

**SARS AND HUMAN RIGHTS IN A POSTMODERN CONTEXT
– A CASE STUDY OF TORONTO**

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This pro gradu-thesis studies the conflict between human rights and Severe Acute Respiratory Syndrome (SARS). The thesis focuses on the events that took place in Toronto between February and June 2003. The theoretical focus is placed within postmodern tradition and the main contributors for the theoretical approach in this work are Michel Foucault and Giorgio Agamben. Especially the concept of biopolitics and politics of the state of exception are closely analysed.

The key aspect of this thesis is in the temporality of human rights and the events that lead to revoking those rights. A great emphasis is placed on describing the interdependence between human rights and citizenship. In addition to human rights debate the aim is to explore the relationship between disease and war and to study how this relationship changed during SARS epidemic.

I argue that SARS epidemic marked a new era in global governance; for the first time universal threat challenged the traditional alert and response mechanisms. The question that remains is did SARS, the invisible enemy, create a constant state of exception that invalidates human rights whenever there is a biological threat.

**Keywords: Foucault, Agamben, SARS, ihmisoikeudet, poikkeustila,
biopolitiikka**

“...if you are not like everybody else, then you are abnormal, if you are abnormal, then you are sick. These three categories, not being like everybody else, not being normal and being sick are in fact very different but have been reduced to the same thing.”

- Michel Foucault

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1 INTRODUCTION

Severe Acute Respiratory Syndrome (SARS) is a severe form of pneumonia. The estimated death rate of the disease is 10 percent¹, but the main concern with this virus is that it spreads by using humans as vectors. Unlike many other deadly diseases, such as Yellow fever, Japanese encephalitis or bird flu that use animal vectors², SARS spreads directly from person to person via air. That makes this corona-virus a deadly companion among densely populated areas. There is no vaccine for this virus and this contagious disease could kill eventually millions.

SARS originated in Guangdong Province in Southern China in the fall of 2002, and began to spread to a number of countries via people travelling on international flights during February 2003³. Ever since the disease originated in November 2002 until it was contained in early July 2003, SARS had infected over 8400 individuals and caused over 900 deaths⁴. The first SARS case was diagnosed in Toronto in February 23 and the final case on June 12, 2003. During this four-month period a total of 41 Canadians lost their lives among 251 infections⁵. The outbreak of SARS in the Toronto area forced some hard choices on people in Canada's largest urban area. Quarantines and mobility restrictions were suddenly part of every day life in Canada.

In my thesis I map out the effects that the SARS epidemic had on human rights. In my work I will use Toronto as a case study through which I study human rights as a socially constructed phenomenon. My main focus is on the temporality of human rights and the events that changed a 'normal' western country into a war zone of disease where politics and life merged into one. My position is somewhat critical and the core idea is to open up the discussion rather than give solid answers. Lately there

¹ World Health Organisation *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome* (2004)

² MacKenzie, D. (2003) 'SARS much more deadly than first estimated' *New Scientist* 17 (51) 2003

³ World Health Organisation *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome* (2004)

⁴ *ibid.*

⁵ *ibid.*

has been vast interest on this topic, but since the events that took place are rather recent past there is not yet a traditional way to address the questions that arose during SARS epidemic.

In my thesis I heavily rely on Giorgio Agamben, Italian philosopher who has studied the contemporary society and his book *Homo Sacer: Sovereign Power and Bare Life*⁶. Agamben outlines the changes that are happening in the relationship between a human being and the state, which he interprets as a transformation of different classical political philosophical categories⁷. The refugee, the camp and the state of exception are the defining terms in his political ontology. Agamben connects the relationship between politics and life to a state of exception⁸. In Toronto this state of exception took place when SARS posed a threat to the national security. This state of exception opened a new sphere for politics that can be best described through terminology. Agamben sees that the politicising of life can be seen as a main characteristic of modern times.

In my opinion the most rewarding theoretical approach to this topic is biopolitical perspective that I use to open up the conventions through which the normalising power appears during state of emergency. For me this perspective is not a strict theoretical framework, but rather a looking glass that enables us to see things from a new angle.

In foucauldian terms politics that controls life is called biopolitics. This refers to all the interventions and measures that aim to exert control over any part of the human body⁹. I will first analyse the concepts of biopolitics and biopower. Michel Foucault used these concepts to analyse the changes that have taken place in social reality during the modernisation process.

⁶ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press

⁷ Ibid.

⁸ Ibid.

⁹ Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p.241

Second, I shall examine the key elements of Agamben's theory. His work is concerned with the notion of sovereignty and human rights within the biopolitical paradigm and his focus is on the juridico-political dimension of humanity. Agamben can best be described as a postmodern critic of human rights. I will map out the new political categories of refugee, camp, bare life and state of exception. I focus on the characteristics of the state of exception and how these characteristics of the state of exception were met in Toronto. The changes that the stage of exception has caused on the policy level are also an important factor in my study. For Agamben these new politico-philosophical categories reveal the tragedy of human rights; when one needs rights the most, they tend to vanish.

Human rights are the surface that reflects the moral and legal aspirations of Western civilisation. The discourse of universal human rights is often portrayed as an ideology that promotes the universal good. However, when the western regime was under attack by the invisible enemy, SARS, many of those universal values, like freedom of movement, were quietly sacrificed. This was later explained through the state of exception. For me universal human rights are a starting point from which I try draw out the conflict that is build within the core idea of human rights: how can individual rights survive in a structure that is essentially a monopoly of violence. The question that remains is, can (any) human rights exist during Giorgio Agamben's state of exception?

Third, I shall focus on the aftermath of the SARS epidemic. Did SARS create a permanent state of exception? Did the disease legitimate the violations against human rights as a standard procedure when there is a biological threat? In the contemporary world, health has become an increasingly important factor in global politics. SARS made it clear that as the world around us is becoming progressively interconnected and complex and human health is now seen as the integrated outcome its of ecological, social-cultural, economic and institutional determinants. We

have witnessed the appearance of new diseases such as Ebola, SARS, and in particular, AIDS, combined with the alarming resurgence of diseases that were previously thought to have been under control, such as malaria and tuberculosis.

The aim of my thesis is to combine biopolitical approach to the contemporary human rights debate and use this combination as a starting point from which I examine the SARS epidemic in Toronto. The scale of my study sets certain limitations for the scope of my work. There are many areas that would have deserved more attention, such as the concept of postmodern justice, which is an interesting battlefield between the legal and the political¹⁰. Also the thought provoking critique of Giorgio Agamben's ideas¹¹ should have deserved more attention. However it is impossible to deal with these issues within this limited context.

I hope that my position as a critical reader will not blur my desire to advocate the debate concerning health and human rights. At least from my point of view this debate has often been neglected since politicizing disease is often concerned inappropriate or something that is part of the private sphere.

¹⁰ Douzinas, C. (1991) *Postmodern jurisprudence: the law of the text in the texts of the law*. London: Routledge.

¹¹ see: Butler, J. (2004) *Precarious Life: The Power of Mourning and Violence*. London: Verso.

2 BIOPOWER AND BIOPOLITICS

In this chapter I will focus on the concepts of biopower and biopolitics. These are the key elements in understanding Giorgio Agamben's approach to human rights in the next chapter. I use the term biopolitics to describe the change that took place in the mechanisms of power by altering them into technologies that aim to reshape and to control the bare life. The object of power in biopolitics is not just the body or the activity of a certain individual in a certain institution (such as hospitals, prisons, schools)¹². Rather the object of power is life as such; the political body is mainly the intersection between physiological and symbolic¹³. The biopolitical power or biopower does not only redefine the cultural meaning of the self, nor should it be seen as something that limits individual behaviour. Biopower also produces everyday life. The ways we act in shops, bedrooms and parent meetings, for example, can be politicised. The biopolitics, as such, aims to map out the dominant practises of power in contemporary societies¹⁴. The biopolitical discourse is a part of a larger linguistic turn in social sciences that puts language in key position as a constructing force, which defines reality.¹⁵

In the mid-1970's, Michel Foucault fundamentally altered the way we study power. The power was seen as a productive force that actively augments the subjects and the study of power moved away from analysing the unilateral power relation. Rather than just following the traditional Western concept where human body is understood as a subject of law, Foucault proposed a new ontology, one that begins with the body and its potential, where the human body is an arena for power. This creates an opportunity where it is possible to transcend the taboos that were previously linked with the human body. Different conventions related to sex, punishment, illness and

¹² Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.228

¹³ Dreyfus L. and Rubinow, P. (1992) *Michel Foucault*, Paris: Gallimard p.26-32

¹⁴ Rabinow, P. (1991) *The Foucault Reader*, London: Penguin p.143

¹⁵ see: Lyotard, J-F. (1984) *The Postmodern Condition: A Report on Knowledge*. Manchester: Manchester University Press

death were therefore debated and studied not only by physicians or legal scholars, but also by social scientists.

In his lecture series at the *Collège de France* Foucault pointed out that state is, indeed, a monopoly of power.¹⁶ The right to kill in the sphere of the state, supposedly committed to the fostering of and caring for life, was seen for the first time as a function of the state power, or, sovereign power. Foucault argues that in the “biopower system...killing or the imperative to kill is acceptable only if it results not in a victory over political adversaries but in the elimination of the biological threat to and the improvement of the species or race”¹⁷. The elaboration of the concept of sovereign and its relation to modern powers provoked Foucault to explore tragic events of the twentieth century including the Holocaust and genocide¹⁸ linking him to other academics that have contributed in mapping out the history of the twentieth century and the essence of sovereignty.

The theorists such as Walter Benjamin¹⁹ with the critique of violence or Carl Schmitt²⁰ and the definitions of sovereignty have elaborated the concept of sovereign and the origin or the power of sovereign. For these thinkers, sovereignty is far more appealing than Jean Bodin's definition as “absolute and perpetual power of the republic” would seem to propose.²¹ “It is the most ancient of powers, the most mysterious, the darkest, and the most allied with the sacred, the mythical, the divine and the demonic. It is the power of powers.”²² In my opinion, however, there is no need to search sovereignty from the past or in the relationship between the state and the individual. It can be found much closer. Sovereignty—the power of killing—is today practiced in the biomedical domain by health professionals and administrators and by relatives

¹⁶ Schmitt, C. (2006) *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press

¹⁷ Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p.256

¹⁸ Hanssen, B. (2000) *Critique of Violence: Between Poststructuralism and Critical Theory*. Routledge: London

¹⁹ Schmitt, C. (2006) *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press

²⁰ Dean, M. (2004) ‘Four Theses on the Powers of Life and Death’ *Contratempus – Online Journal of Philosophy*

²¹ Ibid.

