

# Polycritical Law

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## 1. Polycritical law

Somewhere in the overlapping space where the Covid pandemic ended and the Russia-Ukraine war began, the neologism ‘polycrisis’ began to gain currency. The term represents the present as a period of multiple crises—no sooner had one significant problem been ‘managed’ than another reared forth Hydralike: finance, pandemic, war, more war, inflation—a sort of stream of crisisness. Major crises are pockmarked with lesser ones—austerity, migration, inflation, supply chain shortages, populism, tariff hikes, coups. Foreseeable future crises wait in the wings: antibiotics, microplastics, AI, Taiwan, debt default. But all are also girdled by an overarching uber-crisis: global climate change; the now yearly havoc, wildfires, hurricanes, heatwaves, droughts—all worse than before and predictably worse again in future, and all triggering their own critical knock-on effects (migration, food shortages, resource struggles over, say, rare earths, lithium, water).

The term ‘polycrisis’ might not stick, but the phenomenon to which it refers has implications for the study of law and governance. Of course the notion of permanent crisis is not in itself new. Hillary Charlesworth famously identified international law as a discipline beholden to crisis in a seminal essay of 2002. And, equally familiar, much Marxist and post-Marxian critique assumes that capitalism necessarily generates crises. But this is something else: crisis is no longer incidental or exceptional, but polymorphous and recurrent, if nevertheless unpredictable. It seems to require of the state not so much a permanent state of ‘preparedness’ (to use a policy term from the early 21<sup>st</sup> C), but rather a diverse variety of tools and flexibility in invoking them. It seems to require of individuals their own tools and attitudes: resilience but also some resignation. The study of ‘polycritical law’, then, would be the study of specific technologies that have arisen around various iterations of crisis, of the conditions of their emergence and justification, and of their relationship to existing norms, rules and principles.

## 2. Post-pandemic

Any discussion of the Covid-19 pandemic of 2020-22—the apparent trigger for a polycritique—is even now hampered by the broad spectrum of views regarding the appropriateness, extent and necessity of governmental responses. Regardless, however, the near-universal return to formidable emergency powers of a kind unknown in much of the world for many decades, and in some instances unprecedented, marked an extraordinary departure—not only from recent practice, but also (perhaps more surprisingly) from a well-established set of rhetorical

presuppositions of the limits on what governments *should* do, and indeed from thirty-odd years of proclamations as to what states *can*, in fact, accomplish. The neoliberal state is normatively disinclined to coerce or steer the economic activity of private actors. But beyond that, it is often represented as *unable* to do so, or to do so well. The reasons given for this are, on one hand, the state's relative incompetence at acquiring and processing the necessary information needed to inform sensible goal-driven coercive action (in comparison to the market's information-processing capacity) and, on the other, the fact of regulatory competition, deriving from the apparent inability or unwillingness of states to coordinate effectively on matters of 'global public interest'.

With Covid, many of these strictures appeared to fall away or be set aside (albeit not without much preliminary throat-clearing). Many measures—even though they enjoyed broad popular support—involved clearly coercive extensions of existing 'emergency' provisions to a degree largely unknown since 1945. States stepped in to support some economic activities, but not others, with enormous and long-lasting distributive impacts. Moreover, although there was little formal cooperation between states, a high degree of coordination emerged in practice, with states watching and learning from one another's trials and errors. This too led to knock-on distributive effects, as some states were less able to deal with the economic and social consequences of lockdown than others. Covid, then, led to a new and lasting social sorting according to risk and vulnerability, with significant long-term winners and losers.

As many commentators observed, the period brought vividly to life the kind of government action characterised by Michel Foucault's (much overused) term 'biopolitics', but with some significant caveats. On one hand, the retreat to cost-benefit calculations in the name of *salus populi*—the weighting of individual sacrifice against population-level gains—fit snugly within the Foucauldian mould; on the other, the relatively authoritarian nature of the more repressive steps did not, or not obviously. Foucault had specifically distinguished, in his discussion of smallpox in the lectures published in English as *Security, Territory, Population*, the biopolitics of vaccines (weighing the harm to some against the benefits to many) from the blunter 'disciplinary' tool of the quarantine (shunting sections of the population off to a demise in isolation). The Covid response, however, entailed both. The Foucauldian frame thus feels inadequate; whereas Giorgio Agamben's hailing of Covid measures as a 'permanent state of exception' seems misplaced. A polycritical law analysis, whatever it might be, remains to be done.

