Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Antigua Universidad s/n - Apdo. 28
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / http://opo.iisj.net

Normalising death in the time of a pandemic

OÑATI SOCIO-LEGAL SERIES VOLUME 12, ISSUE 3 (2022), 540–555: NORM, NORMAL AND DISRUPTION: THE ROLE OF LAW, KNOWLEDGE AND TECHNOLOGIES IN NORMALISING SOCIAL LIFE
DOI LINK: HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1232
RECEIVED 12 APRIL 2021, ACCEPTED 14 JUNE 2021, FIRST-ONLINE PUBLISHED 30 NOVEMBER 2021, VERSION OF RECORD PUBLISHED 1 JUNE 2022

MARC TRABSKY*

Abstract

This paper examines a tension during the first year of the COVID-19 pandemic between discourses of death as an anomaly and techniques for normalising death as an inevitable outcome of life. It contends that the technology of registering a death in the Global North in 2020 was conditioned upon differentiating between the normal and the pathological, standards and variations, and an average and excess. Indeed, the registration of a death depended on the creation of a new universal nomenclature for ascertaining causation, which excluded various circumstances of a person's life in order to stabilise SARS-CoV-2 as a normative category for classification. The paper thus reveals how in the time of a pandemic, the technology of registration can be utilised to pathologise specific kinds of death, while unproblematically reifying the concept of a normal death. It argues that what the initial phase of COVID-19 exposes, particularly though the productive tension between discourses of death as both an anomaly and inevitability, is that normalising technologies are inextricable from how a panopoly of institutions determine what deaths should be counted at all.

Key words

COVID-19; death; registration; normal; excess

I would like to thank Patrícia Branco, Marco Velicogna, Ric Mohr and the two anonymous reviewers for their generous comments on this paper, and Ric Mohr, Patrícia Branco and Francesco Contini for inviting me to present an earlier version of the paper during the 'Technologies of Normalization' seminar series in 2020. I am also grateful for Jacinthe Flore's comments on the final version of the paper.

* Dr Marc Trabsky is a Senior Lecturer at La Trobe Law School, La Trobe University. He writes in the intersections of legal theory, history and the humanities. His research examines the theoretical, historical and institutional arrangements of law and death. His first book, *Law and the Dead: Technology, Relations and Institutions* (Routledge, 2019), was awarded the Law and Society Association of Australia and New Zealand Book Prize for 2019. La Trobe Law School, La Trobe University, 3086, Victoria, Australia. Email address: M.Trabsky@latrobe.edu.au

Resumen

Este artículo examina la tensión que se produjo en el primer año de pandemia de la COVID-19 entre discursos sobre la muerte como anomalía y las técnicas para normalizar la muerte como resultado inevitable de la vida. Afirma que la tecnología de registro de muertes en el norte global en 2020 estaba condicionada por diferenciar entre lo normal y lo patológico, lo normal y la variación, y la media y el exceso. De hecho, el registro de un fallecimiento dependía de la creación de una nueva nomenclatura universal para comprobar la causa, lo cual excluía diversas circunstancias de la vida de una persona a fin de estabilizar el SARS-CoV-2 como una categoría normativa de clasificación. Por tanto, el artículo revela como, en época de pandemia, la tecnología de registro se puede usar para patologizar determinados tipos de muertes. Se argumenta que la fase inicial de la COVID-19 deja al descubierto, sobre todo a través de la tensión productiva entre discursos de la muerte como anomalía e inevitabilidad, que las tecnologías normalizadoras son inextricables de la forma en que un entramado de instituciones deciden qué muertes se deben contabilizar.