²² Ibid.

and providers all under the watchful guardianship of institutional ethical committees, legal regulation and therapeutic expertise.²³

According to Foucault, biopower emerged as a coherent political technology in the seventeenth century. It has two components. First, is the element of scientific categories of human beings²⁴ (species, population, race, gender, sexual practice). The second element is disciplinary power²⁵, a form of surveillance, which is internalised and there is no longer a need to actively control individuals. The basic goal of disciplinary power is to produce a person who is docile.²⁶

Biopower normalises, and it functions through the concepts of normal and abnormal rather than legal and illegal like classical power. The object of biopower is not a person as a juridical justice subject but rather a human as a living bodily being. Therefore the reproduction of life gets politicised and this makes human bodies and everyday life potential places for resistance. The resistance acts through networking as the sovereign acts through centralisation and hierarchical power structures.

Biopower is more a perspective than a concept: it brings into view a whole range of more or less rationalised attempts by different authorities to intervene upon the vital characteristics of human existence. Given the intrinsic connections between the management of populations and their characteristics, and the government of bodies and their conducts, I will use the term biopolitics to refer to the specific strategies that can be revealed from this perspective. These strategies involve the debate over the ways in which human vitality, morbidity and morality ought be problematised and the debate over the desirable level and form of the interventions required as well as the

²³ Dean, M. (2004) 'Four Theses on the Powers of Life and Death' *Contratempus – Online Journal of Philosophy*

²⁴ Foucault, M. (1990) *History of Sexuality*, Harmondsworth: Penguin p.58-68

²⁵ Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.192

²⁶ Dreyfus L. and Rubinow, P. (1992) *Michel Foucault*, Paris: Gallimard p.134-135

debate over the knowledge, regimes of authority, and practices of intervention that are desirable, legitimate and efficacious.²⁷

Biopolitics is widely linked to modernised societies, and the changes that took place in the relationship between the state and the individual during the modernisation process. According to Foucault, the classical concept of power typically threatened people with death and the contemporary power concept works by controlling the life. The increasing state concern with the biological well being of the population including disease control and prevention, adequate food and water supply, sanitary, shelter, and education²⁸, created a surveillance system that aims to control the body.²⁹ Biopolitics is not based on officialdom and its capacity but rather biopolitics controls, corrects, values and ranks people.

Globalisation seems to have reinforced the biopolitical process. Globalisation has weakened the role of the nation state by causing the barrier between the human bodies and the controlling power to vanish. The phenomenon is simultaneously local and global as well as private and political. A good example of this is SARS. For the first time, individuals were one biological entity under surveillance.

2.1 Techniques and strategies of power

For centuries, power had been associated with the negative capacity to deny or forbid. This view suited our modern conception of political sovereignty as a top-down phenomenon. Power reputedly consisted of a relationship between sovereign and subjects. It described the capacity of rulers to censure or to control the behaviour of the ruled. Traditionally power is seen in rather simplistic terms. "A has power over B

²⁷ Rose, N. (2005) *The Politics of Life Itself: Biomedicine, Power, and Subjectivity in the Twenty-First Century*, Woodstock: Princeton University Press p.54

²⁸ Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p.170

²⁹ Ibid.

in that context that A can make B do something that B would not do otherwise.³⁰ Foucault is interested in power relations as a part of interaction where the mechanisms of that relationship define that the parties X and Y in different ways. Therefore the identity of individuals as well as groups is constructed through that power relationship. The main question in biopower is how we became the individuals or groups that use power and how we surrender to that power.³¹

When the elements or surroundings change the power relationship is altered. It is inevitable that the individual has many roles in the power network that covers the entire social field³². From this point of view, the important level of analysis of power relations is on the micro level of society (individuals, small groups and closed systems) rather than on the macro level (the state). Foucault claims that the macro level power relations are just abstractions and reductions; reflections from the micro level³³. The micro level models, such as prisons or hospitals, are the basis of which his analysis builds on.³⁴

Through biopower Foucault aimed to find the turning points where the macro level practices turned into micro level power techniques. He claims that as early as 17th century there was a significant change from old juridical power concept to a new biopower concept³⁵. In the classical concept of power, power was seen as a property that could be gained or lost. The sovereign and the society were in a hierarchical order and this order was based on legislation and rituals that reinforced that relationship.³⁶ The change from juridico-polical power to biopower was influenced by the new micro level political, often institutionalised, technologies that aimed to control

³⁰ Dahl, R. *The Concept of Power*, in Bell & Edwards & Wagner (1969) *Political Power. A Reader in Theory and Research*. New York: The Free Press

³¹ Rabinow, P. (1991) *The Foucault Reader*, London: Penguin p.48-52

³² Ibid.

³³ Pulkkinen, T. (2000), *The Postmodern and the Political Agency*. Jyväskylä: SoPhi p.75-82

³⁴ Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.199-200

³⁵ Ibid. p.40-57

³⁶ Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p.221-225

the human body. These institutions, such as army, factory, mental hospital and school focused on creating the 'obeying bodies'.³⁷

2.2 Knowledge and power

While studying the relationship between knowledge and power, Foucault came to conclusion that it defines the biopolitical discourse. In the key position is the usage of the information as a part of the surveillance process. The role that knowledge has is vital in production of identities.³⁸ Foucault is interested in the processes that aim to collect information (such as medical check ups, inquiries) and the more technologies that aim to produce scientific information and norms. His view on gathering and holding information is rather cynical. Unlike Hegel³⁹, for Foucault, truth does not mean 'absolute knowledge'. Instead, the truth must be reconceptualised "as a system of ordered procedures for the production, regulation, distribution, circulation, and operation of statements".⁴⁰ As such, truth is related in a circular relation with systems of power, which produces and sustains it, and to effects of power, which it induces and which extends it.⁴¹

In his celebrated essay *Nietzsche, Genealogy, History*⁴², Foucault carries this analysis a step further, claiming provocatively "all knowledge rests upon injustice. ... [The] instinct for knowledge is malicious (something murderous, opposed to the happiness of mankind)".⁴³ Foucault challenges the Kantian virtues of knowledge⁴⁴ – the scientific community, for Foucault, is netted with power relations. In this context the power is not only a limit that defines the boundaries of the knowledge, but power

³⁷ Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.199-200

³⁸ Foucault, M. (1990) *History of Sexuality*, Harmondsworth: Penguin p.58-68

³⁹ see: Hegel, GWF. (1991) *Elements of the Philosophy of Right*. Cambridge: Cambridge University Press

⁴⁰ Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p. 10

⁴¹ Ibid.

⁴² Rabinow, P. (1991) *The Foucault Reader*, London: Penguin p. 76

⁴³ see: Hegel, GWF. (1991) *Elements of the Philosophy of Right*. Cambridge: Cambridge University Press

⁴⁴ see: Zagzebski, L. (1996) *Virtues of the Mind*. Cambridge: Cambridge University Press

rather actively produces knowledge. The researcher has, indeed, a will to power.⁴⁵ The connection between scientific research and social power is crucial. Foucault has pointed out that there are many ways in which the scientific community controls its' members. These rules make sure that the knowledge is produced only by the well-socialised members of the research community. The disciplinary power of the discipline controls and produces knowledge.⁴⁶

The Foucauldian power/knowledge concept suggests that the modern ideal of value-free knowing is illusory. Instead, knowledge is implicated in the maintenance and reproduction of power relations. The reign of biopower is produced and facilitated the scientific disciplines of criminology, medicine, and public administration. "In Foucault's view, the Enlightenment-inspired discourse of the human sciences is a prime offender. The so-called sciences of man function as the handmaidens of a nefarious 'disciplinary society', furnishing it with data that serve the administrative needs of 'governmentality': the Orwellian technique of turning citizens into pliable and cooperative 'docile bodies'."⁴⁷

In biopolitical discourse the individual is in the spotlight of gathering information, labelling and statistication. The control of information is traditionally seen as a mechanism of sovereign power⁴⁸. In biopolitical discourse the sovereign is not the only one interested in the information. The self also produces and gathers and labels the data, and through this process the categorisation happens⁴⁹. There is no longer need for control from the outside; the political actions create pressure that makes the individual behave in a certain way. Normalisation and socialisation is complete.

⁴⁵Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p. 10-12

⁴⁶ Ibid.

⁴⁷ Wolin, R. (2006) 'Foucault the Neohumanist?' *The Chronicle Review* 53 (2)

⁴⁸ Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.28-45

⁴⁹ Foucault, M. (1990) *Archeology of knowledge*. London: Routledge p.88-93

It can be argued that in 21st century this subject of power is no longer a prisoner, a student or a factory worker. The new category in humanity is health. The actions that we surrender aim to optimise the collective physical well being. Nikolas Rose calls this molecular biopolitics⁵⁰. Earlier the area that was under the surveillance of the sovereign was the bodily being. Now the interest of the sovereign has shifted towards the molecular level of existence. In sickness and in health we see ourselves through the eyes of the sovereign.

The process where modern biopower replaced juridico-political power is closely connected to the birth of new disciplines and research traditions. The need to legitimise these new approaches helped to create new definitions such as sexuality and population and systematic information categories for medical knowledge. The will to power helped to create the tools to exercise biopower and administrate human populations⁵¹. Now the information that is gathered comes in smaller and smaller pieces. We no longer have a whole human being under the lenses⁵², now it is viruses, cells and DNA-strains. The traditional relationship between sovereign and power aimed toward the creation of the good life the contemporary practice of power focuses on preservation and control of the bare life⁵³.

In the relationship between biopolitics and sovereignty, biopolitics does not replace sovereignty, but rather sovereign acts through biopolitics. For Mitchell Dean biopolitics is the strategic coordination of power relations to extract a surplus of power from living beings⁵⁴. Biopolitics is a strategic relation; it is not the pure and simple capacity to legislate or legitimise sovereignty⁵⁵. Foucault defines the biopolitical functions of coordination and determination as the drivers of biopower, but the true

⁵⁰ Rose, N. (2005) *The Politics of Life Itself: Biomedicine, Power, and Subjectivity in the Twenty-First Century*, Woodstock: Princeton University Press

⁵¹ Kusch, M. (2002) *Knowledge by Agreement: the Programme of communitarian epistemology*. Oxford: Clarendon Press p.152-155

⁵² see: Semple, J. (1993) *Bentham's prison: a study of the panopticon penitentiary*. Oxford: Clarendon

⁵³ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press

⁵⁴ Dean, M. (1999) *Governmentality: Power and Rule in Modern Society*. London: Sage Publications

⁵⁵ Lazzarato, M. (2002) 'From Biopower to Biopolitics' *Plí – The Warwick Journal of Philosophy*, vol. 13

source of power lies somewhere else. Biopower coordinates and targets a power that does not properly belong to it, that comes from the 'outside.' Biopower is always born of something other than itself⁵⁶.

