

LI-Briefing

The open society and its new enemies

MICHAEL ESFELD * • April 2021



Summary

- Like after the Second World War, we face today once again a choice between freedom and totalitarianism, namely between an open society that recognizes every human being as a person unconditionally and a closed society that ties the granting of fundamental rights to certain conditions that are set by a ruling elite.
- Challenges such as the spread of the coronavirus or climate change are not entirely new in their quality and magnitude. Such challenges have always been mastered by open societies through spontaneous adaptation of behaviour and technological innovation.
- Leading personalities from science, politics and business, in conjunction with the mass media, make these challenges appear as existential crises for humanity in order to gain acceptance for sweeping the basic values of our society aside by means of deliberately fomented fear.
- Externalities that come with free actions are played out in such a way that ultimately every free action comes under suspicion of harming others. People can discharge themselves from this suspicion only by means of a vaccination, a sustainability or, in general, a social pass. The exercise of freedom is thus placed under conditions set by experts who claim to have moral, normative knowledge to rule society.
- In order to counter this fatal development, we've to return to a substantial view of human beings based on freedom and human dignity from which fundamental rights derive that hold unconditionally. There is no moral value that stands above the dignity of every individual human being.

* The author is professor of philosophy of science at the University of Lausanne.

The *open society and its enemies* is the title of Karl Popper's major book in political philosophy, written in exile in New Zealand during the Second World War and published in 1945. This book was one of the intellectual foundations of the political course that was set by Winston Churchill's speeches in Fulton (Missouri) and Zurich in 1946: the formation of a Western community of states based on the rule of law and human rights to oppose the Soviet empire. As a result, the iron curtain became not only a physical but above all an ideological border – the assertion of freedom against the claim to power of totalitarianism. This setting established a framework that encompassed all the major social groups and political parties in the West: whatever divergent interests and different political programmes existed, the rule of law based on fundamental rights in contrast to the totalitarianism of the Soviet empire was not in dispute. This setting shaped politics and society for four decades. In 1989, after the fall of the Berlin wall, no new course seemed necessary: freedom and the rule of law had prevailed. Francis Fukuyama even spoke of the end of history¹.

That was a mistake. The fixing is done now, in 2021. Again, we face a crossroads between freedom and totalitarianism, which could, again, shape our lives for decades to come. Again, it is about a trend that could encompass all major social groups and political parties, whatever their differences otherwise are. This trend will be determined by the consequences that we draw from the corona crisis.

Popper on the open society

The open society is characterized by recognizing every human being as a person: the person has an inalienable dignity. Persons have the freedom to shape their lives as they see fit, as well as the responsibility to account for their actions on demand. Freedom is the human condition. When we think and act, we are free. This is so because one can demand reasons and thus justifications for thoughts and actions – and only for these. By contrast, it makes no sense to demand reasons for behaviour that is a reaction to biological stimuli and needs. We are free because the human species has freed itself during evolution from a behaviour that is a mere reaction to stimuli.

This freedom gives rise to fundamental rights. These are rights of defence against external interference in one's own judgement about how one wants to conduct one's life. In philosophy, these fundamental rights are conceived as being given with the existence of persons as such. They don't depend on the positive law of a state and contingent historical circumstances. To mention a few examples, this is so in natural law since antiquity; in the Enlightenment, which politically demanded universal human rights that apply equally to all human beings and which led, among other things, to the abolition of slavery; in Kant, whose categorical imperative demands that people always be treated as ends in themselves and never merely as means to an end; in the 20th century, also in the discourse ethics of Karl-Otto Apel or the theory of justice of John Rawls, among others. The state is a constitutional state

¹ "The end of history?", *The National Interest* 16 (1989), pp. 3-18

that protects these rights; it does not direct society, but gives people free rein to shape their social relations.

According to Popper, the intellectual enemies of the open society are those who claim to possess knowledge of a common good. On the basis of this knowledge, they claim to be able to control society in a technocratic manner in order to realize this good. This knowledge is both factual-scientific and normative-moral: it is moral knowledge about the highest good together with scientific or technocratic knowledge about how to steer people's lives in order to achieve this good. Therefore, this knowledge stands above the freedom of individual people, namely above their own judgement about how they want to shape their lives.

These enemies come from within our society. Popper makes this point in terms of the transition from Socrates to Plato and then from Kant to Hegel and Marx. Socrates and Kant lay the intellectual foundation for the open society; Plato, Hegel and Marx destroy it by replacing the search for what everyone sees as a successful life for themselves with the claim of possessing knowledge of an absolute good towards which history is heading. This knowledge entitles them to disregard fundamental rights and human dignity; for it is about the very goal of human existence. That is why this is a totalitarianism: the whole of society, down to the lives of families and individuals, is directed towards the realization of the alleged absolute good, with no limits being set by human dignity and fundamental rights.