Palabras clave

COVID-19; muerte; registro; normal; exceso

Table of contents

1. Introduction

Discourses of death during the first year of the COVID-19 outbreak included the tabulation of mortality rates, images of mass graves and makeshift morgues, and narratives of overflowing funeral homes and corpses lying unattended in hospitals.[1] The outbreak was declared a public health emergency of international concern on 30 January 2020 and then later proclaimed a global pandemic by the World Health Organization on 11 March 2020. These discourses emerged alongside debates about governmental interventions into everyday life, such as mandatory testing and vaccination regimes, lockdowns and curfews, border closures, "ring fencing" of apartment blocks, suburbs and cities, and other social distancing restrictions, which in different ways maximise the utility of individuals and the vitality of populations, while also *allowing* people to die. Discussions about the rationalisation of medical resources – articulated first by emergency doctors in hospitals in Italy during the first wave of SARS-CoV-2, the virus that causes COVID-19, and then by "death panels" hastily set up in several USA states[2] – were nothing new for medical institutions, but revealed to individuals, perhaps too honestly, the extent to which states calculate the social, economic and political costs of "*foster*[ing] life or *disallow*[ing] it to the point of death" (Foucault 1998, p. 138). The first year of the global pandemic confirmed that because "death is power's limit, the moment that escapes it", as Michel Foucault writes towards the end of volume 1 of *The History of Sexuality*, "the procedures of power have not ceased to turn away from death" (Foucault 1998, p. 138).

Multifaceted representations of COVID-19 have demonstrated that there is no universal discourse of death, but rather fragmented, inconsistent, and often temporally and geographically specific narratives, disseminated jurisdictionally. In the Global North, for example, deaths caused by SARS-CoV-2 have been mostly depicted as *pathological*, while on the other hand, deaths arising from the pandemic, but not caused by the virus itself, have been *normalised* as the endpoint of a life cut tragically short or a life lived well. The adaptation in press media in early 2020 of Nassim Nicholas Taleb's (2010) theory of a "black swan event" to classify the pandemic as an anomaly, depicted it as an incongruous disruption in the habitual economy of life and death. Yet this rhetoric conflicts with the institutional routinisation of death, in particular its regulation by state and non-state institutions, which gave rise in the eighteenth and nineteenth centuries to what Foucault (1988, p. 160) calls *thanato-politics*. In this arrangement of governmentality, the technology of death registration, which harnesses the bureaucratic logic of the file, classification systems for death causation and the statistical tabulation of mortality rates, is deployed as a normalising technique for managing relations between the living and the dead. Registration technologies do not only delineate in law a boundary point between life and death; they are vital for how administrative, legal and medical

---

[1] Makeshift morgues were erected in major cities around the world from the first quarter of 2020 to store what was predicted to be a large number of causalities of COVID-19. In countries such as China, Brazil, India, Iran, Italy, Spain and the USA, images appeared across both social and press media of funeral homes full of rudimentary coffins, corpses lying prostrate in the street or left unattended in overstretched hospitals and mass graves for promptly burying the dead.

[2] On the rationing of medical resources in Italy, see Shields 2020; and in the USA, see Sainato 2020.

institutions classify the cause of a death and determine what causes should be measured at different levels of the population.

This paper examines a tension during the first year of the COVID-19 pandemic, which was regularly proclaimed by government officials, public health experts and journalists as an "once in a century" event, between discourses of death as an anomaly and techniques for normalising death as an inevitable outcome of life. Classification systems for death causation were revealed to be malleable: COVID-19 was variously classified as causative according to the place where a person died, their symptoms prior to their death or whether a laboratory test was undertaken while they were alive (Trabsky and Hempton 2020). This meant that the registration of a death depended on the creation of a new universal nomenclature for ascertaining causation, which excluded various circumstances of a person's life in order to stabilise SARS-CoV-2 as a normative category for classification. In this paper I contend that the technology of registering a death in the Global North in 2020 was conditioned upon differentiating between the normal and the pathological, standards and variations, and an average and excess. The point that I am making here is not that registration as a normalising technology is problematic in itself – classification systems cannot operate without norms – but rather how in the time of a pandemic, the technology can be utilised to pathologise specific kinds of death, while unproblematically reifying the concept of a normal death. The paper argues then that what the initial phase of COVID-19 exposes, particularly though the productive tension between discourses of death as both an anomaly and inevitability, is that normalising technologies are inextricable from how a panoply of institutions determine what deaths should be counted at all.