Governing the population within a system that Mitchell Dean calls apparatuses of security⁵⁷ has become ever so popular simultaneously with globalisation; the system that includes the use of armies, police forces, diplomatic corps and intelligence services to control and monitor people in certain geographical area has strengthen with the help of new technologies and ever increasing information needs. The aim of this is to defend, maintain and secure a national population.⁵⁸ By following Deans' logic it is possible to claim that in addition to armies, police forces, diplomatic corps and intelligence services, that are the core of apparatuses of security, health and education aim to similar goals. SARS challenged the traditional way these apparatuses of security have acted in the past. Traditionally threats have been noticed, defined and excluded and then executed. In order to this to work there must be spatial difference that allows the institutions to react. SARS as a global challenge that showed how vulnerable the systems was when the threat was immediate.

⁵⁶ Dean, M. (2004) 'Four Theses on the Powers of Life and Death' *Contratempus – Online Journal of Philosophy*

⁵⁷ Dean, M. (1999) *Governmentality: Power and Rule in Modern Society*. London: Sage Publications

⁵⁸ Ibid.

2.3 Spaces of exclusion

In order to better understand the political dynamics behind public health it is important to recognise the developments in modern forms of governance. The rise of the 19th-century industrial city, for example, necessitated the development of much more sophisticated forms of urban governance in order to tackle the threat of epidemic disease and enable these new cities to function effectively as centres of economic activity⁵⁹. But these new spaces of public health control had and have a gloomy “other”⁶⁰. The other is now the poor both in the West and in the developing world. The current exclusion of the world's poor from adequate medical care is thus a form of state-sponsored violence, in which millions are deprived of even the most basic human rights. These “wasted lives”⁶¹ signify a literal as well as metaphorical process of permanent and fatal exclusion for the poor, the marginalised, and others who have no value within the global economy. Nevertheless, in the globalised world the geographical exclusion will be a lethal mistake; the disease knows no borders. Globalisation is associated with increases in travel and transportation, communications and the sharing of cultures. As a result of the growing web of interconnections, microbes have an easier ride than ever. In the Middle Ages, it took three years for the Plague to spread from Asia to the Western Europe. The SARS virus, crossed from Hong Kong to Toronto in about 15 hours.⁶²

In the framework of medical exclusion, methods of physical exclusion have been widely used since the Plague. Quarantine and isolation – concentration camps for the ill – portray a painfully clear picture of the logic of disease control. Quarantine and isolation as terms refer to restrictions of movement and physical separation from others of those who may have been exposed to a contagious disease. Quarantine is applied to people who show no symptoms of the disease. Isolation refers to those

⁵⁹ Rabinow, P. (1991) *The Foucault Reader*, London: Penguin p. 170-177

⁶⁰ Gandy, M. (2005) ‘Deadly Alliances: Death, Disease, and the Global Politics of Public Health’ *PLoS Medicine* 2 (1)

⁶¹ Bauman, Z. (2004) *Wasted lives: Modernity and its outcasts*. Cambridge: Polity Press p.152

⁶² Centers for Disease Control and Prevention (2003) *Severe Acute Respiratory Syndrome – Toronto, Canada*

showing symptoms⁶³. It is more and more common to draw out the 'other' through the rhetoric of health. Public health campaigns, actions against smokers and increased medical consultancy are examples of ideology that aims to create the perfect political body.

⁶³ Centers for Disease Control and Prevention (2003) *Severe Acute Respiratory Syndrome – Toronto, Canada*

3 HUMAN RIGHTS

Since World War II, the idea of human rights has become an essential part of our political consciousness. States and international institutions have created a human rights agenda that aims to set a norm that protects the basic rights, such as security rights, liberty rights or political rights. And yet, right along side the human rights enterprise, there has developed a critical tradition that questions the assumption and efficacy of the human rights movement. Many contemporary political and legal philosophers have suggested that something is wrong with international humanitarian relief and human rights advocacy.⁶⁴ Such a critique no longer seems to be motivated by ideologies. Rather, it derives from a perspective that sees humanitarian activism as an ill-conceived sphere of action, often as a merely compensatory gesture.⁶⁵

Human rights as such do not constitute the entire political aspiration of modernity; rather, they represent one of its fragile achievements⁶⁶. It would therefore be unwise to ignore the limitations of the achievements of the declarations of human rights. Or to criticise human rights politics as though they were the main threat to our political systems⁶⁷. Today, the role played by human rights is dangerously small. Previously, the concept was an influential weapon aimed at totalitarian systems.⁶⁸ At the present that the Marxist rejection of human rights as the pure expression of bourgeois rights has melted away, the surfacing of new critiques can be witnessed.⁶⁹

In the core of my thesis is the most interesting critique of human rights, which suggests that, in their application, human rights are in fact the rights of citizens. Certainly this recognition provides an initial insight into the change that is taking place

⁶⁴ Hein, V. (2005) 'Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy' *German Law Journal* 6 (5)

⁶⁵ Bauman, Z. (2003) 'From Bystander to Actor' *Journal of Human Rights* vol. 12

⁶⁶ Paradis, M-O. (2006). 'The democratic neighbour – Politics of human rights in an enlarged Europe' *Eurozine – netmagazine*

⁶⁷ Mutua, M. (2002) *Human Rights A Political and Cultural Critique* Philadelphia: University of Pennsylvania Press

⁶⁸ Evens, T. (2005) *The Politics of Human Rights – A Global Perspective* London: Pluto press p.20-26

⁶⁹ Ibid.

in the juridico-political category of the human. Interestingly, the sovereignty is still intact; it is the humanity that is in crisis. While in to contemporary world the possession of citizenship is in most cases an essential precondition for access to human rights, it is by no means enough to guarantee such access⁷⁰. If today biopolitics increasingly operates on a global scale – taking all the people on the globe as a population that can be monitored and intervened into with vaccines, food aid or with bullets and bombs – then citizenship can no longer be the line that connects humans and human rights. Now citizenship is the line that is drawn between those who are, and those who are not granted human rights. Humanity is no longer a neutral term. Once individuals are stripped of the mediation of law and citizenship and placed outside the discourse of human rights, it becomes obvious that it is within these spheres where the political construction of the human actually begins and ends.⁷¹

3.1 Refugees and camps

Giorgio Agamben, one of the central contributors of postmodern tradition argues that the nation-state is dissolving and national sovereignty is becoming increasingly diffused. His argument is based on Arendt's views of the figure of the refugee as a political subject. Agamben sees that under contemporary political discourse the refugee, not the citizen, is the only conceivable political category of being. Agamben relies on Hannah Arendt when he claims the refugees represent a “new historical consciousness”⁷² He argues that this new form of consciousness is especially important today when older concepts representing the political subject such as ‘man’ or ‘citizen’ are falling by the wayside as the nation-state slowly declines. Agamben writes, “It is also the case that given the by now unstoppable decline of the nation-state, and the general corrosion of traditional political-juridical categories, the refugee

⁷⁰ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press

⁷¹ Ibid. p.74-90

⁷² Ibid.

is perhaps the only thinkable figure for the people for our time..."⁷³

Agamben places the concept of the concentration camp into the centre of the political discourse. According to Agamben the goal of modern power politics is no longer the national, sovereign state but, shockingly, the concentration camp. He portrays the camp as the true symbol of the modern age, where people have only their 'bare life'⁷⁴ to hold on to.⁷⁵ The camp presents the state where legal, non-democratic order that is forced upon the individuals.

Agamben argues that democracy does not threaten to turn into totalitarianism, but rather both regimes smoothly cross over into one another since they in the end rest on the same foundation of a political interpretation of life itself.⁷⁶ Like Carl Schmitt, Agamben sees the invocation of human rights by democratic governments as well as the "humanitarian concept of humanity"⁷⁷ as deceptive manoeuvres or, at least, as acts of self-deception that are conducted by the western liberal bourgeoisie.⁷⁸

The crucial difference between Agamben and Schmitt is that Schmitt fought liberal democracy in the name of the authoritarian state, while Agamben defines democracy and dictatorship as two equally unattractive twins.⁷⁹ Agamben underlines that the national territorial sovereignty itself creates concentration camps. He urges the nation-state to "find the courage to question the very principle of the inscription of nativity as well as the trinity of state-nation-territory that is founded on that principle" before "extermination camps are reopened in Europe."⁸⁰

⁷³ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press

⁷⁴ Hein, V. (2005) 'Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy' *German Law Journal* 6 (5)

⁷⁵ Ibid.

⁷⁶ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press p.121

⁷⁷ Schmitt, C. (2006) *Political Theology: Four Chapters on the Concept of Sovereignty*. University of Chicago Press: Chicago p.55

⁷⁸ Agamben, G. (1996) *Beyond human rights*, in P. Virno and M. Hardt (Eds),

Radical Thought in Italy: A Potential Politics, University of Minnesota Press, Minneapolis

⁷⁹ Hein, V. (2005) 'Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy' *German Law Journal* 6 (5)

⁸⁰ Agamben, G. (1996) *Beyond human rights*, in P. Virno and M. Hardt (Eds), *Radical Thought in Italy: A*

Schmitt's famous quote on political sovereignty says that "Sovereign is the one who decides on the state of emergency"⁸¹ thus can be interpreted as "Sovereign is also the one who is able to set up a camp."⁸² In this manner the legal transition from state of normality to state of emergency is complete. Individuals interned in the camp are creatures without rights or dignity. A refugee is nothing more than a bodily being, and for this very reason a non-person.⁸³

3.2 Bare life

"From Aristotle to Arendt, classical political thinkers have sought to limit politics, setting it apart from mere life, which, they argued, was an essentially private affair. In Ancient Greece, this distinction is evident in the lack of a single word for human life, signified by the split between *zoe*: natural life, and *bios* the politically qualified life."⁸⁴ The purpose of politics was therefore not simply the life but the good life, a life that is not naturally given but is an achievement. Hence only through political action could one create a good and truly human life. It is interesting that natural life was only worth living, and therefore it was seen as something that must be excluded from polis, the realm of politics. By excluding the natural life, *zoe* was simultaneously politicised in the process where *bios*, the politically qualified life, was created.

Agamben gives the name bare life to that threshold between *bios* and *zoe* that separates the political sphere from the sphere of natural life, and the polis from the private real. Bare life, or *homo sacer*⁸⁵ is a life reduced to a bare natural fact, the act of living. When the management of biological life becomes the ultimate political

Potential Politics, Minneapolis: University of Minnesota Press

⁸¹ Schmitt, C. (2006) *Political Theology: Four Chapters on the Concept of Sovereignty*. University of Chicago Press: Chicago p.55

⁸² Agamben, G. (1996) *Beyond human rights*, in P. Virno and M. Hardt (Eds), *Radical Thought in Italy: A Potential Politics*, Minneapolis: University of Minnesota Press,

⁸³ Rieger, A. (2003) 'Nihilism and Human Rights' *Conference paper* from the 8th International Fiqh Conference held in Pretoria, South Africa on the 18-20 October 2003

⁸⁴ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press.

