not taking the situation seriously.<sup>18</sup> Furthermore, private citizens themselves started to harass and sometimes photograph – from their windows or balconies – people that they noticed walking outside,<sup>19</sup> without having any idea if they had any legitimate reason to do so.

Yet, even if the main response to the pandemic in Italy consisted in the implementation of strong containment measures which resembled in practice the disciplinary power described by Foucault, the government's capacity of tackling the pandemic has been made dependent solely upon the willingness of the citizens to comply with them.<sup>20</sup> In this context, Isabell Lorey has underlined how the focus and reliance on individual responsibility is one of the main features of liberal governmentality and biopower.<sup>21</sup> We have had no serious debate about the responsibilities of who has privatized the national health system and reduced its investments or even about the long-term strategy to deal with the

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account of Foucault's theory of governmentality is further laid down in *Security, Territory, Population: Lectures at the Collège de France 1977-1978*.

<sup>13</sup> In this regard, he refers to a ‘positive’ (in the sense of active) function of the police. See Foucault, M. (2007). *Security, Territory, Population. Lectures at the Collège de France 1977-1978*. Palgrave, at 353-354.

<sup>14</sup> Foucault, M. (2007). *Security, Territory, Population. Lectures at the Collège de France 1977-1978*. Palgrave, at 11.

<sup>15</sup> *Id.*, at 5.

<sup>16</sup> These words were pronounced by the former Prime Minister Matteo Renzi in an interview during the Italian show ‘Piazza Pulita’ on the 23 of April 2020. The video is available on the website of the television network: <https://www.la7.it/piazzapulita/video/coronavirus-renzi-ci-sono-60-milioni-di-italiani-agli-arresti-domiciliari-facciamoli-uscire-poi-23-04-2020-321229>.

<sup>17</sup> Meisenzahl, M. (2020, April 1). *Italian police are using drones to track down citizens who violate one of the strictest coronavirus lockdowns in Europe*. Business Insider. Available at: <https://www.businessinsider.com/coronavirus-italian-police-monitoring-lockdown-with-drones-2020-3?international=true&r=US&IR=T>.

<sup>18</sup> Horowitz, J. (2020, April 26). *Comic Insults Aside, Mayors Act as Sentinels in Italy's Coronavirus Tragedy*. The New York Times. Available at: <https://www.nytimes.com/2020/04/26/world/europe/italy-mayors-coronavirus.html>.

<sup>19</sup> Parodi, E.; Semeraro, G.; Anzolin, E.; Mackenzie, J. (2020, March 23). *Tempers flare in Italy as coronavirus toll keeps climbing*. Reuters. Available at: <https://www.reuters.com/article/uk-health-coronavirus-italy-temper/temper-flare-in-italy-as-coronavirus-toll-keeps-climbing-idUSKBN21A397>.

<sup>20</sup> Among several similar declarations, the Ministry of Health has stated on the 3<sup>rd</sup> of May that “the coronavirus will never be beaten by an act of the government. An ordinance or decree is not enough, they are tools put in place that have a purpose, but what really matters is the behavior of each person and the controls will not determine the outcome of this challenge.” This statement was published on the website of the Minister of Health, available at [http://www.salute.gov.it/portale/news/p3\\_2\\_1\\_1\\_1.jsp?lingua=italiano&menu=notizie&p=dalministro&id=4665](http://www.salute.gov.it/portale/news/p3_2_1_1_1.jsp?lingua=italiano&menu=notizie&p=dalministro&id=4665) (the translation is mine).

<sup>21</sup> Lorey, I. (2015). *State of Insecurity: Government of the Precarious*. Verso, at 25.

consequences of the pandemic. This is so because the whole rationale at the basis of the adoption of the containment measures was not deemed to be a specific political decision but solely the result of an obvious outcome dictated by the reliance upon supposedly neutral technical expertise. From the onset of the emergency, the public communication concerning the COVID-19 response has been shaped by references to the Technical and Scientific Committee, the group of technicians entrusted with the task of suggesting to the government the containment measures to curb the spread of the epidemic. Furthermore, television and radio shows have been characterized by an overexposure of virologists, epidemiologists and infectivologists telling the public how to behave. This trend contributed to a process of deresponsabilization of the executive powers who were responsible for having decided to suspend the normal juridical order in the first place. In this regard, for example, the President of Lombardy, the worst-hit region in Italy – who has been harshly criticized for the way he handled the crisis<sup>22</sup> – has repeatedly justified himself by saying that the decisions taken by its cabinet are merely the result of proposals of third parties and in particular of "technicians", which are thus responsible for any mistakes in managing the crisis.<sup>23</sup> Going back to the theory, alongside the focus on individual responsibility, a new relationship between power and knowledge based on an overreliance on scientific rationality rather than political considerations, is exactly what Foucault identified as being one of the major modification points depicting the shift from mercantilism (characterized by a protectionist system) to liberalism (characterized by a capitalist system) and from a disciplinary to a biopower governmentality.<sup>24</sup>