2. The *thanato-politics* of death registration

The transformation from clerical to secular death registration in the eighteenth century in France, and the nineteenth century in Germany and Britain, anticipated the emergence of the discipline of public health in the late nineteenth century. The French Republic commenced the civil registration of all deaths in any given municipality in the late eighteenth century, where previously only burials were recorded by the Church. The enactment of the *Births and Deaths Registration Act 1836* (UK), which established a General Register Office in England and Wales, and vested a public servant, the Register-General, with the responsibility of registering every death in a geographical area, likewise removed the duty of recording all burials in a parish from religious institutions. The administrative regime of mortality record-keeping relied upon the mapping of discrete "registration" districts, a hierarchy of supervisors and delegates, and a legion of coroners and physicians, who signed death certificates, setting out the age, sex and rank of the deceased, as well as the ostensible cause of death. For Thomas Laqueur and Lisa Cody, "[a]ll over Europe the dead entered the administrative world of trash, water, and other waste. They entered the domain of new experts on what to do with matter" (Laqueur and Cody 2010, p. 41). Public health reformers, particularly Edwin Chadwick, William Farr and John Snow brandished the bureaucratisation of death registration as a turning point for improving the sanitary conditions of a "labouring" population, and alongside other legislative reforms in the nineteenth century, it paved the way for the science of epidemiology.[3]

In volume one of the *History of Sexuality*, Foucault pithily refers to the technology of death registration as part of a suite of administrative practices that correlate with the emergence of bio-power in the West. The transformation from sovereign power to an era of bio-power marks the entry of the problem of life into regimes of power and knowledge. While Foucault admits that human life, as an object of power, had always been exploited by sovereigns, particularly in the furtherance of expanding its territories, since the eighteenth and nineteenth centuries, humankind problematised

> what it meant to be a living species in a living world, to have a body, conditions of existence, probabilities of life, an individual and collective welfare, forces that could be modified, and a space in which they could be distributed in an optimal manner. (Foucault 1998, p. 142)

The analytics of the exercise of bio-power consists of two political technologies: an *anatomo-politics* of the human body, and a *bio-politics* of the population. The former refers to the individualisation of the subject, and the subjugation and docility of the body through practices of examination, surveillance and discipline. While the latter takes as its site of intervention, not the individual human body, but the population, the "species body", or human life itself. *Bio-politics* makes use of technologies that seek to incite, control, optimise and invest life. It is also only through the application of technologies of bio-power in every facet of life and across different institutions that a population emerges as both an object of scientific study and a problem of governance. Thus, the modern incantation of bio-power differs from the ancient form of sovereign power – a "deductive" power over life and death, which emphasises the right of the King to take a life or let live – by problematising life and investing in it to a point where life is *allowed* to perish.

But this does not imply that death was no longer of interest to the state in the eighteenth and nineteenth centuries. Rather the *government* of death was immanent in "a power that exerts a positive influence on life, that endeavours to administer, optimise, and multiply it, subjecting it to precise controls and comprehensive regulations" (Foucault 1998, p. 137). The bureaucratic processes of recording a death, classifying its cause, arranging it in a table and monitoring rates of mortality all constitute different technologies of *thanato-politics*, a term coined by Foucault to emphasise that *bio-politics* does not ignore death. In fact, the manifestation of death as an "insurmountable" limit of power's control over life, renders visible how a range of state and non-state institutions attempt to manage what always already slips outside of their grasp. Foucault makes this point clear in *Society Must be Defended*: "[d]eath is beyond the reach of power, and power has a grip on it only in general, overall, or statistical terms" (Foucault 2003b, p. 248). Bio-power as a new "art of government" concerned itself not simply with the management of a

---

[3] The development of public health discourses in Britain in the nineteenth century, particularly in the writings of sanitary reformers represented the dead body as miasmatic – just a whiff of the odour of death could strike a person with cholera, typhus or typhoid. It was only towards the end of the nineteenth century that miasma theories of death causation were debunked by germ theory which demonstrated that contagions are caused by viruses, bacteria and other pathogenic particles spreading through droplets in the air and water (Trabsky 2014, pp. 171–5).