### 3. Atmospherics

The Covid measures raised a particularly striking set of concerns for those familiar with and concerned about climate science and policy. The restrictions on travel, in particular, led to an immediate and dramatic reduction in the consumption of fossil fuels globally: Covid measures led, at a stroke, to a policy outcome that 30 years of climate lobbying had failed to achieve. The price of fossil fuels fell through the floor shortly afterwards, as supply far outstripped demand—but producers quickly adjusted to the new scenario, constraining supply, and prices not only rebounded but jumped higher than pre-Covid levels (increasing

the carbon price)—a result compounded by the outbreak of war in Ukraine. The related rise in online life and work likewise seemed to align with long-standing climate-friendlier measures: less traveling and physical commuting, more virtual meeting and ‘digital’ commuting. At the same time, entire economies went into recession, perversely emulating the kind of ‘degrowth’ some had been touting for some time in response to the climate problem—albeit lacking in the coordination and equity they proposed. Some governments took advantage of the lull in public mobility to put in place bike lanes and other ‘climate-friendly’ infrastructure. There was lots of talk of ‘building back better’ after the pandemic. Even violent conflict dipped.

Of course, in the event, few if any of these effects were lasting. Travel took off again, demand for fossil fuels resurged, economies regained much of their strength, the new ‘green’ infrastructure proved both inadequate and, in many cases, short-lived. New wars began. What remained, though, was the realisation that states *could* act in ways that would address the climate problem (or some salient aspects of it) if they chose. Moreover, states appeared capable of acting in a broadly coordinated manner, were a global crisis sufficiently extreme. For those long familiar with climate politics, this was a bittersweet realisation. Yes, climate action was possible, but at what cost? A second realisation, for seasoned climate-informed observers, was more concerning: the climate problem too is entering ‘crisis-mode’, both in its representation and its response-measures. Is climate policy too destined to be reactive rather than pre-emptive? If so, to what extent is the unfolding of a ‘climate crisis’ *already* factored into policy? Is there an *incentive* to allow pressures to build before acting—or to assume action *requires* (yet more) crisis? To factor in scalable loss? The dangers of such an approach are immense, but—aside from the general unpredictability of pushing into 2.6°C or 3.4°C+ worlds—there is the very public question of sorting winners and losers. As with Covid, this ‘vulnerability sorting’—the distributional outcomes of such a scenario—would be dramatic. And yet, as with Covid, they might be embraced as the lesser evil.

For those of us already immersed in climate matters, ‘polycrisis’ looks like ‘climate+’: climate change plus much besides. Climate change itself arguably produces ‘polycrisis’—indeed increasingly. But it also intensifies the effects of other crises: it makes resource wars more likely, increases mass migration, reduces the wherewithal to cope. The study of ‘polycritical law’ would, then, target a law that shapes and responds to the likely rise of crisis as the object and mode of governance into a future which cannot currently imagine its absence.

#### 4. Dataspherics

A critical background element to the emergent domain of polycritical law is the broad rise in reliance on digital infrastructures in the tasks of monitoring, analysing and managing crises—though not it seems, oddly enough, of pre-empting them. Covid marked an extension of an already burgeoning architecture of disease-tracking and assessment, as well as a proving ground—both technically and in terms of public legitimacy—for technologies tracking population movement and interaction, of viral mobility, mutation and transmissibility, and

of policy-orientation. At the same time, populations globally migrated online, dramatically increasing both the volume of population-level data held by the major brokers, and the habitus of online living itself, among all demographics. In this, the 'biopolitical' dimensions of the pandemic illustrate the degree to which the recourse to statistics, identified by Foucault as the pre-eminent technology of government from the 18<sup>th</sup> Century, seeded the information technology revolution of the last 80 years. As it happens, climate science too owes its existence—as an epistemological matter—to this flourishing of computer technologies from the post-WW2 period on, in a process that united the vast investment in computer technologies with the leaps in processing capacity necessary to model climate dynamics—magnificently described in Paul Edwards's 2012 *A Vast Machine*. And of course, the key role of digital apparatuses in financial crisis, in war, in populism, in the sowing of chaos, is well known. As of 2024, the entirety of this familiar assemblage is undergoing reassembly through large-language model AI—combining superior processing power and data-crunching with a near anti-rationalist rejection of traditional computer 'logic'. And this too provides its own crisis narrative, in which a polycritical law bears the clichéd—but surely anachronistic at last—stamp of a law outflanked by technology. How instead to appreciate the polyvalent legal entanglement—in permanent regulatory revision as well as burgeoning 'voluntary' encodings—with the rise of government-by-data?

These are among the themes that will animate our discussion over 1.5 days at the London School of Economics and to which we would hugely appreciate your contribution. Your choice of themes, or set of themes, is in your hands: we will group and timetable according to the emerging themes we identify in submitted abstracts.

**Stephen Humphreys**  
London School of Economics