These enemies of the open society have lost all their credibility as a result of the mass murders that proved inevitable on the way to accomplish the alleged good during the 20th century. On this path, not only were human dignity and fundamental rights eliminated, but at the same time a bad result was achieved in relation to the alleged good. Under communist regimes, on the way to a classless, exploitation-free society, more severe economic exploitation occurred than ever seen in a capitalist society. Under National Socialism, the path to the goal of a pure-blooded *Volksge-meinschaft* led this very people to the brink of ruin. These ideas and their political consequences indeed belong to history.

The new enemies of the open society

Nevertheless, we stand once again at a crossroads between the open society and totalitarianism. The new enemies of the open society come again from within our society with knowledge claims that are both cognitive and moral in nature and which again result in a technocratic shaping of society that overrides human dignity and fundamental rights. The difference is that the new enemies of the open society do not operate with the mirage of an absolute good, but with deliberately stoked fear of threats that allegedly endanger our existence. These threats are based on facts, such as the spread of the coronavirus or climate change. The challenges that we face, which are indeed serious, are taken as an opportunity to set certain values absolute, such as health protection or climate protection. An alliance of some scientists, politicians and business leaders claims to have the knowledge of how to steer social down

to family and individual life in order to safeguard these values. Again, the issue is about a higher social good – health protection, living conditions of future generations – behind which individual human dignity and basic rights have to take a back seat.

The mechanism employed is to spotlight these challenges in such a way that they appear as existential crises: a killer virus going around, a climate crisis threatening the livelihoods of our children. The fear that is stirred up in this way then makes it possible to gain acceptance for setting aside the basic values of our coexistence – just as in the totalitarianisms criticized by Popper, in which the supposedly good motivated many people to commit de facto criminal acts. It is not primarily evil people who do evil, but often good people who, out of concern for what they believe to be a threatened and important value for our existence, do things that ultimately have devastating consequences.

This mechanism strikes the open society at its heart, because one plays out a well-known problem, namely the one of negative externalities. The problem is this one: the freedom of one person ends where it threatens the freedom of others. Actions of one person, including the contracts she enters into, have an impact on third parties who are outside of these relationships, but whose freedom to shape their lives can be impaired by these actions. The boundary beyond which the free shaping of one's life causes harm to the free shaping of the lives of others is not fixed from the outset. It can be defined in a broad or a narrow way. The mentioned mechanism consists in spreading fear and exploiting the moral value of solidarity to define this boundary in so narrow a manner that, in the end, there is no room for the free shaping of one's life left: every exercise of freedom can be construed as generating negative externalities that pose a threat to the freedom of others.

The new enemies of the open society stoke fears of the spread of a supposed once in a century pandemic – but, of course, every form of physical contact can contribute to spreading the coronavirus (as well as other viruses and bacteria). They stoke fears of an impending climate catastrophe – but, of course, every action has an impact on the non-human environment and may thus contribute to climate change. Consequently, everyone has to prove that their actions do not unintentionally further the spread of a virus or the change of climate, etc. – this list could be extended at will. In this manner, everybody is placed under a general suspicion of potentially harming others with everything they do. The burden of proof thus is reversed: it is no longer required to provide concrete evidence that someone impairs the freedom of others with certain of their actions. Rather, everyone must prove from the outset that their actions cannot have unintended consequences that potentially harm others (other compatriots, or members of future generations). Accordingly, people can free themselves from this general suspicion only by acquiring a certificate that clears them – like a vaccination certificate, a sustainability passport or a social pass in general. This is a kind of modern sale of indulgences. One thereby abolishes freedom and installs a new totalitarianism: the exercise of freedom and the grant of fundamental rights depends on a licence that an elite of experts grants – or refuses to grant.

The crossroads with which we are confronted hence is this one: an open society that unconditionally recognizes everyone as a person with an inalienable dignity and fundamental rights; or a closed society to whose social life one gains access through a certificate whose conditions are defined by certain experts, as envisaged by Plato's philosopher-kings. Like the latter, whose knowledge claims were debunked by Popper, their present-day descendants have no knowledge that would put them in a position to set such conditions without arbitrariness.