population in a general sense, but offered precise points of intervention, at different levels of the population, for the purposes of manipulating variations and fluctuations in an economy of life and death. If the government of a population in the exercise of bio-power involves the practice of "taking care" of things and their relations, then the quantification of those relations, not only their qualitative value, become "technical vectors" of governmentality.[4]

Foucault's account of bio-power in *The History of Sexuality* was preceded by a description of the governance of plague towns in the eighteenth century in his lecture series *Abnormal*. The administrative practices developed to examine, quarantine, and differentiate between the living, the sick and the dead during the arrival of the plague, which contrasted with the banishment of lepers in previous centuries, established a "positive" model for exercising power. The plague is this "marvelous moment", Foucault writes, "when political power is exercised to the full" (Foucault 2003a, p. 47). Techniques of observation, partitioning and *quadrillage* relied upon acts of permanent registration, or rather, the extent to which power was exercised effectively, depended on practices for recording the "visual examinations" of syndics and intendants, and enumerating the newly dead in bills of mortality. While Foucault emphasises in *Abnormal*, but also in *Discipline and Punish*, how surveillance of the plague town became a model for the inclusionary exercise of power, it should be noted that the technology of death registration, or what he calls "a system of permanent registration" (Foucault 1991a, p. 196), which is inextricable from apparatuses of surveillance, became vital for the exercise of bio-power in the nineteenth century. The transformation from the clerical recording of all burials in a parish to the secular registration of all deaths in a municipality was unequivocally conditioned by the governance of the plague in the eighteenth century, and also became entangled with an array of administrative practices that ushered in a new arrangement of governmentality.

In the nineteenth century, death became not simply an object of registration, but of statistical value and demographic modelling, for administrative, legal and medical institutions, and particularly for the newly created disciplines of public health, epidemiology and political economy. It is important not to simply conflate here the act of registration with that of enumeration. Registration activities were bilateral in the nineteenth century, which means they involved actions by individuals as well as institutions, and benefited individuals in performing specific obligations or asserting legal rights, while enumeration practices were solely directed by and oriented towards the government of a population (Szreter and Brechenridge 2012, p. 19). That being said, an integral element of civil registration systems from at least the mid-nineteenth century was the acquisition of epidemiological data about death causation, which was subsequently utilised by state institutions to administer decennial censuses, monitor mortality rates and create life tables. The General Register's Office's life-tables, which set out the "average" life expectancy of any particular person undoubtedly purported to

---

[4] Foucault does not position governmentality as a replacement of disciplinary or sovereign power in the eighteenth and nineteenth centuries. Rather he inserts governmentality in a triangulated relationship with both sovereignty and disciplinarity. Governmentality is an "ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principle form of knowledge political economy, and as its essential technical means apparatuses of security" (Foucault 1991b, p. 102).

provide “rigorously-constructed sources of evidence as to the state of the nation’s health and therefore placed the office in a position of unassailable authority in the field” (Szreter 1991, p. 407).

This paper contends that the transformation from clerical to secular death registration in the West in the nineteenth century was important to the exercise of bio-power because it made possible the bureaucratic process of extrapolating death from individuals, mapping it onto populations and arranging it into an enumerated form, which could then be calculated and studied. In ascertaining the cause of an individual’s death, classifying it according to universal nomenclature and monitoring trends in death causation at different levels of a population over a specific duration, state institutions could construct the “naturalness” of a population, but also even attempt to prevent the occurrence of a particular kind of death in the future. I suggest then that death was never effaced by the emergence of the problem of life and the exercise of bio-power in the eighteenth and nineteenth centuries. Instead its registration by state institutions and its quantification as a rate that could be measured and monitored was indispensable to how governments invested in life to the point where individuals were *allowed* to perish.

