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THE POST-COVID-19 UNIVERSE AND THE RECOVERY OF INDIVIDUAL FREEDOMS

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I. AN UNEXPECTED PANDEMIC – II. ANTIVIRAL STRATEGIES – III. RED LINES AND HUMAN RIGHTS – IV. DESIGNING THE “POST-COVID-19 UNIVERSE” – V. IN SYNTHESIS.

ABSTRACT: The emergence of the pandemic generated by COVID-19 has led to a significant reduction in fundamental freedoms, which, although justified as part of the fight against the pathogen, in some situations certain red lines have been crossed. This implies the need to recover the *statu quo ante* and generate a return to the principles of respect for human rights and to consider a global strategy on what has been called “the post-COVID-19 universe”.

KEYWORDS: Pandemic, COVID-19, Vaccines, Human Rights.

EL UNIVERSO DE LA POSCOVID-19 Y LA RECUPERACIÓN DE LAS LIBERTADES INDIVIDUALES

RESUMEN: La aparición de la pandemia generada por la COVID-19 ha supuesto una merma importante de las libertades fundamentales que, si bien se ha justificado como parte de la lucha contra el patógeno, en determinadas situaciones se han sobrepasado ciertas líneas rojas. Ello implica la necesidad de recuperar el *statu quo ante* y generar un retorno a los principios de respeto de los derechos humanos y plantearnos una estrategia mundial sobre lo que se ha dado en llamar “el universo posCOVID-19”.

PALABRAS CLAVES: Pandemia, COVID-19, Vacunas, Derechos humanos.

L'UNIVERS POST-COVID-19 ET LA REPRISE DES LIBERTÉS INDIVIDUELLES

RESUME : L'apparition de la pandémie générée par le COVID-19 a entraîné une réduction significative des libertés fondamentales qui, bien que justifiée dans le cadre de la lutte contre le pathogène, dans certaines situations certaines lignes rouges ont été dépassées. Cela implique la nécessité de retrouver le *statu quo ante* et de générer un retour aux principes de respect des droits humains et de proposer une stratégie globale sur ce qu'on a appelé « l'univers post-COVID-19 ».

MOTS-CLES : Pandémie, COVID-19, Vaccins, Droits humains.

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I. AN UNEXPECTED PANDEMIC

If we carry out an shallow analysis of history or literature², we can find “warnings to navigators” that point out how the life of human beings has been marked by plagues and pandemics. The unexpected factor that has led to the emergence of the COVID-19 does not take us away from the fact that the human condition and its urban organisation have facilitated the transmission of pathogens of different kinds.

Pandemics are not a new reality. Thucydides recounts in “The Peloponnesian War” the plague that ravaged Athens from 430 to 426 BCE and which for four interminable years took to the grave more than a quarter of this city, including Pericles himself and his family. The cause is not known for sure, as experts have attributed up to twenty-eight pathogenic causes to Thucydides’ descriptions. However, it is attributed to typhoid fever on the basis of the findings made by archaeologists in 1994 in Athens, in the cemetery of Kerameikos. It was a common grave containing around 150 dead bodies together with funerary offerings that could be dated to that time and which made it possible to rescue DNA sequences of “salmonella tiphy”³ in the dental pulp of the remains bodies studied.

Another notable case was the smallpox epidemic known as the “Antonine plague” which decimated most of the city of Rome exterminating about five thousand people a day between 165 and 180 BCE; with a duration of almost

² CAMUS, A., *La peste*, ed. Sur, S.A., Colección Índice, Editorial Sudamericana S.A., 1979, (original book published in 1947). In these days, Albert Camus’ work “The Plague”, which was published in 1947, has again been cited in numerous interventions and is becoming a revived metaphor that reminds us that an epidemic makes us reflect on ourselves, on our moral values and, especially, on time. Camus tells us: “Only one thing had changed for them: time, which during their months of exile they would have liked to push it to hurry up, which they really wanted to rush; now that they were near our city, they wanted it to be slower, they wanted it to be suspended...”. In short, this confinement in our homes, necessary and opportune, is offering us another dimension and understanding of what we call “time”. Minute by minute we can understand in our introspection the value of our hours and the importance of travelling together with the rest of the human beings in the suggestive and interesting experience of this “journey of life”, for as the wise men of the East remind us: “You Westerners have the clocks, we have the time”.

³ PAPAGRIGORAKIS M. J., YAPIJAKIS C, SYNODINOS P. N., BAZIOTOPOULOU-VALAVANI, E: “DNA examination of ancient pulp incriminates typhoid fever as a probable cause of the plague of Athens”, *International Journal of Infectious Diseases*, n°10, 2006, pp. 206-214.

twenty years. It is said that the Stoic emperor Marcus Aurelius may have died as a victim of this pandemic.

As early as 541 AD, the so-called “Plague of Justinian” broke out in Constantinople, as reported by its contemporary historian and chronicler Procopius of Caesarea, who indicates that the pandemic exterminated up to ten thousand people a day. What began as a simple outbreak spread exponentially through the population, killing forty million people as it extended throughout the cities of that time. Although, the origin of pandemics is highly debated by experts, it was concluded that the cause was bubonic fever caused by fleas nesting in the fur of black rats (*chenopsylla cheopis*). According to a study conducted in a cemetery in Germany on the teeth of two corpses, attributed to the time, whose DNA fragments indicated that the bacterium was *Yersinia pestis*⁴, which confirmed that it was a zoonosis, that is, a disease transmitted from animals to humans. According to the aforementioned historian, the plague arrived in ships from Egypt, but recent studies indicate that it may have come from Asia via the Silk Road.