⁸⁵ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press.

mission, the margin between *bios* and *zoe* deteriorates, and Arendt's affirmation that "life and death are non-worldly and anti-political"⁸⁶ can no longer be sustained. Death is always *primus motor* behind the state's care for life, a realisation that has existed since Socrates described an 'art of medicine' in which the doctor would "let die the ones whose bodies are [corrupt] and the ones whose souls have bad natures and are incurable, they themselves will kill."⁸⁷

Agamben explains how the essence of state power lies in its ability to exclude and to decide on the state of exception, rendering certain people into life. Bare life is not the same as natural life, but is to be comprehended as the result of an inevitable political power that obscures the distinction between political and natural. For Arendt bare life is represented as reducing human beings to mere "savages" or "animals"⁸⁸, where as for Agamben bare life is just a sheer physical act of being alive. When the nation-state falls apart, that human life becomes "sacred" and the state of exception becomes possible⁸⁹. Arendt writes "The paradox involved in the loss of human rights is that such a loss coincides with the instant when a person becomes a human being in general- without a profession, without citizenship, without an opinion, without a deed by which to identify and specify himself- and different in General, representing nothing but his own absolutely unique individuality which deprived of expression within and action upon a common world, loses all significance."⁹⁰

Humanitarian efforts are failing since they do not mediate the problem of bare life but instead humanitarian actions propagate the state of exception where citizenship suspended and the individual transforms to a non-citizen, an entity can be sacrificed. For Agamben the final analysis divulge that humanitarian organisations can only access to human life in the figure of bare life, and therefore and therefore uphold a

⁸⁶ Ibid.

⁸⁷ Foucault, M. (2004) *Society Must Be Defended*, London: Penguin p.256

⁸⁸ Arendt, H. (1967) *The Origins of Totalitarianism*, London: Allen & Unwin p.302

⁸⁹ Hussain, N. and Ptacek, M. (2000) 'Thresholds: Sovereignty and the sacred' *Law & Society Review*, Vol. 38

(4)

⁹⁰ Ibid.

surreptitious solidarity with the very powers they ought to combat.⁹¹ Therefore, for Agamben, human right campaigns are essentially complicit in production of the refugee, or the individual without the rights of a citizen. The refugee, bearer of bear life whom Arendt first drew out, is without any relevance in the international system.

According to Hannah Arendt the problem with human rights is that they are invoked at the precise moment at which the rights of a citizen, the political artifice that bears human dignity, are stripped away⁹². This leaves us with “the abstract nakedness of being human and nothing but human”⁹³ – a condition that despite the numerous best-intentioned declarations of human rights, is seen by her as essentially worthless⁹⁴. Beginning with the French Revolution's *Declaration of the Rights of Man and Citizen*⁹⁵, rights were subsumed into the general category of citizenship. Agamben asserts, “a stable statute for the human in itself is inconceivable in the law of the nation-state.”⁹⁶ For Agamben, the notion that an international body can impose and enforce an external morality on the nation-state is inconceivable, since the state only recognises the rights of the citizen and not of the human being. Following this reasoning, declarations of rights, including the United Nation's Universal Declaration of Human Rights, are no longer relevant for they are pinned on national sovereignty. These rights, essentially, are attributed to the human being only to the degree to which she or he is the immediately vanishing presupposition of the citizen.⁹⁷ For Agamben, all humanitarian declarations of rights, including the 1948 declaration, implicitly reinforce the concept of national sovereignty by underlining the ability to have rights with citizenship.⁹⁸

⁹¹ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press p.133

⁹² Hussain, N. and Ptacek, M. (2000) ‘Thresholds: Sovereignty and the sacred’ *Law & Society Review*, Vol. 38 (4)

⁹³ Arendt, H. (1967) *The Origins of Totalitarianism*, London: Allen & Unwin 297-298

⁹⁴ *Ibid.*

⁹⁵ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press.

⁹⁶ *Ibid.* p.20

⁹⁷ Hussain, N. and Ptacek, M. (2000) ‘Thresholds: Sovereignty and the sacred’ *Law & Society Review*, Vol. 38 (4)

⁹⁸ Hein, V. (2005) ‘Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy’ *German Law Journal* 6 (5)

3.3 State of exception and just war

The critical analysis of the events that took place in Toronto in 2003 shows the fragility of human rights and how the policies that actually worked against human rights were justified through heroic narrative where culturally loaded factors played a major role. SARS became the common enemy and suddenly the people in Toronto found out that they were fighting in the front line. State of exception emerged creating camps in hospital wards where the refugees battled over their bare life. Canada was at war against the invisible enemy.

In *Political Theology*, Carl Schmitt established the essential proximity between the state of exception and sovereignty⁹⁹. But although his famous definition of the sovereign as “the one who can proclaim a state of exception”¹⁰⁰ has been commented many times, we still lack a genuine theory of the state of exception within the public law. The very definition of the term is complex, since it is situated at the limit of law and of politics. According to a widespread conception, the state of exception would be situated at an “ambiguous and uncertain fringe at the intersection of the legal and the political,”¹⁰¹ and would constitute a “point of disequilibrium between public law and political fact.”¹⁰²

Additionally, if the sovereign exception were the original set-up through which law relates to life to incorporate it in the very same gesture that suspends its own exercise, then a theory of the state of exception would be the first condition for comprehending of the bond between the living being and law.¹⁰³ To explore this ‘no man’s land’ between legislation and political realities, and on the other hand, between legal order and life, is to understand the significance of the difference between the political and the legal as well as the difference between law and life.

⁹⁹ Schmitt, C. (2006) *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press

¹⁰⁰ Ibid.

¹⁰¹ Agamben, G. (2005) *State of Exception*. Chicago: University of Chicago Press

¹⁰² Ibid.

¹⁰³ Agamben, G. (2005) *State of Exception*. Chicago: University of Chicago Press

Are the state of exception and extreme emergency exchangeable concepts and are they overriding the human rights? If we take a closer look on more traditional appearance of state of exception we come across with state of war. Traditionally state of exception is proclaimed during the war. Michael Walzer, an eager analyst of war, explain in his book *Just and Unjust Wars* thoroughly the just war theory an he manages to point out the problems of the state of exception – a category of the ultimate evil that justifies the drastic policies, which, in most cases, aim to preserve the ‘the good’ within society¹⁰⁴. Politicing evil as abnormal and unacceptable leads to interesting position in the context of biopolitics. When ‘the enemy’ no longer comes from outside the lines between ‘us’ and ‘them’ blur. When the enemy is invisible and silent, like a virus for example, the normal practises of war suddenly do not apply.

From my point of view this can be interpreted in such a way that at this moment in a shift takes place in political order. This changes the policies, since everyone is guilty until proven innocent. The sovereign power controls the political body. There is only just war, since the aim is for the common good of all. However, this leads to a situation where the political subject (the refugee, as the category of citizen is invalid) becomes an object. The rights and liberties are suddenly gone, and the individuals must function in that narrow space that the sovereign has granted.

The main concept in Walzer’s theory regarding extreme emergency basically serves the goals of the state reason, ‘*raison d’etat*’.¹⁰⁵ This links Walzer closely to realism in political theory¹⁰⁶. However, the interesting division to political realism is that Walzer’s theory does not rely on strategic justification of actions, rather on moral rationale. Interestingly, when comparing contemporary politics, a similar pattern of political

¹⁰⁴ Ibid.

¹⁰⁵ Hendricksen, D. (1997) ‘In defence of Realism. A Commentary on Just and Unjust Wars’. *Ethics and International Affairs* 5 (11) 1997 p.24

¹⁰⁶ Ibid.

reasoning can be discovered. Walzer calls this “legal parading”.¹⁰⁷ Just war can be, according to Walzer, fought if certain moral rules are filled. However, there are exceptions that override these moral rules and justify violent actions. He believes that there can be an ultimate evil.¹⁰⁸ The extreme emergency and the ultimate evil legitimate all the actions that are needed to maintain the sovereign power. The category of ultimate evil serves political agenda during crisis, in many cases a decision that would not achieve democratic recognition, will be passed through when portrayed as the ultimate evil.

“Theories of politics are tested through the events in the political world”¹⁰⁹. It is interesting that in Walzer’s theory the use of force is justified through “extreme emergency”. However Agamben’s state of exception describes best the political horizon that emerged in Toronto when SARS epidemic challenged the normality of a western liberal state. The concept of biopolitics draws out the lines of postmodern political space that are constantly changing and moving. For me Walzer view on just war was a turning point through which events in Toronto linked together with Agamben’s ideas of a sovereign setting up a camp. I argue that word war is interchangeable with word disease. When we place this notion within Foucault’s ideas concerning the discursive power the actor that dictates the rules for the common good and justifies the intrusive actions against civil liberties can be identified as the sovereign power.

Today, in the face of the continuous progression of something that could be defined as a “global civil war,”¹¹⁰ the state of exception tends more and more to present itself as the dominant paradigm of governance in contemporary politics. Once the state of exception has become the rule, there is a danger that this transformation of it will be

¹⁰⁷ Walzer, M. (1978) *Just and Unjust Wars: a Moral Argument with Historical Illustrations*. London: Allen Lane p.61

¹⁰⁸ Ibid. p.253

¹⁰⁹ Ibid.

¹¹⁰ Walzer, M. (1978) *Just and Unjust Wars: a Moral Argument with Historical Illustrations*. London: Allen Lane

perpetual, since the democratic institutions have no space to manoeuvre during the state of exception. The provisional and exceptional measures change into a technique of governance that will mean the death of constitution. This creates a tension between traditional concept of justice and postmodern ideology where the state can not be seen as an instrument that produces 'the good life' but rather as an entity that is willing to use all the means necessary to insure its' own survival.

3.4 Human rights, health and international law

As it has already been indicated, the main participants in international law are sovereign states. According to many scholars¹¹¹ the state is still the primary actor in international politics. Paradoxically, the principle of respect for human rights competes with the traditional principles of sovereignty and non-interference in the domestic affairs of other states. Nevertheless, a growing number of universal and regional instruments elaborate on a broad range of rights, including individual rights upheld in tandem with the national legislation. Since a right is just an empty shell if the implementation of that right is not forced, states allow other states and independent expert bodies to challenge them by establishing monitoring mechanisms, judicial review, and formal complaint procedures.¹¹²

Louis Henkin, a chairman of the Center for Study of Human Rights in Columbia University, says that examining human rights is a subject of international law and politics.¹¹³ According to Henkin, the international law of human rights derives mainly from contemporary international agreements in which states agree to respect the specific rights of their nationals. International law of human rights, therefore, does not differ too much from national law since largely national laws implement it. Yet he makes it clear that by establishing essentially interstate rights and duties in regard to

¹¹¹ see: Hirst, P. (1996) *Globalisation in Question – International Economy and the possibilities of Governance*. Cambridge: Polity Press

¹¹² Campbell, T. et al. (1987) 'Human Rights: From Rhetoric to Reality' *The American Journal of International Law* 81 (2)

¹¹³ Henkin, L. (1992) *The Age of Rights*. New York: Columbia University Press p.129-145

human rights and thus providing only horizontal inter-state remedies, international law does not make human rights international legal rights for individuals in the international legal order¹¹⁴. To put it differently, “the individual has no international legal rights; he is only the incidental beneficiary of rights and duties between states parties”¹¹⁵.