Modern death registration is underpinned by three institutional practices: the bureaucratic logic of the file, classification systems for death causation and the statistical tabulation of mortality rates. First, the reliance on technical, written record-keeping in the nineteenth century bureaucratised earlier forms of parochial registration and transformed individual deaths into files that could be collated by state institutions. Cornelia Vismann (2008) examines the act of filing as inseparable from the formalisation of law in the West and I have discussed the significance of recording a biography of the dead and how record-keeping became essential to the way legal institutions took care of the dead elsewhere (Trabsky 2019). Second, classification systems for death causation expanded alongside the emergence of the sciences of pathology and epidemiology, but what persisted initially was a lack of universal nomenclature for death causation, a point highlighted by William Farr, the first Superintendent of Statistics at the General Registers Office. The pursuit of objectivity for classifying death, which was first proposed by Florence Nightingale and later developed by Jacques Bertillon, enabled the register to become not simply a record of who died, but a source of valuable data for tracking mortality trends at different levels of the population. Third, the tabulation of mortality rates, that is to say the arrangement of the number of deaths per year, and across different attributes, such as age, sex, location and cause of death, in the form of tables, conditioned the possibility of the quantification of death in terms of *amounts*. By the late nineteenth century, and perhaps for the first time in the West, the amount of death in a population in any given year, became a diagnostic tool for *pathologising* variations and fluctuations in the purported rate over a specific period of time.

3. Normalising death in pathological times

In *The Normal and the Pathological*, Georges Canguilhem writes a history of the relationship between the concepts of the normal and the pathological in the disciplines of biology, medicine and nosology. In the writings of Auguste Comte, François-Joseph-Victor Broussais and Claude Bernard, pathology manifests as a “quantitative variation” (too much or too little) of a normal state of existence, while “the scientific study of pathological cases becomes an indispensable phase in the overall search for the laws of the normal state" (Canguilhem 1991, p. 51). In the second part of the book, Canguilhem reiterates that the constitutive relationship between the normal and the pathological is shaped by quantitative, statistical and mathematical concepts. The normal is "the average or standard of a measurable characteristic" (Canguilhem 1991, p. 125), such that the pathological can only make sense as a quantifiable deviation from a norm. Here, life only becomes a norm given the habitual regularity of the effectiveness of the human body, and it remains in that fragile state until the body is disrupted by disease, illness or death.

When applying this theory to the science of biology, it becomes clear that life is the normative state of the human body, and death is nothing other than an inclined variation from the functional order of things. In other words, death is not an anomaly in itself, but rather becomes anomalous due its divergence in degree from the standardisation of the operation of organs. Anomaly derives from the Greek *anomalia,* which according to Canguilhem, "means unevenness, asperity; *omalos* in Greek means that which is level, even, smooth, hence 'anomaly' is, etymologically, *an-omalos*, that which is uneven, rough, irregular, in the sense given these words when speaking of a terrain" (Canguilhem 1991, p. 131). Canguilhem points this out to show that anomaly does not derive etymologically from the Greek word for law, *nomos*. His idea is that while "anomaly" was once used as a descriptive term and "abnormal" was conceptualised as evaluative, over time the meanings of both terms combined such that they equally refer to the making of a qualitative judgement. In depicting death as anomalous or abnormal, scientists are designating it as a matter of a fact, but also offering an evaluation of that fact.

In the first year of the COVID-19 pandemic, epidemiologists, researchers, journalists and the public repeatedly questioned the "true" death toll of the pandemic. "How many people has the coronavirus killed?", asks Giuliana Viglione (2020) in *Nature*; a refrain that incessantly reverberated across the globe. Many journalists argued that official state-based deaths tolls were gravely inaccurate. They either underestimated the deadlines of SARS-CoV-2 or the overall mortality rates for all deaths were lower on average than previous years due to social distancing restrictions. Regardless of how the mortality rate of the pandemic may have been (mis)calculated, as Stefania Milan points out, "the COVID-19 crisis has installed quantification at the core of the governmental and popular response to the virus" (Milan 2020, p. 1). It has established "counting the dead" as the only way to know the virus that causes COVID-19. And it is in this feverish propensity to enumerate mortality that death is characterised as simultaneously a normal and pathological aspect of life. Or, to put this another way, death-counting, whether initiated by states, articulated by epidemiologists or reported by journalists, has represented fatalities directly caused by the virus as anomalous, while deaths directly, indirectly or even tangentially related to the pandemic – for example, deaths due to suicides, accidents, violence, negligence, chronic illness or other diseases – as the inevitable resolution of a life lived well or a regular, albeit tragic, end of a life cut short.