The same sequence continued during the 14th century in Europe, as between 1346 and 1347⁵ there was an unstoppable pandemic outbreak of bubonic plague and which lasted until 1353, wiping out twenty million Europeans in a period of six years. It turned out to be an ironic imitation of the one provoked in Justinian’s time, which would spread throughout Europe and recur intermittently from the 14th to the 18th century. It became known as the “black plague” because of the pustules it left on its victims and was manifested by dark spots on the skin, along with the other variants such as septicaemia plague which passed into the blood, not forgetting the pneumonic variant which affected the respiratory tract and was spread through the air. Studies suggest that it was during the Mongol siege of the city of Caffa in the Crimean⁶ peninsula that Genoese merchants, who had a trading post in

⁴ WARNER, D. M., KLUNK, J., HARBECK, M., DEVALULT, A., WAGLECHNER, N., SAHL, J.W. *et al*: “*Yersinia pestis* and the Plague of Justinian 541–543 AD: a genomic analysis”, *The Lancet Infectious Diseases*, n°14, 2014, pp. 319-326.

⁵ BETRÁN, J. L., *Historia de las epidemias en España y sus colonias (1348-1919)*, La Esfera de los Libros, Madrid, 2006.

⁶ Tradition has it that the Mongols were the first to suffer from the disease and that they catapulted contaminated corpses over the walls of city of Caffa, in the Black Sea, which dispersed the plague in this colony of Genoese traders.

the area, fled the war and carried the pathogen to Italy, from where it spread throughout Europe. Trade routes became links for the spread of the plague, which bewildered a vulnerable population who were unaware of the causes of their contagion and of the deaths that were occurring without mercy on a daily basis; whose animal aetiology was not known until five centuries later.

Influenza has also been the cause of numerous deadly pandemics, such as the case of the “Russian flu” that emerged in St. Petersburg between 1889 and 1890; it first ravaged Europe and then moved to America, killing more than a million people worldwide. The misnamed “Spanish flu” that emerged in Kansas, in the United States, at the Fort Riley military base spreads across the globe between 1918 and 1919, killing around forty million people; in an era without antibiotics in the face of a type A virus of the H1N1 subtype. Not forgetting the “Asian flu” of 1957, the “Hong Kong flu” of 1968, the “Russian flu” of 1977, the “bird flu” of 2003 and the “influenza A” of 2009 and now the coronavirus pandemic from 2019.

Smallpox has been another of the predators of human society and probably one of the oldest taking into account that the *variola* virus became a highly contagious and serious disease. It was during the 18th century that it became more evident throughout the world; I bring it up because it was eradicated thanks to the discovery of the vaccine that the English ambassador’s wife Lady Montagu tested in Turkey and introduced in London in 1721, inoculating healthy people with infected material. However, it will be a hundred years we have to wait until Edward Jenner, in 1802, succeeded in scientifically proving its efficacy. His reputation spread so far that in 1805 Napoleon Bonaparte ordered his army to be vaccinated with the “Jenner method”. A recalcitrant disease that, even in the 20th century, caused more than 300 million deaths and which, thanks to the vaccine, was finally declared eradicated by the World Health Organisation (WHO) in 1980.

Another scourge suffered by humanity has been the Acquired Immunodeficiency Virus (HIV) known as Acquired Immune Deficiency Syndrome (AIDS) and which is estimated to have caused around 25 million deaths worldwide. Their origin appears to be of animal origin as a result of zoonosis, but once inoculated in humans, it is transmitted between humans via body fluids; this leads to a depletion of the immune system and leaves the body unprotected against other generally lethal diseases.

These successive pandemics give us food for thought about the fate of human nature, which we must not underestimate, since coexistence with pathogens is a permanent reminder of our existential condition, but over which, as rational beings, we must seek the means to protect ourselves, to seek ways to combat them and methods to overcome them.

When we refer to COVID-19 as an “unexpected pandemic”, we mean that we have not taken into account all that has been said above, and that after SARS-CoV-2, there will be other pathogens that will decimate people, as has always been the case throughout history⁷. The problem may be based on the tendency to forgetfulness and the assumption that moments of placidity are permanent, but to our derision, history is cyclical, as Arnold Toynbee reminds us and as had already been pointed out, by Polybius and Cicero. We have to take into account the criteria which I have just outlined: we need to look for ways to protect ourselves, to combat them, methods to overcome them. Then, we will be able to anticipate future pandemics, generate the appropriate vaccines to combat them and then, build on the lessons learned to find ways to achieve positive outcomes and timely reflections once the pandemic is over.

However, as we have already realised, no pandemic that humankind has experienced has ever been short-lived, as we have seen, all have been raging with viral mutations and have spread over time, destroying habitats and populations. We must now ask ourselves about the aetiology of COVID-19 and how to overcome it.

⁷ Recent research on permafrost suggests that as climate change melts the planet’s northern ice sheets, it may reactivate the activity of certain viruses that have been cryopreserved. The actual consequences of melting permafrost (the frozen ground of arctic regions or glaciers resulting from the melting of the ice covering it) will depend on the characteristics of the infectious agent in question. While many micro-organisms are unable to survive in extreme cold, there are others that can withstand such conditions for years: “*B. anthracis* is special because it is a sporulated bacterium,” explains Jean-Michel Claverie, from the University of Aix-Marseille and head of the Mediterranean Institute of Microbiology. Add, “Spores are very resilient and, like seeds, can survive for centuries”. Some viruses can also survive for long periods of time. In 2014 and 2015, Claverie and his collaborator Chantal Abergel published their findings on two viruses found in a 30,000-year-old fragment of Siberian permafrost, which still retained their infectious capacity. And while “*Pithovirus sibericum* and *Mollivirus sibericum* only infect amoebae, the finding is an indication that other viruses that do cause human disease, such as smallpox or the 1918 influenza (Spanish flu), may have remained preserved in the permafrost”. *Vid.* <https://www.investigacionyciencia.es/revistas/investigacion-y-ciencia/el-futuro-688/las-epidemias-resucitadas-del-permafrost-14635>.

In late 2019 and early 2020, the international community was shaken by the outbreak of a pandemic triggered by the highly infectious and massive spread of the coronavirus (COVID-19) and rapidly globalised worldwide.

This is a virus belonging to the Coronaviridae family related to SARS-CoV-2 and viral diseases such as Zika and Ebola and its nickname is due to the resemblance of the virus to the outer part of the sun's corona. The World Health Organisation (WHO) has proposed the acronym COVID-19, in which he joins the English terms for virus (CORonaVirus) and disease (Disease), together with the numeral 19 as it was detected at the end of 2019 in the city of Wuhan (Hubei province) in China. The acronym could therefore be translated as "coronavirus disease".