The illusion of knowledge to steer society

Viral outbreaks of comparable magnitude to the current corona pandemic have occurred frequently – most recently the Asian flu in the mid-1950s and the Hong Kong flu in the late 1960s. Open societies always mastered them successfully through spontaneous behavioural adaptation and medical means focused on the protection of the vulnerable persons. The established knowledge of efficient pandemic management was thrown overboard in the spring of 2020. The experts who advocated the proven medical strategy of general hygiene recommendations and targeted protection of those at risk were defamed – as if everyone, of whatever scientific standing, had lost their mind as soon as they advocated the traditional way to deal with a pandemic. The goal was to replace the medical strategy with a political strategy that attempts to steer the entire society through the pandemic by an all-encompassing control of physical contacts. Human dignity and fundamental rights take a back seat to this control. This is not about solidarity with the people at risk. Their targeted protection is undermined by the political regimentation of all social life. The political regimentation of everyone's social life becomes almost an excuse for not having to specifically take care of the protection of vulnerable people, with fatal consequences for them, visible in the scandalously high number of corona deaths in nursing homes. All this is about the social control of the way in which people conduct their lives.

Numerous studies are now available that show that repressive political measures such as lockdowns do not make a statistically significant difference in the fight against the corona pandemic². This can be illustrated in this way: one shows people the relevant data such as hospital admissions and deaths relative to population from countries with similar geographic situation and economic prosperity over a longer period of time. It is not possible to infer from these data which of these countries adopted severe repressive policy measures such as lockdowns with orders to stay at home and which ones refrained from doing so³.

² Studies summed up in Eran Bendavid et al., "Assessing mandatory stay-at-home and business closure effects on the spread of COVID-19", *European Journal of Clinical Investigation* 51 (2021), e 13484. See also the overview of the relevant studies in *American Institute of Economic Research*, "Lockdowns do not control the coronavirus: the evidence", <https://www.aier.org/article/lockdowns-do-not-control-the-coronavirus-the-evidence> (accessed 20 December 2020). See furthermore Christian Bjørnskov, "Did lockdown work? An economist's cross-country comparison", *CESifo Economic Studies*, 29 March 2021, 1-14, DOI: 10.1093/cesifo/ifab003. For a criticism of the lockdown politics in Germany see Christoph Lütge and Michael Esfeld, *Und die Freiheit? Wie die Corona-Politik und der Missbrauch der Wissenschaft unsere offene Gesellschaft bedrohen*, Munich: riva 2021.

³ Cf. R. F. Savaris et al., "Stay-at-home policy is a case of exception fallacy: an internet-based ecological study", *Nature Scientific Reports* 11 (2021), article no. 5313.

One example is the comparison between Germany and Sweden as from summer 2020 on, after Sweden had come to grips with the initial failures in the protection of nursing homes: between Sweden without lockdown and Germany with lockdown, there has been no statistically significant difference in the success of combating the pandemic since then. Another example are states in the USA, such as Florida and California, which are comparable because of their warm climate and coastal location. Since September 2020, the governor of Florida has been following the science, namely the science that has always been used to successfully combat pandemics on a comparable scale with medical means only. Florida, despite all the catastrophic prophecies, if one follows this science, is by no means worse off in the health management of the pandemic than California, where political reprisals continue to exist. A similar case is South Dakota, which never resorted to coercive political measures, in comparison to North Dakota.

Moreover, numerous studies confirm that the health, social and economic harms of the so-called corona protection measures will by far exceed their benefits. This is calculated in the following way: One accepts the assumption that lockdowns can indeed prevent premature deaths due to infection with the coronavirus in a statistically significant way. One then estimates the years of life that can be gained through a lockdown and compares them with the years of life that are lost as a result of the health, social and economic damage that lockdowns cause, because people will die earlier due to this damage than would otherwise be the case. These deaths, of course, occur in the future, globally and in a socially unevenly distributed manner: they primarily affect underprivileged social classes and developing countries, mainly due to the regressions in health care and poverty reduction in these countries. Obviously, these figures cannot be estimated exactly, but their magnitude is clear: the damage in terms of years of life lost exceeds the potentially gained years of life many times over⁴.

All this confirms a well-known result: if one places value X – in this case health protection – above human dignity and fundamental rights, then one not only destroys these, but also eventually achieves a bad result in relation to X. In this case, the bad result consists in serious negative effects for health protection, for the entire population and viewed globally, as a consequence of the devastating damage caused by the so-called corona protection measures. The conclusion that one should draw from this is to prohibit lockdowns and the like in the constitution of the states that implement the rule of law in order to avoid that what we have experienced since March 2020 can be repeated.