The problem of how death appeared as both normal and pathological in the first year of the COVID-19 pandemic was contingent upon two institutional practices that underpin the technology of death registration: classification systems for death causation and the statistical tabulation of mortality rates. The first practice derives from how a cause of death is identified by administrative, legal and medical institutions for the purposes of registering a death. Legal procedures for completing a "cause of death form" attribute responsibility to medical practitioners and empowers them to use medical knowledge to differentiate between underlying, associated and multiple causes of death. Underlying refers to the leading cause of death, that is, a disease or injury that "initiated" the journey towards death, while associated denotes an immediate, antecedent, direct, indirect or intervening contribution to death other than the underlying cause. The reference to multiple causes signifies a combination of underlying and associated causes of a death. Practitioners responsible for signing a death certificate are obliged to indicate the cause that led directly to the death – for example, coronary heart disease – but also any associated causes, if the underlying cause arose due to another disease, injury or condition – for example, hypertensive disease (Australian Bureau of Statistics 2008).

The second practice, the tabulation of death rates, is ultimately dependent on how a cause of death is classified by institutions that are responsible for death registration. What was included or excluded in a COVID-19 death toll in any country relied upon an administrative decision, which I describe as *thanato-political*, to either only count deaths where the SARS-CoV-2 virus was identified as the underlying cause, or *also* count deaths that had a different underlying cause, but where the virus contributed to the death.[5] In the USA, for example, some states initially only reported the deaths of confirmed cases of COVID-19 to the *Centers for Disease Control and Prevention* (CDC) via the National Vital Statistics System and the National Center for Health Statistics, while other states reported the deaths of both confirmed and probable cases of the virus.[6] Relatively few countries reported the deaths of *suspected* cases of COVID-19, where a person met both the clinical and epidemiological criteria of the virus, but did not receive a positive outcome from a relevant test prior to their death.

The complexities of the classificatory process for determining a cause of death should not be underestimated. Whether a death was counted in COVID-19 mortality statistics in 2020 was contingent upon medical practitioners distinguishing between dying *from* the virus, where it was the direct cause of death, as opposed to dying *with* the virus, where it contributed to the death – which several epidemiologists expressed in terms of degrees and percentages – but was not the underlying cause (Trabsky and Hempton 2020). Yet to determine whether a person either died from or with COVID-19, medical practitioners had to first ascertain "measurable" characteristics of each death – such as the age and sex of the deceased, the location and time of the death, any pre-existing comorbidities and whether the person tested positive for the virus prior to their death – and second, compare those characteristics against broader mortality trends. To put this differently, practitioners had to contrast the individual death against a typical death for

---

[5] In Australia, "[a] COVID-19 death is defined for surveillance purposes as a death in a probable or confirmed COVID-19 case, unless there is a clear alternative cause of death that cannot be related to COVID-19 (e.g. trauma). There should be no period of complete recovery from COVID-19 between illness and death" (Communicable Diseases Network Australia 2020, 24).