In early January 2020 the WHO defined it as "acute respiratory disease caused by 2019-nCoV" (i.e.: 2019-novel CORonaVirus) until finally, in February 2020, it was named "novel coronavirus named 'Covid-19': WHO".

According to information provided by the Chinese Centre for Disease Control and Prevention (CDC)⁸, the first symptoms of pneumonia were detected in Wuhan market workers in December 2019, this allowed Chinese scientists to isolate the virus and sequence its genome, and be in a position to submit these data to the WHO in January 2020. The report indicated that the causes of pneumonia had not been caused by similar infections, such as SARS, or MERS, or influenza, or bird influenza, or any of the other known respiratory diseases. Although in the first few days it manifested itself with symptoms resembling a common flu, it was in fact a mutation and a new disease.

According to the journal *Nature Medicine*⁹, it is a zoonotic disease, because it would probably have moved from an animal host (could be a bat) to a human being. However, voices have also been raised that it may be a designer virus that escaped from the microbiology laboratory of the Wuhan Institute of Virology; where the team led by Shi Zhangli was the first to identify the genetic sequence of the new coronavirus (2019-nCoV)¹⁰.

⁸ Chinese Center for Disease Control and Prevention (CDC), <http://www.chinacdc.cn/en/>.

⁹ ANDERSEN K. G., RAMBAUT A., LIPKIN W. A., HOLMES E. C., GARRY R. F., "The Proximal Origin of SARS-CoV-2" *Nature Medicine*, vol, april 26, 2020, pp. 450-455: <https://andersen-lab.com/papers/andersen-et-al-nature-medicine-2020/>.

¹⁰ As a curiosity, it is disturbing, to say the least, that we find literary and cinematographic resources that foreshadow possible pandemics. This is the case of Steven Soderbergh's film

Finally, the scientists' efforts have yielded the expected results and different types of vaccines and doses have been introduced that have been successful in reducing mortality with the idea of achieving "herd immunity".

As a result, the disease has a very high case fatality rate and as the pandemic has spread to all regions of the world, containment measures have been put in place by government agencies and states to prevent the spread of infection. This has led to prevention methods such as 14-day quarantine, isolation and body distancing, the use of masks or the promotion of intensive personal hygiene.

II. ANTIVIRAL STRATEGIES

The most effective and quickest protective measure is "quarantine", which for sanitary reasons implies a preventive isolation of people or animals for a certain period, because they believe they may be infected by a contagious virus or to prevent them from becoming infected. The question that has arisen as soon as governments, both European and world-wide, have mandated quarantine has been to know how long would be the duration of that measure. In principle, it might seem that it should be forty days, but it has been suggested that it should be no more than fourteen days of compulsory confinement, which health institutions consider sufficient. The duration of forty days comes from the one imposed in the 14th century during the "black plague" and the quarantine period finds its inspiration in the number of days that Jesus of Nazareth isolated himself in the desert¹¹.

Following these criteria, two models have emerged in the face of the pandemic: on the one hand, quarantine for fourteen days, in hospitals or enclosures set up or adapted for the purpose for those affected or possible carriers of the virus and, on the other hand, confinement to their homes for the rest of the population.

"Contagion", released in 2011 and starring Matt Damon, which tells the fictional story of the same reality that we are living today. It is strange that this film is based on a work published in 1981 by Dean Koontz. "The eyes of darkness" which tells the story of an extremely deadly virus that emerges in a laboratory as a "powerful biological weapon" in the city of Wuhan and is dubbed "Wuhan-400". It is a striking coincidence that the Corona Virus has emerged in the Chinese city of Wuhan, spreading its contagion, in many cases lethal, all over the planet.

¹¹ FARAMIÑÁN GILBERT, J. M. de., "Aspectos jurídicos del estado de alarma y la pandemia COVID-19", *Revista de Estudios Jurídicos*, n° 20, 2020, pp. 473-553.

This confinement has been implemented through the Spanish government's adoption of a "state of alarm", which has been extended by a fortnight at a time, until total confinement has exceeded a month and a half; from which, depending on the evolution of the pandemic, it is possible to move on to the de-escalation phases. The legal basis for the adoption of the "state of alarm" is based on Article 116 of the Spanish Constitution of 1978, which states, "An organic law shall regulate the states of alarm, emergency and siege, and the corresponding powers and limitations". The government, by means of Royal Decree 463/2020, which came into force on 15 March, declared the application of these exceptional measures in order to alleviate the damage caused by the coronavirus for a period of fifteen days, extendable, but in this case, with the agreement of Congress. The competent authorities for the exercise of these exceptional functions are the President of the Government and the Ministers of Health, Defence, Interior and Transport. Article 4 of Organic Law 4/1981, which regulates states of alarm, emergency and siege, empowers the government to assume these restrictions, in part or all of the national territory, whenever serious disruptions to normality occur, such as disasters, earthquakes, floods, health crises such as epidemics or severe pollution situations.

However, the state of alarm should not presuppose any effect on the validity of fundamental rights, although, in accordance with the provisions of article 11 of Organic Law 4/1981, it is possible that, exceptionally and temporarily, some freedoms may be limited. Restricting the movement or stay of persons or vehicles in certain places or at certain times, carrying out temporary requisitions of goods, imposing compulsory personal services, temporarily occupying industries or holdings, rationing the consumption of basic necessities or imposing specific orders to ensure the functioning of public services.

Following these criteria, Royal Decree 463/2020 established as a consequence of the state of alarm: the confinement of the population, the limitations of citizens' transit marked by the distance from their homes of habitual residence, with the exception of going to work or to basic necessities or to purchase food and pharmaceuticals or to visit financial institutions. The proper enforcement of these measures is monitored by State security forces

and cases of non-compliance are fined as breaches of the current confinement regulations.

This implied the suspension of educational activities at all levels, the closure of bars and hotels, discotheques and sports facilities, cultural activities such as theatres or cinemas and popular festivals, parades or demonstrations that could generate crowds. In those cases where the exit has been allowed on an exceptional basis for shopping or essential services, it is determined to wear masks and latex gloves and to respect the safety distance of about one metre.