⁴ See, for instance, for Germany Bernd Raffelhüschen, “Verhältnismässigkeit in der Pandemie: Geht das?”, *WiSt. Wirtschaftswissenschaftliches Studium* July 2020; for Switzerland Konstantin Beck, Konstantin and Werner Widmer, “Corona in der Schweiz. Plädoyer für eine evidenzbasierte Pandemie-Politik”, ISBN 978-3-033-08275-5, <https://www.corona-in-der-schweiz.ch> (consulted 16 December 2020); for the United Kingdom David K. Miles, Michael Stedman and Adrian H. Heald, “‘Stay at home, protect the National Health Service, safe lives’: a cost benefit analysis of the lockdown in the United Kingdom”, *International Journal of Clinical Practice* 75.3 (2020), DOI: 10.1111/ijcp.13674. See furthermore the Oxfam report, “The hunger virus: how COVID-19 is fuelling hunger in a hungry world”, 9 July 2020, accessible on <https://www.oxfam.de/presse/pressemitteilungen/2020-07-09-neue-hunger-epizentren-covid-19-mehr-menschen-koennten>

Unfortunately, however, a similar situation may arise in the political reaction to the climate crisis. Global warming correlated with industrialisation is indeed a serious challenge. Nevertheless, the handling of climate change in history shows us how humanity has always mastered it hitherto through spontaneous adaptation and technological innovation. The open society provides the best setting for this. Imposing political conditions in the form of controlling the economy and society, which overrides human dignity and fundamental rights and operates with rather arbitrary, politically influenced definitions of what is supposed to be sustainable, does not achieve this aim. For instance, the facts already show that CO₂ emissions in industrialised countries without an energy transition hitherto (such as France, England, the USA) have declined by the same percentage as in countries that have pursued an energy transition at enormous financial expense in the last 20 years (Germany). The decisive factor is technological innovation and not centrally controlled, political paternalism based on the advice of scientists that claim moral-normative knowledge to control society. Again, the danger is that the political steering to supposedly save the world's climate in fact prevents a targeted, local fight against those concrete environmental problems that actually cause a large number of deaths every year here and now.

It is no coincidence that it is largely the same group of experts and their organizations such as academies, together with some politicians and some business leaders, who use the corona and the climate crisis as an opportunity to lead us from an open into a closed society. The spread of the coronavirus apparently serves as a dress rehearsal for the following: to define negative externalities so comprehensively by deliberately stirring up fear that every exercise of freedom comes under suspicion, in order to then be able to impose a control of freedom through conditions formulated by alleged experts.

Why does this happen? For many scientists and intellectuals, it is apparently difficult to admit to not having normative knowledge that enables the steering of society. They succumb to the temptation that Popper already identified in the intellectuals and scientists he criticized. For politicians, it is not attractive to do nothing and let people's lives take their course. Hence, they welcome the opportunity to talk up old challenges that arise in a new form into existential crises and to spread fear with pseudo-scientific models that lead to catastrophe forecasts. Then, scientists can put themselves in the limelight with political demands that have no legal limits due to the alleged emergency. This scientific legitimacy then provides politicians with a power to interfere in people's lives that they could never obtain through democratic, constitutional means. They are willingly joined by those business people who profit from this policy and can pass on the risks of their economic activities to the taxpayer.

There are individual scientists, politicians and business leaders who called for coercive political measures already during past virus outbreaks such as the swine flu in 2009. These individuals were prepared to use the next best virus outbreak to push through their plans – out of sincere conviction, will to power or profit interests. But Popper's philosophy of science teaches us that no individual or group of individuals can determine the course of society by means of a prepared plan (a "conspiracy"). It

was contingent circumstances – such as perhaps the images from Wuhan and Bergamo – combined with panic reactions that led to the result that this time these plans found favour in broad circles of media, politicians and scientists. A trend then developed that swept more and more social stakeholders along with it and that was difficult to escape.

This situation compares well with the outbreak of the First World War, which also developed out of contingent circumstances in July 1914. Indeed, there is the danger of the history of the 20th century history repeating itself in the 21st century: the political handling of the corona pandemic is equivalent to the First World War. Demands for a radical reset of society like “zero Covid” (and its counterpart in climate activism) correspond to Bolshevism. Against these demands and the failure of the elites as a whole, a radical right-wing populism is forming that could develop into the contemporary equivalent of fascism. The economic consequences of the coercive measures to control the corona pandemic and the unlimited printing of money to absorb these consequences may lead to inflation and eventually an economic crisis like the one at the end of the 1920s, when the liberal forces in continental Europe were crushed between Bolshevism and fascism. It is important to be aware of this danger, to recognize the parallels with the course of the 20th century and to oppose the fatal trend that has formed in dealing with the corona pandemic.