It not wise jump to the conclusion that states are given *carte blanche* in these matters, since, as Henkin rightly points out, there are numerous forces that, however they do not command, still shape and influence state’s willingness to respect human rights. But to capture the underlying motives of state’s behaviour one has to leave the legal domain and enter the ‘jungle of international politics’. It can be argued that sometimes human rights norms have begun to replace territorial legitimacy as a defining feature of the constitution of legitimate sovereignty.¹¹⁶ SARS has strengthened the demands for more solid global governance. One of the key ideas in global governance is the abolition of gross human right violations.

It is interesting to notice that when Agamben strongly argues against human rights declarations, Foucault is a strong supporter of international institutions and non-governmental organisations. In 1981, Foucault addressed a major conference held at United Nations’ headquarters in Geneva. In his speech, Foucault eloquently praised the responsibilities of “international citizenship”, which, he claimed, “implies a commitment to rise up against any abuse of power, whoever its author, and whoever its victims.” “Amnesty International, *Terre des Hommes*, and *Médecins du Monde*,” he continued, “are the initiatives which have created this new right; the right of private individuals to intervene effectively in the order of international policies and strategies.”¹¹⁷

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Barkin, S (2001) “The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms,” *Millennium: Journal of International Studies* 27 (2)

¹¹⁷ Wolin, R. (2006) ‘Foucault the Neohumanist?’ *The Chronicle Review* 53 (2)

On an international level, the organisations and agencies such as United Nations have begun to consider the relevance of human rights in the context of public health.¹¹⁸ The policy of 'mainstreaming human rights'¹¹⁹ refers to the programme of enhancing human rights and integrating them into the broad range of United Nations activities. The United Nations' reform programme states that human rights cut across four substantive fields of United Nations' work: peace and security, economic and social affairs, development co-operation, and humanitarian affairs. The principle of non-discrimination is fundamental to human rights thinking. Hence, the United Nations Commission on Human Rights has stated, "all are equal before the law and entitled to equal protection of the law from all discrimination and from all incitement to discrimination relating to their health status".¹²⁰

The human right to health is well expressed in the international human rights regime. The definition of health is of course a slippery one and reasonable people will disagree on its precise meaning. For its part the World Health Organisation defines health as, "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹²¹ Yet it would be difficult to hold member states to such a broad definition of health. Indeed a literal interpretation of the right to health would require that governments prevent illnesses from ever occurring. Nonetheless there is the sense that some minimum standard must be met in regards to public health.

The International Health Regulations, adopted in 1969 by the World Health Organisation, were designed "to ensure the maximum security against the international spread of diseases with a minimum interference with world traffic,"¹²² and are binding for all World Health Organisation member states. The International Health Regulations includes a global surveillance system for communicable diseases,

¹¹⁸ Alston, P. (2000) *The Future of UN Human Rights Treaty Monitoring*. Cambridge: Cambridge University Press

¹¹⁹ Ibid.

¹²⁰ United Nations (1948) *Universal Declaration of Human Rights*

¹²¹ World Health Organisation (1985) *Constitution of the World Health Organisation*

¹²² The World Health Organisation (2000) *International Health Regulations*

specific measures for dealing with certain infectious agents, and monitoring functions at all international ports and airports¹²³. The International Health Regulations, however, are currently restricted to just three diseases: cholera, the Plague and yellow fever¹²⁴. As a result recent infectious illnesses, including HIV/AIDS and SARS, are not bound by the International Health Regulations. Countries that spread such diseases around the world out of negligence or inaction cannot be held legally accountable.

Therefore, when SARS epidemic originated from China they did not act against international law when they failed to inform the rest of the world about this new deadly and highly contagious disease. China's international legal obligations under International Health Regulations are to report outbreaks of cholera, plague, and yellow fever. China is under no other international legal obligation to report other disease events or outbreaks to World Health Organisation or other states. China's reluctance to cooperate with public health officials from World Health Organisation and other governments may have made the public health threat from SARS worse, but such behaviour does not appear to trigger state responsibility under international law.¹²⁵

The International Covenant on Economic, Social and Cultural Rights promulgated in 1976 identifies, "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." It also notes that states should take action toward, "the prevention, treatment and control of epidemic, endemic, occupational and other diseases."¹²⁶ Technically speaking, countries that fail to meet the health needs of their people are in violation of the right to health as defined by the International Covenant on Economic, Social and Cultural Rights. While the International Covenant on Economic, Social and Cultural Rights does not have the

¹²³ Chan, K. (2003) 'SARS and the Implications for Human' seminar paper. Carr Center for Human Rights, John F. Kennedy School of Government, Harvard University.

¹²⁴ *ibid.*

¹²⁵ Fidler, D. (2003) 'SARS and International Law.' *American Society of International Law Insights*

¹²⁶ United Nations (1966) *The International Covenant on Economic, Social and Cultural Rights*

force of international law, it has become a powerful normative tool for the promotion of human rights in the international community. Hence, the rights relating to non-discrimination, autonomy, transparency, information, education and participation are integral parts of the achievement of the highest attainable standard of health.

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, established in 1984, delineate the conditions under which individual liberties may be restricted¹²⁷. According to the Siracusa Principles, when a government revokes a right, it must be a last resort and will only be considered legitimate when the following criteria are met:

- The restriction is provided for and carried out in accordance with law;
- The restriction is in the interest of a legitimate objective of general interest;
- The restriction is strictly necessary in a democratic society to achieve the objective;
- There are no less intrusive and restrictive means available to reach the same goal; and
- The restriction is not imposed arbitrarily, i.e., in an unreasonable or otherwise discriminatory manner.¹²⁸

Siracusa Principles exclusively recognise that public health may be quoted as a ground for limiting certain rights, allowing a state to take measures dealing with a serious threat to the health of the population or individual members of the population.¹²⁹ These measures must be explicitly aimed at preventing the disease or injury or providing care for the ill and injured.¹³⁰ Restrictions should not target any

¹²⁷ Chan, K. (2003) 'SARS and the Implications for Human Rights' *seminar paper*. Carr Center for Human Rights, John F. Kennedy School of Government, Harvard University.

¹²⁸ Chan, K. (2003) 'SARS and the Implications for Human' *seminar paper*. Carr Center for Human Rights, John F. Kennedy School of Government, Harvard University.

¹²⁹ Ibid.

¹³⁰ World Health Organisation (1998) *The Domains of Health Responsiveness – A Human Rights Analysis*.

group unfairly. There should be sufficient reimbursement for those who suffer deprivation in the public interest, and public information must be maintained at a high level so as to assist every person in the maintenance of their own health and the safety of others.

The World Health Organisation Guiding Principles for International Outbreak Alert and Response articulate the consensus of partners in the Global Outbreak Alert and Response Network on how to prepare for field activity, activate international support, co-ordinate response in the field and evaluate and follow up outbreaks of international importance¹³¹. In fact, the SARS outbreak witnessed this response from the World Health Organisation. Comprehensive standard operating protocols supplement the Guiding Principles and address the broad range of operational questions. Among the Guiding Principles there is a clause that says: “all network responses will proceed with full respect for ethical standards, human rights, national and local laws, cultural sensitivities and traditions”¹³². This further emphasises the argument made earlier that human rights are certainly integrated to the mandate of the World Health Organisation. This commitment not only guarantees that the right to health is promoted and protected; it furthermore certifies that, in the course of fulfilling this right, other human rights are not violated.

¹³¹ Ibid.

¹³² World Health Organisation (1998) *The Domains of Health Responsiveness – A Human Rights Analysis*.

4 PATHOGENS OF POWER

The intriguing implications of the connection between disease and war can be read as an aftermath of SARS. SARS proved us the things we already knew and feared – the disease would bring down a modern western society within days. This realisation, combined with the current *war on terror* has increased the emphasis that can be found between preventing emerging infectious diseases and bioterrorism. During the epidemic, SARS did not just infect biological networks; it also infected transportation networks, communications networks, and cultural networks¹³³. Though SARS was a naturally occurring outbreak, it was not difficult to imagine the possibility of somebody using a similar outbreak as a weapon.

4.1 Medical surveillance

Contemporary society is filled with networks that exchange information. Medical surveillance has taken a Foucauldian turn. The behaviour of a micro level organisation, such as one hospital, has changed into a control mechanisms of global institutions. The World Health Organisation, working with the local health institutions, was able to establish a communications and data transmission network which greatly facilitated their decisions on travel advisories, quarantines, and the confirmation of SARS cases based on patient data¹³⁴. An information network was used to combat a biological network. The World Health Organisation's "Global Outbreak Alert and Response Network" has as one of its primary aims, the insurance that "outbreaks of potential international importance are rapidly verified and information is quickly shared within the Network."¹³⁵

The mere existence of medical surveillance is not problematic in itself. Certainly if it

¹³³ Galloway, A. and Thacker, E. (2004) 'Networks, Control, and Life.-forms. *SIGGROUP Bulletin* 25 (2)

¹³⁴ World Health Organisation (2004) *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome*

¹³⁵ *ibid.*

were not for the World Health Organisation's efforts, the SARS epidemic may have been more devastating. The key issue lies in the relationship between disease, code, and war¹³⁶. The idea of disease-as-war has a long history. However, it is foreseeable that the issue related to collection and archiving of health data may cause some controversy. Concerns over public health will be the Trojan horse increased medical surveillance and militarisation of medicine¹³⁷. The institutions of medical surveillance will be almost indistinguishable from national security initiatives and both will have shared goals and techniques. While the World Health Organisation utilised medical data from patients infected with SARS, some researchers claim that it is inevitable that health data may soon be required in advance from both infected and non-infected people¹³⁸. We are already witnessing this in the areas of genetic screening, genetic counselling, and DNA fingerprinting. The science fiction ideology is changing the boundaries of our bodies. The new biopassport that is already required when travelling to the United States is a perfect example of biological control on individuals. It is no longer our name that defines us, rather, our biology.