These protective measures were certainly acceptable and understandable in the fight against the spread of the virus and in the desire to prevent contagion, but it should also be noted that they should be of a temporary and exceptional nature, especially in cases such as geolocation via mobile phones or discrimination based on age or gender. Note that recent research by the universities of Zaragoza and Carlos III in Madrid, the Massachusetts Institute of Technology (MIT) and the Italian ISI Foundation¹² has concluded that confinement and social distancing do not solve all problems. If these measures are not complemented by large-scale diagnostic testing, determining the isolation of people with symptoms and the intelligent tracing of their contacts.

With regard to the concept and scope of the state of alarm, a heated debate has arisen since the Constitutional Court's ruling in July 2021¹³ declaring the Spanish government's state of alarm decree unconstitutional.

As noted above, Organic Law 4/1981, which regulates states of political exceptionality, makes an express reference in its fourth article to "health crises, such as epidemics and situations of serious contamination"¹⁴.

¹² MARTÍN-CORRAL, D., ALETA, A., PENTLAND, A., MORENO, Y., MORO, E., "Effectiveness of social distancing strategies for protecting a community from a pandemic with a data-driven contact network based on census and real-work mobility data", *IDSS MIT / University of Zaragoza / UC3M / ISI Foundation*, march 22, 2020, <https://covid-19-sds.github.io/>.

¹³ Judgment of the Constitutional Court 148-2021, July 14, 2021.

¹⁴ *Boletín Oficial de Estado*, nº134, de 05 de junio de 1981, Ley Orgánica 4/1981, de 1 de junio, de los Estados de alarma, excepción y sitio. Article 4 states that: "The Government, in use of the powers granted to it by article one hundred and sixteen, two, of the Constitution, may declare a state of alarm, in all or part of the national territory, when any of the following serious alterations of normality occur: (a) Disasters, calamities or public misfortunes, such as earthquakes, floods, urban and forest fires or major accidents. (b) Health crises, such as epidemics and serious pollution situations. (c) Stoppage of public services essential to

It is striking that the Constitutional Court draws attention to the fact that the recourse to confinement has meant more than a limitation of the fundamental right to freedom of movement, given that it means an actual suspension of this right in violation of Article 19 of the Spanish Constitution. The Constitutional Court criticised the measure adopted by the government, stating that instead of decreeing a state of alarm it should have opted for decreeing a state of exception, given that this allows for the suspension of fundamental rights, whereas a state of alarm does not.

The question arises, as Ramón Soriano¹⁵, criticizing the ruling of the Constitutional Court and with whom I agree has pointed out, from the fact that “the suspension entails the emptying of the right. Limitation means that the exercise of the right is conditional, that is to say it cannot be exercised in full. There is a long way between the exercise of the right in absolute terms and its conditional exercise. I would ask the reader whether he was confined as in a prison or whether he could go out for certain activities: to the bank, to the grocery shop, to the doctor, even to walk the dog and a long etcetera because the rule allowed for other justified causes. When a right is suspended, the right does not exist; when a right is limited, the right exists, albeit conditioned in its exercise”¹⁶.

It is clear that the state of exception, as set out in Article 13 of Organic Law 4/1981, is foreseen for situations that affect “public order” and for which a government decree is required with the authorisation of the Congress of Deputies after parliamentary debate. It is established for a period of thirty days renewable for another thirty days, as opposed to the state of alarm that is established for fifteen days and can be renewed successively without time limits. As Soriano points out, “We are talking about people’s health and lives

the community, when the provisions of Articles 28.2 and 37.2 of the Constitution are not guaranteed, and when any of the other circumstances or situations contained in this Article are present. (d) Situations of shortages of basic necessities”.

¹⁵ Soriano, R., “La ilegal sentencia del Constitucional sobre el estado de alarma”, *elDiario.es*, July 23, 2021, https://www.eldiario.es/opinion/tribuna-abierta/ilegal-sentencia-constitucional-alarma_129_8161264.html.

¹⁶ *Ibidem*. The author adds that “I have analysed many judgements of the TC, because I have worked for a long time on matters of public liberties, and I have not found a judgement as absurd as this one, which is not only not in line with the law, but also violates people’s intelligence”.

in the context of a pandemic, which no one knows how long it will last or the circumstances of its acclimatisation and damage. In this situation, a rapid legal instrument that can be extended *sine die* should be used, and this instrument is the state of alarm, not the procedurally slow state of exception, which is also subject to an expiry date¹⁷.

Let us recall that in a completely different framework, the practicality and timeliness of declaring a state of alarm as opposed to a state of exception is recognised. Indeed, Ana Aba Catoira pointed out that as a consequence of the airport crisis in Spain in 2010 and the “unsustainable situation generated by the airport chaos”, with the abandonment of the control towers by the controllers, the declaration of the state of alarm and the subsequent arbitration award issued by Manuel Pimentel: “let us consider how the state of alarm was regulated with emergencies caused by epidemics or natural catastrophes in mind, without the legislator having in mind conflicts of a different nature and more typical of a more developed society than that of 1978, such as airport chaos, the collapse of computer networks or food crises [...] certainly, the state of exception, which seems to be more in line with the situation that generated the state of alarm, presents itself as a more difficult procedure when it comes to the possibility of adopting effective measures to re-establish constitutional normality”¹⁸.

Within antiviral strategies, vaccination is undoubtedly a key tool. As I have already noted, the advances in this field made by Jenner in relation to smallpox have demonstrated the efficacy of this method. Since then, different types of vaccines have been developed that have eradicated or at least mitigated important infectious diseases.

Among the existing varieties of vaccines, we can highlight: attenuated virus vaccines, containing a laboratory-weakened version of the live virus,

¹⁷ *Ibidem*. “In conclusion, the TC ruling does not meet any of the criteria for interpreting legal norms. I am grateful to six of the eleven members of this high court for producing a judgment that is a textbook judgment to explain to first-year law students how the law should not be interpreted. A ruling that is a candidate to be amended by the European Court in Strasbourg (which has already ruled in a similar case on the legality of the state of emergency, equivalent to our state of alarm, decreed by the Romanian government) and to join the list of setbacks that our country’s high courts are receiving from the European courts (fortunately of last procedural instance)”.