### *Final reflections*

I believe that the use of invasive disciplinary powers and the creation of an environment of general suspicion and fear, accompanied, however, by a rejection of political responsibility through a rhetorical reliance on individual conducts and scientific rationality is quite problematic. This is so because, in my view, it combines the shortcomings of an over-active state with the ones of a passive one, whose role is mainly to facilitate processes of self-regulation, without being willing – or able – to impose structural changes to respond to the contemporary crisis. In this light, another evidence of the fact that the Italian response is still deeply rooted into neoliberal governmentality is the total absence of measures addressed to what Bauman refers to as “human waste.”<sup>25</sup> For these categories of people, identified as the outcasts of society, the problem is not the “state of exception”, but rather the fact that for them no exceptional measure has been envisaged. For them the problem lies in the normal juridical order. I am referring here to the third country nationals placed in detention centers pending removal, notwithstanding the impossibility of complying with the health measures to contrast the COVID-19 and the practical impossibility of removal due to the suspension of air and sea connections,<sup>26</sup> to the homeless people who have been fined for not respecting the stay-at-home orders,<sup>27</sup> to the numerous victims of domestic violence whose situation has become unsustainable now that they are stuck at home with their

<sup>22</sup> Privitera, G. (2020, May 27). *First in, last out: Why Lombardy is still Italy's coronavirus hotspot*. Politico. Available at: <https://www.politico.eu/article/first-in-last-out-why-lombardy-is-still-italys-coronavirus-covid19-hotspot-italy/>.

<sup>23</sup> Bassi, C. (2020, April 18). *Rsa, l'attacco di Fontana: "Errori? Colpa dei tecnici"*. Il Giornale. Available at: <https://www.ilgiornale.it/news/politica/rsa-lattacco-fontana-errori-colpa-dei-tecnici-1855420.html> (the translation is mine).

<sup>24</sup> Foucault, M. (2007). *Security, Territory, Population. Lectures at the Collège de France 1977-1978*. Palgrave, at 350.

<sup>25</sup> Bauman, Z. (2007). *Liquid Times: Living in an Age of Uncertainty*. Polity Press, at 41.

<sup>26</sup> See, in this regard, the bulletin of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty of 24 of March 2020, available in English at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/dd6f22940ef3eab2defd9af5254c155b.pdf>.

<sup>27</sup> Belardelli, G. (2020, April 6). *È fuori casa, perché “vivo per strada”*. Senzatetto multato a Roma. HuffPost. Available at: [https://www.huffingtonpost.it/entry/multe-senza-fissa-dimora\\_it\\_5e8b1d43c5b6e7d76c674726](https://www.huffingtonpost.it/entry/multe-senza-fissa-dimora_it_5e8b1d43c5b6e7d76c674726).

abuser.<sup>28</sup> They seem to live in a state of exception within the exception or a camp<sup>29</sup> – to conclude with a (positive) reference to Agamben’s theories – precisely because for them the usual regulatory framework (or its lack thereof) still applies.

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<sup>28</sup> Nadotti, C. (2020, April 14). Coronavirus, aumentano le violenze sulle donne, ma il governo non sostiene i centri anti violenza. Repubblica. Available at: [https://www.repubblica.it/cronaca/2020/04/14/news/emergenza\\_coronavirus\\_aumentano\\_le\\_violenze\\_sulle\\_donne-254026268/](https://www.repubblica.it/cronaca/2020/04/14/news/emergenza_coronavirus_aumentano_le_violenze_sulle_donne-254026268/).

<sup>29</sup> Agamben, G. (1998)., ‘The Camp as Nomos of Modern Times’, in G. Agamben, *Homo Sacer*, Stanford University Press.