4.2 Epistemic epidemic

Earlier the distinction was made between emerging infectious disease and bioterrorism based on their cause: one was naturally occurring and the other the result of direct human intervention. International organisations such as the World Health Organisation and United Nations still maintain this distinction¹³⁹. The United States government, however, seems to have combined the threat of disease and the threat of bioterrorism and this has resulted drastically streamlined connections between military, medicine, and the economics of drug development¹⁴⁰. A White House press release outlining the President Bush's 2003 proposed budget discusses how, "in his 2003 Budget, the President has proposed \$1.6 billion to assist State and

¹³⁶ Galloway, A. and Thacker, E. (2004) 'Networks, Control, and Life.-forms. *SIGGROUP Bulletin* 25 (2)

¹³⁷ Ibid.

¹³⁸ *ibid.*

¹³⁹ Ibid.

¹⁴⁰ Galloway, A. and Thacker, E. (2004) 'Networks, Control, and Life.-forms. *SIGGROUP Bulletin* 25 (2)

local health care systems in improving their ability to manage both contagious and non-contagious biological attacks.”¹⁴¹ President Bush on July 21, 2004 signed into law Project BioShield, which provides new tools to improve medical countermeasures protecting Americans against a chemical, biological, radiological, or nuclear (CBRN) attack. A White House press release describes Project BioShield as a “comprehensive effort to develop and make available modern, effective drugs and vaccines to protect against attack by biological and chemical weapons or other dangerous pathogens.”¹⁴² It is the implication of the word ‘or’ that signals a new, inclusive stage in modern biopolitics.¹⁴³

Regardless of the specific context, be it disease or terrorism, the aim seems to be a complete military-medical alert and response-system for biological threats; context and cause are less significant than the common denominator of biological effect¹⁴⁴. It has little significance if the context is terrorism, unsafe food or new virus strains transported by air travel. The thing that matters is the fact that in all these cases it is the bare life that is at stake. One of the ways that sovereignty maintains its political power is to continually identify a biological threat that is defined through bare life, or life itself, the health of the population and the health of the nation. These are the terms of modern biopolitics. By grounding political sovereignty in biology, threats against the political and biological body, in the form of threats against the health of the population, can be leveraged as ammunition for building a stronger sovereign power¹⁴⁵.

Biological security has as its aim the protection of the population, defined as a genetic entity, from any possible biological threat, be it conventional war or death itself. This also signifies that the biological threat, the opposite of biological security, is a

¹⁴¹ Ibid.

¹⁴² White House (2004) *President Bush Signs Project Bioshield Act of 2004*

¹⁴³ Galloway, A. and Thacker, E. (2004) ‘Networks, Control, and Life.-forms. *SIGGROUP Bulletin* 25 (2)

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

perpetual threat, even an existential threat.¹⁴⁶ To fully grasp the both aspects there is a need for a paradigm in which life can be regarded as simultaneously biological and political. As Foucault notes, “at the end of the eighteenth century, it was not epidemics that were the issue, but something else – what might broadly be called endemics, or in other words, the form, nature, extension, duration, and intensity of the illnesses prevalent in a population. Death was now something permanent, something that slips into life, perpetually gnaws at it, diminishes it and weakens it.”¹⁴⁷

It is clear that, in this context, there is no end to biological security. Its job is never finished, and by definition, can never be finished. If there is one site in which the state of exception becomes the norm, it is this site of non-distinction between war and disease.

¹⁴⁶ Galloway, A. and Thacker, E. (2004) ‘Networks, Control, and Life.-forms. *SIGGROUP Bulletin* 25 (2)

¹⁴⁷ Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.243-244

5 SARS – THE LESSONS LEARNED

Overall SARS was diagnosed in 29 countries and nearly 774 people died. While Asia was the epicentre of the SARS epidemic, countries in Europe and the Americas also contended with their own outbreaks of the respiratory disease.

Summary of SARS cases from 1 November 2002 to 31 July 2003¹⁴⁸

Areas	Female	Male	Total	Deaths
Australia	4	2	6	0
Canada	151	100	251	43
China	2674	2607	5327 ^b	349
China, Hong Kong	977	778	1755	299
China, Macao	0	1	1	0
China, Taiwan	218	128	346 ^c	37
France	1	6	7	1
Germany	4	5	9	0
India	0	3	3	0
Indonesia	0	2	2	0
Italy	1	3	4	0
Kuwait	1	0	1	0
Malaysia	1	4	5	2
Mongolia	8	1	9	0
New Zealand	1	0	1	0
Philippines	8	6	14	2
Republic of Ireland	0	1	1	0
Republic of Korea	0	3	3	0
Romania	0	1	1	0
Russian Federation	0	1	1	0
Singapore	161	77	238	33
South Africa	0	1	1	1
Spain	0	1	1	0
Sweden	3	2	5	0
Switzerland	0	1	1	0
Thailand	5	4	9	2
United Kingdom	2	2	4	0
United States	13	14	27	0
Viet Nam	39	24	63	5
Total			8096	774

¹⁴⁸ World Health Organisation (2003) This table presents a summary of the areas around the world that experienced SARS during the outbreak period. It shows the number of deaths. The table has been compiled from the reports that WHO have received from public health authorities and it is available in <http://www.who.int/csr/sars/areas/en/>.

Canada's historic immigration links with Hong Kong contributed Toronto to become the worst affected area outside of the eastern hemisphere. Between the uncovering of the first case on February 23 and the onset of the final case on July 31, a total of 43 Canadians lost their lives among 251 infections¹⁴⁹.

5.1 Toronto

Toronto, Canada's largest city and the provincial capital of Ontario, was overwhelmed by the outbreak in its first few weeks. While health officials had been aware for some time that conditions were ripe for a new global disease, other pressing health-care demands had made developing detailed contingency plans a distant priority. Indeed, the provincial action plan to combat SARS did not take effect until March 31, over a month after the index case was identified. Dr. Donald Low, chief microbiologist at Toronto's Mount Sinai Hospital remarked, "We're playing this huge catch-up in creating all of these high-level documents in a period of 24, 48 or 72 hours. It's an incredible amount of work – we were not prepared to do that."¹⁵⁰ Political leaders at all levels of Canadian government also seemed astonished when an infection crossed ocean rapidly and begun spreading at an alarming rate¹⁵¹. The New York Times wrote: "Prime Minister Jean Chrétien and Mr. Lastman, the Mayor of Toronto, have come under increasing criticism in recent days for not taking stronger action to confront the health crisis or even making a concerted effort to calm fears."¹⁵²

With Ontario in a state of emergency, firm course of actions were taken in all hospitals. Visits to patients were severely shortened and additional security staff and police assigned to enforce the new rules.¹⁵³ A voluntary quarantine urging affected

¹⁴⁹ World Health Organisation (2004) *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome*

¹⁵⁰ Hawaleshka, D. (2003) 'Is This Your Best Defense?' *MacLean's*, April 14

¹⁵¹ Chan, K. (2003) 'SARS and the Implications for Human' seminar paper. Carr Center for Human Rights, John F. Kennedy School of Government, Harvard University.

¹⁵² Kraus, C. (2003) 'The SARS Epidemic: The Overview: Travelers Urged to Avoid Toronto Because of SARS', *The New York Times*, April 24

¹⁵³ Kraus, C. (2003) 'The SARS Epidemic: The Overview: Travelers Urged to Avoid Toronto Because of

Torontonians to isolate themselves for the ten-day incubation period of the SARS corona virus eventually concerned some 12,000 individuals.¹⁵⁴ Five people who disregarded the quarantine directive were later placed in mandatory isolation¹⁵⁵.

In a society freedom is a core value health workers were reluctant to ask the probing questions necessary to contain the spread of SARS. Dr. Allison McGreer – an infectious disease expert at Mount Sinai Hospital – noted, “We don’t go and interrogate people to see if their family had been to Hong Kong.”¹⁵⁶ However, Canadians were seeing things very differently. An Ipsos-Reid study found that 66% of Canadians polled believed that airline passengers arriving from SARS-infected areas should be quarantined or refused entrance to the country.¹⁵⁷

On April 24, Toronto became the first city outside of China to be put on the World Health Organisation’s list of travel destinations to be avoided¹⁵⁸. Evidence showed that latest cases of infection in Australia, the United States and the Philippines could be traced back to Toronto, suggesting a failure in containment. Toronto officials were shocked. “I have never been so angry in my whole life. If it’s safe to live in Toronto, it’s safe to come to Toronto. This isn’t a city in the grips of fear and panic,” Toronto’s Mayor Lastman announced.¹⁵⁹ The travel restrictions lasted six days. However, it had had significant impacts on the local economy. Toronto suffered a vast loss of business due to canceled conferences and lack of tourism. Figures show business travel has dropped 20 per cent, Chinese businesses have lost up to 80 per cent of customers, while downtown retail stores were down as much as 30 per cent.”¹⁶⁰

SARS’, *The New York Times*, April 24

¹⁵⁴ Centers for Disease Control and Prevention (2003) *SARS*

¹⁵⁵ Ibid.

¹⁵⁶ Hawaleshka, D. (2003) ‘Is This Your Best Defense?’ *MacLean’s*, April 14

¹⁵⁷ Chan, K. (2003) ‘SARS and the Implications for Human’ seminar paper. Carr Center for Human Rights, John F. Kennedy School of Government, Harvard University.

¹⁵⁸ World Health Organisation (2004) *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome*

¹⁵⁹ Kraus, C. (2003) ‘The SARS Epidemic: The Overview: Travelers Urged to Avoid Toronto Because of SARS’, *The New York Times*, April 24

¹⁶⁰ Carroll, B. (2003) ‘China Orders Massive Quarantine as SARS Panic Spreads’ *NewsMax*, April 25

After SARS was contained in early June, it was apparent that government and health officials had not been adequately prepared for the outbreak. The SARS Commission conducted detailed survey about the circumstances where the SARS outbreak occurred in Ontario. The commission's report states: "Vaccines, sanitation, medical improvements and antibiotics reduced the burden of infectious disease, shifting patterns of morbidity and mortality from diseases like diphtheria to diseases like coronary heart disease. The shift in public health priorities to long-term population health promotion, coupled with the general decline in public and governmental attention to infectious disease control, has led to the point where our public health system is not well equipped to deal with significant outbreaks of a new communicable disease".¹⁶¹

With SARS it became clear modern way of living makes infectious diseases a concern for every member of the international community regardless of their country of origin. The global SARS crisis raised many human rights issues, including the importance of a free and vibrant press, the obligation of member states to uphold international security, disagreements over the scope of the right to health, and the inherent tension between public health and individual liberty.

5.2 Conflicts with ethical principles

In Canada, like in other liberal democracies generally, the idea of virtually unrestricted personal freedom has become a core value. During recent decades there has been a number of serious public health issues in the Western democracies, such as tuberculosis and AIDS, that have raised questions about the relationship of the rights of the individual and the common good of society. SARS created an even sharper test

¹⁶¹The SARS Commission (2004) *SARS and Public Health in Ontario: Interim Report*.

of which rights should exist at what time¹⁶². In most cases legislation allows individual rights to be overridden for the common good but under defined circumstances. When there is a need to revoke the individual rights, it should be done in an ethical and fair manner so that people are not wrongly or disproportionately harmed by such measures¹⁶³.