¹⁸ ABA CATOIRA, A., “El estado de alarma en España”, *Teoría y Realidad Constitucional*, UNED, n° 28, 2011, pp. 305-334.

eliciting a strong and long-lasting immune response after one or two doses of inoculation (measles, mumps, rubella); inactivated virus or bacterial vaccines, produced by killing the pathogen with chemicals, heat or radiation, without losing the ability to produce immunity (for hepatitis A); toxoid vaccines, a toxin made from the germ that causes the disease is used, with an immune response that attacks the toxin rather than the whole germ (diphtheria, tetanus); biosynthetic vaccines with recombinant technology, with substances created in the laboratory that are similar to fragments of viruses or bacteria capable of creating immunity (for hepatitis B); messenger RNA vaccines, used in purified mRNA encapsulated in lipid molecules. This type of vaccine teaches our cells to make proteins that generate an immune effect. They do not contain viruses and do not interfere with our DNA (these are the first vaccines that have been developed against COVID-19)¹⁹.

As Hernández Terradas points out, the response to this pandemic has been an example of speed and efficiency, as in March 2020, 37 groups of pharmaceutical companies and academic institutions began work on the development of new vaccines. Messenger RNA vaccines, have been shown to be highly effective in terms of immunity but are very fragile, as they require extreme maintenance conditions of minus 80 degrees Celsius. Alongside this model, other options have also emerged called viral vector vaccines (containing other modified viruses that instruct our cells to produce an immune response and generate antibodies); o vaccines containing protein subunits of the COVID-19 virus instead of the whole virus (achieving an immune response with the production of T-lymphocytes and antibodies). On the whole these are very safe vaccines as safety standards are very high “as it is not only an ethical imperative, but also essential”²⁰.

Ultimately, vaccination is a critical step in preventing the spread of the pathogen. With vaccination rates reaching eighty to eighty-five percent of the population can be achieved herd immunity. In this way, it prevents the virus

¹⁹ Hernández Terradas, J. F., “La importancia de la vacunación frente a la COVID-19”, *Egarsat*, (february 12, 2021), <https://www.egarsat.es/la-importancia-de-la-vacunacion-frente-a-la-covid-19/>.

²⁰ *Ibidem*. He adds that: “They are only contraindicated in people who have reacted acutely (anaphylaxis) to the first dose. In persons with a history of severe reactions, not an absolute contraindication. In pregnancy, the benefit/risk ratio has to be assessed, although there are no data on this at the moment”.

from circulating, and while a vaccine does not prevent infection, what it really prevents is that once it has occurred, the disease does not develop.

III. RED LINES AND HUMAN RIGHTS

The United Nations High Commissioner for Human Rights, Michelle Bachelet, has indicated in relation to COVID-19 “emergency measures must not be a pretext for the violation of rights”²¹. In addition, insists, “Our efforts to combat the virus will not work unless we take a holistic approach, which means carefully protecting the most vulnerable and disadvantaged sectors of society both medically and economically”. She adds, and I agree with her, that “confinement, quarantine and other such measures aimed at combating the spread of COVID-19 must always be applied in strict observance of human rights standards and in a manner that is proportional and proportionate to the risk involved, but can still have a serious impact on the lives of individuals”²².

These words lead us to the following reflection: the pandemic has put governments and citizens to the test of the need to ensure respect for all human rights, whether economic, civil, social or cultural, when, after the hot period of contagion, it is necessary to mitigate the impact of the public health measures that were adopted in order to protect us from the spread of the virus²³.

For his part, António Guterres, Secretary-General of the United Nations, in his statement on COVID-19 and human rights, warns that we are facing “an economic crisis, a social crisis and a human crisis that is fast becoming a human rights crisis”²⁴. It is worrying that “We have seen that the virus does not discriminate, but its effects do: they expose the profound deficiencies in the provision of public services and the structural inequalities that hinder access

²¹ United Nations, *La emergencia sanitaria del coronavirus no puede limitar los derechos humanos*, april 27, 2020, <https://news.un.org/es/story/2020/04/1473482>.

²² *Ibidem*.

²³ FARAMIÑÁN GILBERT, J.M. de., “La protección de la salud pública y el respeto a las libertades individuales ante la COVID-19”, *Freedom, Security & Justice: European Legal Studies. Rivista quadrimestrale on line sullo Spazio europeo de libertà, sicurezza e giustizia*, 2020, n° 2, pp. 1-21.

²⁴ United Nations. Office of the High Commissioner for Human Rights, “We are all in this together: UNSG delivers policy brief on COVID-19 and human rights”, 23/04/2020, https://www.ohchr.org/EN/NewsEvents/Pages/UNSG_HumanRights_COVID19.aspx.

to them”. He adds: “We see the rise of hate speech, attacks on vulnerable groups and the risk that heavy-handed security responses will undermine the health response (...) while human rights in some countries are being rolled back, the crisis may serve as a pretext for repressive measures for purposes unrelated to the pandemic”²⁵.

For these reasons, the Office of the High Commissioner has insisted on the aim of successfully dealing with the pandemic, but also overcoming the risks and totalitarian temptations to continue to control the population once de-escalation has been completed.

Another controversial issue is the question of geolocation, as there are serious legal doubts as to whether detecting a citizen’s geographic location would violate the principle of minimisation of data collection, raising privacy and security concerns. In this regard, European Commission spokesperson Johannes Barke²⁶, indicated that the use of these applications should be voluntary and anonymous. It should be borne in mind that while GPS tracking of people affected by the virus may be operational in the fight against its spread, these systems should be time-limited and should not extend beyond the period of cohabitation with the virus and the end of the pandemic.

In Spain, the application of Organic Law 3/2018 of 5 December on the Protection of Personal Data and Guarantee of Digital Rights must be taken into account and respected, as data obtained by geolocation may violate these guarantees. The European Commission recalls, “contact-tracking applications are neither necessary nor recommended for the purposes of contact-tracking applications, as they are not intended to track the movements of individuals”²⁷.