The problem of negative externalities and its solution

The problem that comes to light here is an old one. It is also inherent in the purely protective state: in order to protect everyone effectively from violence, the whereabouts of everyone at all times would have to be verifiable; in order to protect everyone’s health effectively from infection by viruses, the physical contacts of everyone at all times would have to be controllable. The problem is the arbitrary definition of negative externalities, against which liberalism and even libertarianism is not as such immune. The reason is that it is not simply obvious what counts and what doesn’t count as a negative externality. Thus, one can derive negative externalities from the spread of viruses or the change in the world’s climate that ultimately occur in all human actions and call for regulation, be it state regulation or market regulation via the expansion of property rights. For example, one could grant each person property rights to the air around them, so that this air must not be contaminated by viruses that are spread by human bodies or must meet certain climatic conditions that are influenced by human actions, etc.

Consequently, the opposition is not that between the state and free markets. Thinking in these terms falls short of addressing the underlying problem of the arbitrary extension of negative externalities. Control can be exercised by state or private entities. The certificates that cleanse people of producing negative externalities and that allow them to participate in social and economic life can be issued by private or state agencies. There can be competition with regard to them and their concrete de-

sign. All this is ultimately irrelevant. The point is the totalitarianism of all-encompassing control, into which even liberally conceived states and societies can slide if one allows negative externalities to be defined so arbitrarily that in the end everyone with all their actions comes under general suspicion of harming others.

This totalitarianism can only be countered by a substantial conception of persons that is based on their freedom and their dignity. Such a conception recognizes fundamental rights that apply unconditionally in the following sense: their validity cannot be subordinated to a higher goal. They can only be suspended if the defence of the very existence of the state that enforces them requires it, as in the case of an external military attack. This is the foundation of the open society in Popper's sense, which, as mentioned above, is laid by natural law, the demand for the political enforcement of universal human rights in the Enlightenment, and so on. To the open society belongs a science that is as open in its research and teaching as society is as well as freedom of contract and the economic freedom associated with it. The latter, however, does not exist on its own, but only on the mentioned foundation; for it is only from this foundation, which absolutely grants everyone the right to live freely, that one can delimit negative externalities in the guise of concrete and significant damage to the freedom of others, which indeed call for external interventions in the way people conduct their lives.

To put it differently: The axiom is the freedom of every person in thought and action; to recognize a being as a person means to grant her or him this freedom and thus to respect her or his dignity. This dignity includes the right to shape one's own life. There is no moral value that stands above this dignity and in view of which it could be justified to define negative externalities that place the actions of every human being under the general suspicion of harming others in view of this value (such as health protection or climate protection). In philosophy, such a reasoning is called a transcendental argument that applies a priori. Empirically, from history as well as from the experience that we currently make again, it is also well-established that when one leaves this basis, great harm is done to the vast majority of people and benefit only to the elite of those who profit from the conditions that regulate access to the closed society. This empirical argument complements the transcendental one.

As after the Second World War, we face today again a choice that could shape our society for decades to come, because it could set a trend that encompasses all major social groups and political parties. Peter Sloterdijk said in March 2020, at the beginning of the corona crisis, that the West will turn out to be as authoritarian as China⁵. Unfortunately, he was proved right last year in a way that many, including the author of this essay, did not think possible after the experience of the totalitarianisms of the 20th century. A large part of the organizational bodies of social groups as well as political parties – including those that carry the label “liberal” in the classical, European sense – have rallied behind the trend towards the new totalitarianism of comprehensive control. But there are also many who have opposed it out of libertarian,

⁵ Interview in *Le Point* 18 March 2020, https://www.lepoint.fr/politique/sloterdijk-le-systeme-occidental-va-se-reveler-aussi-autoritaire-que-celui-de-la-chine-18-03-2020-2367624_20.php

religious or social conviction – or simply because they have not allowed their common sense to be blundered into a modelled reality that the media presented to them.

It is high time that we become aware of the crossroads at which stand. Doing so requires a sober attitude that does not allow itself to be clouded by the fears stirred up by the new enemies of the open society, namely the respect and trust in what distinguishes each and every one of us as a rational living being: the dignity of the person, which consists in her or his freedom of thought and action⁶.

⁶ The ideas developed in this essay are influenced by my exchange with Andreas Buchleitner, Boris Kotchoubey, Christoph Lütge, Henrique Schneider and Gerhard Wagner. Of course, the responsibility for the thoughts expressed here is entirely mine.



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Liberal Institute
Hochstrasse 38
8044 Zürich, Schweiz
Tel.: +41 (0)44 364 16 66
institut@libinst.ch

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