There are times when the interests of protecting public health overthrow certain individual rights, such as freedom of movement. Then society has a duty to inform people of the nature of the threat, be open in explaining the reasons for suspension of individual rights and do as much as possible to aid those whose rights are being violated.¹⁶⁴

Contagious diseases are similar to wars in that sense that they both test the limits of freedom in societies¹⁶⁵. SARS was a reminder that the interests of the individual must, occasionally, be surrendered to the best interests of society. In Toronto, thousands were placed in quarantine¹⁶⁶, mostly at home, in order to protect millions others – not only in Canada but also around the world from possible exposure to a fatal illness. When clear, serious and imminent threat to the population is demonstrable, public health authorities have an obligation prioritise the individual health and well-being of the community rights in the interest of the.¹⁶⁷

The citizens have a civic duty to comply with such restrictions for the common good. When protecting many from harm is ethically necessary and when the exercise of power by the public health authorities can be justified, the very authorities must also protect individuals from unnecessary coercion. Restrictions of liberty must be

¹⁶² Davis, M. (2003) *The Scars of SARS-Balancing Human Rights and Public Health Concerns*. Hong Kong: Hong Kong Law Society

¹⁶³ *ibid.*

¹⁶⁴ The SARS Commission (2004) *SARS and Public Health in Ontario: Interim Report*.

¹⁶⁵ Davis, M. (2003) *The Scars of SARS-Balancing Human Rights and Public Health Concerns*. Hong Kong: Hong Kong Law Society

¹⁶⁶ World Health Organisation (1998) *The Domains of Health Responsiveness – A Human Rights Analysis*

¹⁶⁷ *Ibid.*

relevant, legitimate and necessary. Only legitimate authorities should place the restrictions and the least intrusive methods should be used. Such restrictions should be applied without discrimination.¹⁶⁸

More people were quarantined in Toronto during the 2003 SARS outbreak – and with less regard to their rights – than in either Hong Kong or Shanghai, the other two most affected cities, according to research by York University Professor Lesley Jacobs¹⁶⁹. From 20,000 to 30,000 people were quarantined in Toronto, versus about 1,200 people in Hong Kong.

“Quarantine infringes on civil and political rights recognised in international law and in the legal systems of most constitutional democracies,” says Jacobs¹⁷⁰. In Toronto, Jacobs also found that concerns over rights had little impact on public health policy, but considerably shaped what was done in Shanghai and especially Hong Kong. He says his findings are all the more surprising because it is widely believed that Canada is much more of a rights-centred society than China or its territories.¹⁷¹

Authorities have the right to force quarantine and isolation, but it is preferable, as was the case in Toronto, to use voluntary measures first. When people are well informed, and see that they are being treated as impartially as possible, it is likely that voluntarism will prevail during emergency. In fact, most people in Toronto cooperated with restrictions. More coercive measures (such as detention orders or surveillance technology) should be reserved for those cases where non-compliance is documented, and potential harm to others is highly probable. In Toronto most people at risk of infection obliged the health authorities’ requests; however, there were cases where more coercive measures were taken.¹⁷²

While the individual has a right to privacy, the state may temporarily suspend this

¹⁶⁸ World Health Organisation (1998) *The Domains of Health Responsiveness – A Human Rights Analysis*

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² The SARS Commission (2004) *SARS and Public Health in Ontario: Interim Report*.

privacy in case of serious public health risk, i.e. when revealing private medical information would help protect public health¹⁷³. As a general guideline the privacy and confidentiality of individuals should be protected at all costs unless a well-defined public health goal can be achieved through the release of this information¹⁷⁴.

In modern democratic societies, all legitimate stakeholders need to be properly informed about the risks and benefits of changes that appear in the society. They should have ability to participate to discussions on issues that affect them, particularly on matters that influence their health, well being and personal liberty. According to Siracusa Principles society has a duty to see that those quarantined receive adequate care, are not kept in quarantine for extremely long periods, and are not abandoned or psychosocially isolated¹⁷⁵. There may also be a need to eliminate economic barriers, such as loss of income, which would otherwise prevent someone from obeying a quarantine order.¹⁷⁶

People placed in quarantine and isolation should be assisted to overcome the hardships imposed.¹⁷⁷ This will also strengthen the cooperation between the individuals and health care authorities. The assistance should include ensuring that they have access to food, shelter, medical care, job protection and connections to outside world for support and comfort. In the Toronto, several volunteer agencies and organisations such as Meals on Wheels, the Red Cross and the Toronto Public Health department, helped people in home quarantine to live as normal a life as possible¹⁷⁸. Government stated that people are not to suffer employment loss or discrimination, and that waiting times for benefits from employment insurance would be reduced to recognise the hardship imposed by quarantine¹⁷⁹.

¹⁷³ World Health Organisation (1998) *The Domains of Health Responsiveness – A Human Rights Analysis*.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ The SARS Commission (2004) *SARS and Public Health in Ontario: Interim Report*

¹⁷⁸ Ibid.

¹⁷⁹ Davis, M. (2003) *The Scars of SARS-Balancing Human Rights and Public Health Concerns*. Hong Kong: Hong Kong Law Society

One of the great challenges of the 21st century is to understand the interconnections between globalisation and health, and to find ways of narrowing global health disparities in different regions. A new global health ethic based on solidarity could help make the world a more stable place. Solidarity means feeling one has common cause with others who are less powerful, wealthy, or healthy. Infectious diseases can spread in either direction between poor, rural areas and rich urban areas, anywhere in the world.

5.3 Integrating human rights and good governance

David Fidler points out that the study of infectious diseases has traditionally focused on scientific and medical issues. The advances in biotechnology suggest that revolutionary scientific and medical developments will be available soon. Fidler points out that these developments might lead to a new era in the become governance of global infectious disease threats: “Public health has experienced a governance revolution of such significance that infectious disease control now represents an important criterion of good governance in world affairs”¹⁸⁰. He also stresses that whether the focus is bioterrorism, HIV/AIDS, SARS, or avian influenza, it is the germs that increasingly pose dangers to human societies. ‘Germ governance’ is linked to the ways the societies, both within and beyond national borders, structure their responses to pathogenic challenges.¹⁸¹

Ultimately, the rights and the governance components of the right to health interact to serve the public interest. Human Rights create entitlements for right-bearers and, at the same time, the right to health creates an obligatory duty on states, as well as other appropriate bodies and individuals, to fulfil the mandate necessitated by the particular right. In this sense, rights may chart avenues of good governance. The legal enforcement mechanisms associated with the right to health add to the public

¹⁸⁰ Fidler, D. (2003) ‘SARS and International Law.’ *American Society of International Law Insights*

¹⁸¹ Ibid.

health and moral imperative inherent in this sound public policy. Enforcement mechanisms, whether administrative or judicial, become vehicles for further public discussion and refinement of norms in support of legislative and administrative processes and social justice.

5.4 SARS in a globalised world

SARS can be seen as a wakeup call about global interdependence. The outbreak of SARS demonstrates the potential of new infectious diseases to spread rapidly in today's world, increasing the risk of a global pandemic. There is a need to strengthen the global health system to cope with infectious diseases in the interests of all, including those in the richer and poorer nations. This will require global solidarity and cooperation in health related issues. The spread of infectious diseases is probably one of the most discussed health effects of globalisation and past disease outbreaks have been linked to factors that are related to the globalisation process.¹⁸² The combination of movement of goods, services and people, and profound changes affecting ecosystem all contribute to increased risk of global pan-epidemic.¹⁸³

Globalisation potentially increases the speed of responses in some cases. Wilson¹⁸⁴ states that responding to disease emergency requires a global perspective, both conceptually and geographically, as the current global situation favours the outbreak and rapid spread of infectious disease. As a result, the policies and actions undertaken by the World Health Organisation are becoming increasingly important in controlling infectious diseases at a global level. For instance, the World Health Organisation played a critical role in controlling SARS by means of global alerts, geographically specific travel advisories and monitoring.¹⁸⁵

¹⁸² Newcomb, J. (2003) *Biology and borders: SARS and the new economics of bio-security*. Cambridge: Bio Economic Research Associates

¹⁸³ Ibid.

¹⁸⁴ Wilson, ME (1995) 'Travel and the emergence of infectious diseases'. *Emerging Infectious Diseases* 3 (1)

¹⁸⁵ World Health Organisation *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome* (2004)

Many have pointed out that a new governance mechanism is needed for global surveillance of infectious diseases¹⁸⁶. Some claim that the world should consider strengthening the role of the World Health Organisation, giving it the right to gather information, communicate it, and to help countries deal with outbreaks¹⁸⁷. There is also a need to strengthen the global health system to cope with infectious diseases¹⁸⁸. Countries invest large amounts in national laboratories for disease control, but relatively little in international organisations such as the World Health Organisation¹⁸⁹. The lack of co-operation is crippling the system. Therefore it can be argued that, at the global level, there has not been, and likely will not be, a completely bio-political network. Globalisation tends to operate solely under economic demands leaving little room for considerations of health and happiness of individuals and populations therefore it may seem that the globalisation is lacking the bio-political aspect. This pseudo absence of bio-politics can be deceiving; productivity and wellbeing of population have a long history.

The role of human rights is essential in prevention and controlling a disease. After SARS many human rights issues lingered. The most important of them is the right of free speech. There is a belief that a free and vibrant media in China would have helped identify and isolate the SARS epidemic. It was a widely held view that Chinese officials had been unhelpful in the World Health Organisation's investigation by actively concealing the extent of the outbreak, and preventing those who had an insight of the event from coming forward¹⁹⁰.

¹⁸⁶ see: Murray CJL and Smith R (2001) *Diseases of globalisation*. London: Earthscan Publication Ltd.

¹⁸⁷ see: Lee, K. (1999) 'Globalization, communicable disease and equity' *Development* 42 (1)

¹⁸⁸ Murray CJL and Smith R (2001) *Diseases of globalisation*. London: Earthscan Publication Ltd.

¹⁸⁹ Huynen, M et al. (2005) 'The health impacts of globalisation: a conceptual framework' *Globalization and Health* 2005, 1 (14)

¹⁹⁰ World Health Organisation (2004) *Cumulative Number of Reported Probable Cases of Severe Acute Respiratory Syndrome*

6 CONCLUSION

Public health pioneers, such as the German bacteriologist Robert Koch, were not only scientists but also political advocates for social change¹⁹¹. Improving healthcare was closely linked with a nexus of reforms that ranged from better housing and nutrition to an extension of voting rights to ensure that the poor had adequate political representation in political institutions¹⁹². The insatiable need for producing better, healthier and more productive (i.e. docile) people was closely connected to modernisation and the rise of the Western capitalism. The techniques that produced desired behaviour were invented because "without the insertion of disciplined, orderly individuals into the machinery of production, the new demands of capitalism would have been stymied."¹⁹³ The aim of disciplinary technology is to forge a docile [body] that may be subjected, used, transformed and improved".¹⁹⁴ Simultaneously, new category of people, the 'other', emerged. This mysterious and evil 'other' embodied all the characteristics that were excluded from the obeying body politics.