We should not jeopardise the gains and freedoms achieved since the end of the Second World War creating confusion to the citizenship by arguing that the deprivations of liberty and the curtailment of human rights and guarantees are being carried out in the interests of public health. In any case, it should be made clear that they should not go on forever.

For this reason, the Office of the High Commissioner’s Guidelines for a “people-centred response to COVID-19” are highly recommended.

²⁵ *Ibidem*.

²⁶ Hoy, “La UE rechaza la geolocalización en aplicaciones anticoronavirus”, 16/04/2020, <https://www.hoy.es/internacional/union-europea/rechaza-geolocalizacion-aplicaciones-20200416171307-ntrc.html>.

²⁷ *Ibidem*.

They are basically the following: “(a) Health strategies should not only focus on the medical aspects of the pandemic, but should also address the human rights implications of the health response. (b) Exceptional powers should be used to legitimise public health goals, not to crush or silence the work of journalists or human rights defenders. (c) Restraint measures, such as social distancing or isolation, must take into account the needs of people who require support from others to feed, clothe and clean themselves. Many people, including persons with disabilities, rely on community and home-based services. (d) It is imperative that increased border control, travel restrictions or limitations on free movement do not prevent the flight of people fleeing war or persecution. (e) Social protection and fiscal stimulus payments, food distribution and universal basic income can be effective protection against the effects of the crisis. (f) LGTBI community are also more at risk during the pandemic. (g) States should take into account the different concepts of health within the indigenous population and should include traditional medicine. Finally, (h) Persons deprived of their liberty in prisons, pre-trial detention, immigration detention, institutions and other places of detention are at an increased risk of infection in the event of an outbreak of disease”²⁸.

This pandemic should leave us with lessons to be learned, for when it is over we will have to deal with the “post-COVID-19 universe”, as the psychological effects, social behaviours, job losses, the economic crisis, will have left a clear mark on citizens all over the world. Without getting carried away by dystopias, we must prefigure the aftermath and the changes in direction that we will have to bring about in our society because, it seems clear that the patterns will never be the same again. However, the dignity of human beings will remain as it has always been and the defence of their rights should not have been altered or diminished.

It is said that, once de-escalation is over, we will face a “new normality”, but it is worth asking what “normality” we are talking about, since this term implies a return to normal behaviour, but by adding the prefix “new” we are asserting that it is not the same as before, thus blurring the true reality with ambiguous terms, and this is disturbing.

²⁸ United Nations, Department of Global Communication, *La protección de los derechos humanos durante la crisis del COVID-19*, april 06, 2020, <https://www.un.org/es/coronavirus/articles/proteger-derechos-humanos-coronavirus>.

This is an unfortunate terminology, because is it going to be normal for citizens in this “post-COVID-19 universe” to have to go out for months wearing masks in the street or in public places, for social relations to be confined to controlled areas limited by the authorities, for video surveillance and body temperature monitoring systems to be applied to us, for us to be geolocated, for us to be catalogued on the basis of age or sex, etc.?

So, we can admit that we are referring to something “new”, but in any case I find it hard to admit that it is “normal”, at least if we understand as normal an Orwellian model of rigorous control of citizens’ privacy.

In any case, as we have analysed, certain human rights protected by international law have been affected in a specific manner during the pandemic. Such as the right to freedom of movement, limiting movement within the same city with time restrictions or between cities or communities; the right to freedom of assembly, limiting capacity and decreeing the obligatory use of masks and safety distances; and the right to privacy, generating through confinement the obligatory nature of teleworking that has turned personal privacy at home into public offices, without forgetting geolocation, which implies control over our personal data, physical situation and movements.

As noted in the Elcano Royal Institute Paper, “The impact of pandemic control on respect for personal data (taking into account the use of apps on mobile devices and possible geolocation) is not only of concern in the area of rights and freedoms but also in the area of geopolitics, given the associated dependence on US and Chinese companies. The debate centres on the degree of centralisation of information and how this relates to both efficiency for the health authority and privacy”²⁹.

The “state of alarm” has specific legal limits as regulated in our Constitution and it is Congress, as the chamber in which the will of the people is represented, where the exercise of these prerogatives must be controlled.

IV. DESIGNING THE “POST-COVID-19 UNIVERSE”

De-escalation was termed the transition stage that begins once it is understood that the transmission curve of the virus has been bent and attempts are made to reach normality in a controlled manner in order to

²⁹ POWELL, C., MOLINA, I. and MARTÍNEZ J. P. (coords.), “España y la crisis del coronavirus: Una reflexión estratégica en contexto europeo e internacional”, *Real Instituto Elcano*, 06/ 2020, p. 22.

avoid a resurgence of the pandemic. This implies a process of de-escalation, through measures in which each step taken is evaluated before the next step is taken, for which a study of seroprevalence is essential in order to evaluate the population with a global vision that allows us to know what percentage has overcome the disease.

A study by epidemiologists Joel López and Oriol Mitjà³⁰ considers that in a likely future scenario the transmission of SARS-CoV-2 cannot be eliminated in the short term, and therefore predicts recurrent outbreaks. It therefore proposes four pillars on which de-escalation should be based: (1) Sequential deconfinement, whereby the at-risk population would need to be monitored while remaining confined to their homes and the younger, healthier population would be allowed to leave. (2) An assessment of immunity, by means of rapid serological tests to measure antibodies to which a “certificate of immunity” is granted. (3) Early detection of new cases and follow-up of their contacts to control possible sources of future infections, for which rapid antigen or PCR (*Polymerase Chain Reaction*) tests are recommended. (4) Targeted containment measures, in so-called “hotspots”, which would involve, in the event of an outbreak of concern, partial containment in defined geographical areas.

As can be deduced from the above measures, while they are temporarily justified in an effort to protect the health of citizens, they also, admittedly, have a fine line where individual rights and respect for privacy may be affected³¹.