Now it seems that the categories of otherness are created through public health. This change has both ideological and practical implications. In my thesis, I have portrayed the interesting crossing between public health and human rights. In this debate, biopower is clearly revealed and both the productive and restricting aspects of this power can be explored.

How then do we respond to this new biopolitical control? The primary response to the turning point where biological life, state power and politics have been combined raised the claim that inalienable rights are attached to the human in and of itself. To promote human rights is not only to legitimise the power of the state that must enforce

¹⁹¹ Farmer, P. (2000) *Infections and Inequalities: the Modern Plagues*. Los Angeles: University of California Press

¹⁹² Chan, K. (2003) 'SARS and the Implications for Human' *seminar paper*. Carr Center for Human Rights, John F. Kennedy School of Government, Harvard University.

¹⁹³ Dreyfus L. and Rubinow, P. (1992) *Michel Foucault*, Paris: Gallimard p.134-135

¹⁹⁴ Foucault, M. (1991) *Discipline and Punish*, London: Penguin p.177-179

them, but also to connect them to the very development of a biopolitics that has turned human life into a site for political control. Far from being neutral in relation to this power, human rights declarations are mechanisms by which sovereignty that was previously legitimated through recourse to the divine, now finds its basis in a national or sovereign people. To locate rights in the biological life of the human is to bring this life further into the realm of sovereign power. As Agamben puts it: “It is almost as if starting from a certain point, every decisive political event were double sided: the spaces, the liberties and the rights won by individuals in their conflicts with certain powers always simultaneously prepared a tacit but increasing inscription of individuals’ lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves”.¹⁹⁵

Interestingly enough, public health and human rights, concepts that one would assume to collaborate, differ tremendously from each other. Public health is based on collective orientation, whereas human rights are focused on individual. Public health uses medical knowledge and empiricism to endorse its agenda. For human rights the roots of the argument rely on the legal and moral aspects.

The combination of human rights and health can cause either sympathy or stigma. If there is identification process, normally people experience sympathy they feel connected and they care. However, often illness causes marginalisation, which creates the stigma effect. This causes social opprobrium and social isolation. The ‘other’ is, in fact, the ill. This idea is visible not only in the cases of emergency, but also in private everyday life.

Health has always been an issue in foreign policy but as its prominence increases, it is important to assess whether it is appropriately prioritised and how the government

¹⁹⁵ Agamben, G. (1998) *Homo Sacer – Sovereign Power and Bare Life*. Stanford: Stanford University Press p.121

interacts with business and civil society on a national, regional (e.g. European Union) and global basis. The HIV/AIDS pandemic, SARS and efforts to improve preparedness for bioterrorism all provide recent examples where health concerns mix with high politics. SARS highlighted the necessity of global co-ordination of efforts to control communicable diseases and the importance of urgent review and effective reform of the system of international health regulations. Since the events of 11th September 2001, the health and development agenda have also been widely linked with the foreign policy priorities of improving global security and preventing state failure. Bioterrorism has formed a prominent part of the health and security agenda. As a result, policy-makers in the previously rather distant fields of health, security and foreign policy must consider each other's work as they are confronted by the interplay of issues at the global level.

There is no escaping from power struggles; these struggles are painfully clear when individuals are fighting for their lives. The public health debate must address these power struggles and make sure that human right aspect is included in the debate. The SARS epidemic showed that there is still plenty to be done so that future emergencies will be handled with care.

There are two great challenges for human rights in contemporary world. Firstly, the world is still organised according to the logic of sovereignty. The international organisations, such as World Health Organisation or United Nations are powerless in front of a truly global threat. Secondly the simultaneous decline of the nation-state and has lead to the end of the rights of man. The human right questions were swept away by claiming that SARS had nothing to do with human rights. Essentially, rights do not exist during the state of emergency or state of exception. The SARS epidemic showed once again that we are desperately in need of reinvention of the concept of human of rights. The decline of the nation-state combined with the incapable international institutions has left humanity adrift. The new concept of human rights should not be organised around the principle of suspension – the rights that exist only

when no one needs them do not constitute a thing.

The biopolitical approach is a useful tool when analysing the changes that either took place or are taking place within the context of politics. It can be argued that in contemporary politics there are processes where rational and calculative policymaking is gradually replaced by reactive actions that are no longer controlled by policy makers. The changes in society are either too fast or too technical for politicians and democratic practises, such as voting. The specific scientific knowledge is taking over the traditional input-output-model. Experts give recommendations that formulate policies, this trend distances people from the decision-making process and can create legitimacy crisis. During SARS epidemic this became the reality. Political rhetoric sounded more warlike and policies were formulated, not in parliaments, but rather in laboratories. I argue that SARS epidemic marked a new era in global governance; for the first time universal threat challenged the traditional alert and response – mechanisms of individual states. The question that remains is did SARS, the invisible enemy, create a permanent state of exception that replaces democracy and invalidates human rights whenever there is a biological threat.

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Appendix – Chronology of SARS

16 November 2002

– First known case of atypical pneumonia occurs in Foshan City, Guangdong Province, China, but is not identified until much later.

12 February 2003

– Health officials from Guangdong Province report a total of 305 cases and 5 deaths of acute respiratory syndrome. The cases and deaths occurred from 16 November to 9 February 2003. Laboratory analyses are negative for influenza viruses.

21 February 2003

– A 64-year-old medical doctor from Zhongshan University in Guangzhou (Guangdong Province) arrives in Hong Kong to attend a wedding. He checks into the ninth floor of the Metropole Hotel (room 911). Although he developed respiratory symptoms five days earlier, he feels well enough to sightsee and shop with his 53-year-old brother-in-law, who resides in Hong Kong.

22 February

– The Guangdong doctor seeks urgent care at the Kwong Wah Hospital in Hong Kong

and is admitted to the intensive care unit with respiratory failure (he had previously treated patients with atypical pneumonia in Guangdong). He warns medical staff that he fears he has contracted a “very virulent disease”. Health authorities in Hong Kong learn that his symptoms developed on 15 February, at which point he would have still been on the Chinese mainland.

23 February

- A 78-year-old female tourist from Toronto, Canada checks out of the Metropole Hotel and begins her homeward journey. On arrival in Toronto she is reunited with her family.
- A team of WHO experts arrives in Beijing, but is granted permission to work at the central level only.

26 February

- A 48-year-old Chinese-American businessman is admitted to the French Hospital in Hanoi with a 3-day history of fever and respiratory symptoms. His recent travel history includes a January trip to Shanghai, and a private trip from 8 to 10 February to Guangdong Province, and Macao. He travelled to Hong Kong on 17 February, departed for Hanoi on 23 February, and fell ill there. Shortly before his departure from Hong Kong, he had stayed on the ninth floor of the Metropole Hotel in a room across the hall from the Guangdong doctor.
- The businessman is attended by a WHO official, Dr Carlo Urbani, based in Viet Nam.

28 February

- Dr Urbani, alarmed by the unusual disease and concerned it might be a case of avian influenza, notifies the WHO office in Manila. WHO headquarters moves into a heightened state of alert.

4 March

- The Guangdong doctor dies of atypical pneumonia at Kwong Wah Hospital.

13 March

- WHO sends emergency alert to its partners in the Global Outbreak Alert and Response Network (GOARN).

15 March

– WHO issues a rare travel advisory as evidence mounts that SARS is spreading by air travel along international routes. WHO names the mysterious illness after its symptoms: severe acute respiratory syndrome (SARS) and declares it “a worldwide health threat.”

22 March

– Hong Kong scientists devise first “hand-made” diagnostic test and announce isolation of a candidate causative agent. The exact identity of the virus remains elusive.

– Thirteen countries on three continents report a cumulative total of 386 cases and 11 deaths.

26 March

– The WHO team in China reviews the case definition used for cases during the outbreak of atypical pneumonia and concludes that the cases most likely represent the same disease now referred to as SARS.

29 March

– WHO infectious disease specialist, Dr Carlo Urbani, the first WHO officer to identify the outbreak of this new disease and treat the earliest cases in Hanoi, dies of SARS in Thailand.

31 March

– Health authorities in Hong Kong issue an unprecedented isolation order to prevent the further spread of SARS.

2 April

– WHO recommends that persons travelling to Hong Kong and Guangdong Province consider postponing all but essential travel until further notice. This is the most stringent travel advisory issued by WHO in its 55-year history.

- Chinese authorities announce updated figures of 361 new SARS cases and 9 deaths in Guangdong Province for the reporting period 1 to 31 March.
- Chinese government gives WHO team permission to travel “immediately” to Guangdong.
- The cumulative world total of SARS cases passes the 2000 mark.

3 April

- WHO team arrives in Guangdong and starts work immediately. Over the next days, the team visits Foshan city, where the first known case was reported in November, and Guangzhou city. All team requests for access to sites and interviews with health staff at all levels are readily granted.
- Chinese Minister of Health appears on national television to address SARS-related issues.

20 April

- Beijing authorities announce 339 previously undisclosed cases of SARS, bringing the cumulative total of SARS cases in China to 1,959. Chinese authorities further announce that the traditional week-long May Day holiday will be shortened.
- The mayor of Beijing and the minister of health, both of whom had downplayed the SARS threat, are removed from their Communist Party posts.

28 April

- Viet Nam is removed from the list of areas with recent local transmission, making it the first country to successfully contain its outbreak.
- The cumulative total number of cases surpasses 5000.

30 April

- WHO lifts its travel advice for Toronto.

- China, accounting for 3460 probable cases of the global total of 5663, now has more cases than the rest of the world combined.

7 May

- WHO estimates that the case fatality ratio of SARS ranges from 0% to 50% depending on the age group affected, with an overall estimate of case fatality of 14% to 15%.

23 May

- Travel recommendations for Hong Kong and Guangdong Province are removed.
- Research teams in Hong Kong and China announce detection of a SARS-like virus in the masked palm civet and racoon-dog. These and other wild animals are traditionally consumed as delicacies and sold for human consumption in markets throughout southern China.

23 June

- Hong Kong is removed from the areas with recent local transmission.

5 July

- WHO declares that SARS outbreaks have been contained worldwide, but calls for continued vigilance.

Source: WHO (http://www.who.int/csr/sars/country/en/country2003_08_15.pdf)