De-escalation should govern not only personal behaviour and the health of citizens but also the effects of the pandemic on the economy and the ways in which should be recovered the purchasing power which were lost due to economic inactivity due to restrictions on the opening and movement of

³⁰ LOPEZ, J. and MITJA, O, “Control epidemiológico COVID-19. Salida coordinada del confinamiento Propuesta de intervenciones de salud pública para el control de la infección SARS-CoV-2 en la comunidad” /*Adaptado del Plan de Andorra*/ 03/04/2020 https://www.diariandorra.ad/uploads/documentos/2020/04/03/document_5f7df7f4.pdf.

³¹ Even more worrying is the Suishenban app already in use in China as a Big Data system, which works via QR code and determines eligibility to attend public venues based on a “mandatory” registration on one’s mobile phone. In other words, if a Code Green appears, the certificate confirms that there are no symptoms and, therefore, the person can go to public places; if they present Code Yellow, they would be obliged to isolate themselves for seven days on suspicion of having been in contact with someone infected. If he/she has a Code Red, he/she will be quarantined for two weeks as he/she is considered to be a carrier of COVID-19.

businesses, premises and people. For this reason, economists' views should be taken into account.

Carlos Berzosa, professor of economics, in an interview on “50 opinions on how to get out of the crisis”, indicates, “This pandemic has caught the Spanish economy and others in the world in a high-risk situation”³². Therefore he proposes an action plan and for that, “it would be important to have an agreement between employers and trade unions and it would be appropriate for there to be a political consensus to know what kind of economy we want and to see which sectors we can bet on so that they can be the driving force for others”³³. For Antonio Martín Mesa, professor of economics, “Spain’s economic recovery after the pandemic should begin by boosting private consumption and encouraging productive investment, which requires the postponement of taxes and even the reduction of some taxes on the middle and lower strata of society. Increase unemployment benefits, subsidies for business investment, development of strategic infrastructure, increase public spending inherent in the welfare society, primarily in support of public health, which has proved so essential in the pandemic”³⁴. As he rightly points out, it is necessary to “adopt shock measures that will allow us to deal with the situation quickly and emerge with the least possible injuries. It is also true that the current losses will have to be paid for by future generations, for many years to come, and that is what we should call *intergenerational solidarity*”³⁵.

Here Professor Martín Mesa points to the crucial issue of intergenerational balance, given that the drift caused by the pandemic is generating, as a kind of collateral effect, a dangerous age discrimination that experts have called “ageism”. As stated in the Public Declaration “More intergenerationality, less ageism” elaborated by the Joint Commission of the Macrosad Chair in Intergenerational Studies, emphasising that “solvent research has confirmed

³² Vega, M, «Carlos Berzosa: «El Estado va a quedar debilitado. La crisis en solitario no se puede resolver», *Invertia-El Español* 26/04/2020, https://www.elespanol.com/invertia/20200426/carlos-berzosa-quedar-debilitado-solitario-no-resolver/485451481_0.html.

³³ *Ibidem*.

³⁴ Diario de Jaen, “España ha de reaccionar de manera inmediata ante el crack económico”, 18.04.2020, <https://www.diariojaen.es/al-dia/espana-ha-de-reaccionar-de-manera-inmediata-ante-el-crack-economico-LX7033368>.

³⁵ *Ibidem*.

the international prevalence of ageism, especially against older people”³⁶. It should therefore be taken into account that, with undoubtedly plausible arguments in the face of the pandemic, rules of behaviour affecting certain age groups such as children and the elderly have nevertheless been laid down. Undoubtedly, these are laudable arguments if it is a matter of protecting their health, but, nevertheless, this type of “cataloguing” generates psychological damage that can lead to discrimination or stigmatisation on the grounds of age, which is undoubtedly harmful.

It is stated in the Public Statement that “age discrimination poses a significant risk to the psychological, behavioural and physiological well-being and health of older persons”³⁷. Insists that older patients should be treated under the same conditions as the rest of the population, referring to the fact that “it would be unacceptable to dismiss a person with COVID-19 disease because he or she is above a certain age”³⁸. As can be deduced, the pandemic has deconfigured classic models of social behaviour.

The crisis of social communication, the economic crisis, the crisis of values or age-related discrimination, the uncertainty of one or more outbreaks, are only symptoms of what the future may hold, once the acute degrees of the pandemic have been overcome. One wonders whether some states will take advantage of these crises to perpetuate these limitations on individual freedoms and thus control their citizens with an iron fist in a totalitarian model. We should oppose this happening. The struggle for human rights and individual guarantees has been too long and too hard for us to forget the premises that protect the dignity of human beings without distinction of any kind.

V. IN SYNTHESIS

This begs the question: what will the “post-COVID-19 universe” look like?

³⁶ CÁTEDRA MACROSAD DE ESTUDIOS INTERGENERACIONALES DE LA UNIVERSIDAD DE GRANADA, *Más intergeneracionalidad, Menos edadismo*, 15.04.2020. https://catedras.ugr.es/macrosad/informacion/noticias?q=informacion/noticias&theme=pdf&field_new_tags_target_id=All&page=2.

³⁷ *Ibidem*.

³⁸ *Ibidem*.

If we look at the behaviour of those before us in previous pandemics, as described in the first section, we can conclude that as a result of the epidemic, societies were affected to such an extent that a change of course occurred.

As Ruiz-Doménec³⁹ rightly points out, how the pandemics have meant the end of an era and the effort to recombine new perspectives.

He reminds us that in the “so-called plague of Justinian” in the spring of 542, there was a crisis of government and the management of the state was reduced to a minimum, with administrative and military stagnation, and the pandemic curiously brought about the disappearance of many plants and a good number of animals. Let us bear in mind, the author reminds us, that these post-pandemic effects precluded the abandonment of the idea of rebuilding the unity of *Mare Nostrum*, which necessarily brought about a historical change.

In other words, as a consequence of the pandemic, there has been a change of course, “geopolitics was changed to adapt it to the world that emerged after the pandemic. The Longobards in Italy, the Franks in France, the Avars on the Danube, entered the stage of history”⁴⁰.

A second moment was the Black Death from 1347 to 1350, “which was the undesired effect of the first globalisation, the one that linked Europe and China in the time of Marco Polo and which was made possible through the Silk Road, where the deadly bacteria was transmitted”. In this case, society also reacted by bringing about changes in social life “the dance of death and a new morality based on private devotion emerged. [...] Society was organised differently, a more effective policy on public hygiene and town planning was installed.”⁴¹.

Another case in point was the great epidemics in Mesoamerica from 1492 to 1520, when the conquistadors brought to America syphilis (1492), influenza (1543), measles (1500), smallpox (1519), which wiped out more than half of the indigenous population in humans unprepared for the new infections. However, as Ruiz Doménec points out, “society reacted and new urban planning matrices in the development of the vice royal cities, a common

³⁹ RUIZ-DOMÉNEC, J. E., *El día después de las grandes epidemias. De la peste bubónica al coronavirus*, Taurus, 2020.

⁴⁰ Ruiz Doménec J. E., “El ‘día después’ de las pandemias históricas”, *La Vanguardia*, april 11, 2020, <https://www.lavanguardia.com/cultura/culturas/20200411/48386825438/epidemias-pandemias-gripe-espanola- peste-negra.html>.

⁴¹ *Ibidem*.

language was established to better communicate the decisions of power regarding contagion, the actions of the conquerors were adjusted to the law through the law of nations”⁴².

Returning to Europe, another turning point was the plagues during the Thirty Years’ War (1618-1648) with an active focus in the region of Lombardy which became known as the “Plague of Milan” and led to a succession of epidemics of typhus, smallpox, malaria and plague caused by the movement of troops and which killed almost a million human beings. However, “society was able to react and the first thing to do was to find a way to overcome the discord between peoples, and that way was diplomacy”. The Peace of Westphalia is established, which gives rise to a modern model of international law, the idea of the nation-state emerges and “the critical conscience that emerged in response to the epidemic appears to have been transplanted to the 18th century Enlightenment and turned into a thirst for knowledge”⁴³.

Closer to our time is the great epidemic of the misnamed “Spanish Flu” (1919-1920) which left millions of dead and once again society reacted “it began to carry out research in laboratories, specific institutes were created [...] resources were allocated to medical research. Vaccines and antibiotics were designed to fight the invisible evil that created epidemics”⁴⁴.

With history as an example, we may wonder how we should react to this new pandemic of COVID-19. In this respect, there have been encouraging reactions, particularly within the framework of the European Union, where a system of aid has been envisaged that will benefit member countries. Let us bear in mind that health is an exclusive competence of the Member States and therefore this competence is in the hands of the Member States⁴⁵. However, the European Commission has reacted by facilitating the supply of medical equipment, has contributed to the financing of R&D&I within the Horizon 2020 initiative, allocating 47.5 million euros for medical research in 17 projects to fight the coronavirus. In addition, a temporary framework relaxing state aid

⁴² *Ibidem*.

⁴³ *Ibidem*.

⁴⁴ *Ibidem*.

⁴⁵ FARAMIÑÁN GILBERT, J.M. de., “Europe before the global challenge of the COVID-19 pandemic”, *Newsletter of the Academy of Yuste*, n° 4, April 2020.

rules was adopted to allow member states to support the sectors hardest hit by the pandemic⁴⁶.

Ricardo Arredondo notes that, as a consequence of the coronavirus disease 2019 (COVID-19) pandemic, “the international community is facing a substantial crisis that is likely to generate significant mutations in the international order as we know it. The pandemic has come to remind us in a clear and unquestionable way of the vulnerability of people and the planet to global threats⁴⁷.”

As in previous pandemics, here too a “Copernican turn” is taking place in the awareness of states and citizens, and social behaviour is changing, slowly creating a different scenario. There is no doubt that the “post-COVID-19 universe” will transform work systems with hybrid models between face-to-face and online teleworking, the modes of social relations that have generated a rejection and distancing from personal contact. A more awakened ecological conscience when we have seen that confinement has alleviated the production of polluting effects with the reduction of up to twenty-five percent of CO2 emissions and the appearance of supposedly wild animals circulating at will in the empty streets of large cities as a consequence of the prohibition of citizen mobility, or the prohibition, sale and consumption of animals as it is suspected that the virus may have originated in their consumption. The introduction of new mobility requirements such as the COVID-19 certificate for entry to enclosed premises and the COVID-19 passport for travel and movement.

When Ricardo Arredondo analyses the post-COVID scenario, he indicates that “the crisis will impact on the globalization process as we know it and will probably reduce support to it. The speed at which the virus spread around the world, thanks to economic interdependence, as well as tourism and travel, will be attributed to globalization and possibly generate reactions against it. One of the most powerful myths of globalization: that of a world without borders has quickly dismantled itself before the closing of national and provincial borders, reaffirming the traditional notion of state sovereignty”⁴⁸. He further

⁴⁶ VALLE, E., “La reacción de la Unión Europea ante el COVID-19”, *Fedea*, Apuntes, n°03, 2020, <https://documentos.fedea.net/pubs/ap/2020/ap2020-03.pdf>.

⁴⁷ ARREDONDO, R., “The age of disorder: global governance in COVID times”, *Paix et Sécurité Internationales*, n° 8, 2020, p. 37.

⁴⁸ *Ibidem*. p. 44.

adds that “the absence of clear leadership, the lack of an effective and rapid response from multilateral institutions and the demand to find solutions to new problems in order to avoid their exacerbation and, eventually, the conflict, invite us to think of new mechanisms to overcome these challenges. New mechanisms and institutions are required to provide a coordinated and multilateral response to challenges of a global nature such as climate change, pandemics, cyberattacks, hunger and poverty, just to name a few”⁴⁹.

This means that we have a good opportunity to make a paradigm shift and establish new standards of behaviour that preserve public health without crossing red lines that may infringe on fundamental freedoms. The lived experience a good opportunity to monitor and determine the necessary boundaries between the defence of life and respect for freedom. It is certainly not a simple dialectic, but lessons must be learned from the pain of the pandemic and the lives it has taken, as well as the side effects that many affected by the virus are still suffering.

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⁴⁹ *Ibidem*. p. 47.

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