[6] See Smith 2020. While the distinction between a probable and confirmed case was not uniform across the world, generally a confirmed case required a positive outcome from a SARS-CoV-2 nucleic acid test, PCR test or antibody test, while a probable case needed a positive outcome from an antibody test, a compatible clinical illness and met an epidemiological criteria, of a suspected case, which ranged from international travel or the person being a close contact of a confirmed or probable case in the fourteen days prior to the onset of symptoms.

a specific segment of the population. This was undoubtedly gleaned from a practitioner's subjective experience, training and knowledge, but also from their interpretation of universal nomenclature for the classification of diseases and illnesses, which since its invention in the nineteenth century categorised morbidities in relation to concepts of the normal and the pathological.[7]

The counting of COVID-19 deaths during the first year of the pandemic was contingent then upon classification systems for death causation and the tabulation of mortality rates. While a death that occurred during the pandemic may not have been counted in COVID-19 death tolls for a variety of reasons – the virus was classified as an associated, not underlying cause of death or a laboratory test for the virus was not undertaken while the person was alive or the person's symptoms prior to death did not meet clinical or epidemiological criteria – what is most interesting about the technology of death registration is how it normalises death as both an abnormality, but also an inevitability, of life. This was most apparent when considering how the privileging of a "COVID-19 toll" – the creation of a new table for measuring the rate of death in a population – represented deaths directly caused by the virus as anomalous, while it depicted other deaths caused by the pandemic, but not the virus itself, such as deaths caused by delays in planned surgeries or medical examinations, or even deaths directly caused by other communicable viruses, as expected or tolerable, and thus not included in the official state-based toll. Yet, and this is where the paradox explicitly manifested, a normal death during this period of the pandemic only made sense if it corresponded to an "average", which could be ascertained by examining mortality trends over a specific period of time. So, if a death "exceeded" that average, or when the amount of death in that period deviated from standard rates over the same period of time in previous years, then the normal became pathological.

4. Quantifying excesses of mortality

The epidemiological concept of "excess mortality" became the subject of much fascination since the beginning of the COVID-19 pandemic. The term denotes the assumption that a population has a normal death rate, and it presumes as a matter of *fact* that death is an inevitable, necessary, and for arrangements of governmentality, a desirous outcome of life. During the initial phase of the COVID-19 pandemic, the concept of excess mortality was used to describe official state-based tolls as inadequate and it was used by journalists to suggest that more people were dying from or with COVID-19 than had been counted by state institutions. But it had also been deployed to contend that the governmental response to the pandemic caused a disproportionate amount of death that may not have been counted in any specific COVID-19 toll, or even narrativised or commemorated, such as deaths from eschewing urgent medical care or necessary health checks, reductions in screening, diagnosing and treating a range of diseases, illnesses and conditions, and spatial barriers to accessing time-sensitive medical treatment.[8] This was in addition to claims that an increase in deaths where the

---

[7] World Health Organization 2018, code U07.1. This code was inserted into the tenth version of the ICD in light of the COVID-19 pandemic.

[8] In the Global North in 2020, researchers began analysing the effects of public health responses to the pandemic on time-sensitive care provided in emergency departments for cardiac and stroke conditions, barriers to screening, diagnosing and treating cancers, postponement of elective surgery and increases in

direct cause is a suicide, accident, violence or negligence will be discovered years after the pandemic. Thus, epidemiologists, journalists and researchers asserted that excess mortality is a "better way of measuring the true impact of the pandemic" (Briggs 2020; see further Martino 2020a, 2020b and 2020c).

If mortality can be described as excessive, as Canguilhem notes with regards to life tables, it is only insofar as the amount of death deviates from an average. Referring to Maurice Halbwachs, Canguilhem surmises that

> [e]verything happens as if a society had 'the mortality that suits it,' the number of the dead and their distribution into different age groups expressing the importance which the society does or does not give to the protraction of life [53, 95-97]. In short, the techniques of collective hygiene which tend to prolong human life, or the habits of negligence which result in shortening it, depending on the value attached to life in a given society, are in the end a value judgement expressed in the abstract number which is the average human life span. The average life span is not the biologically normal, but in a sense the socially normative, life span. Once more the norm is not deduced from, but rather expressed in the average. (Canguilhem 1991, p. 51)

In other words, the measurement of excess death is made possible by its comparison to a numerical average, which is also the articulation of a qualitative judgement about the value of human life. The concept of the average, for François Ewald, is the expression of a process of normalisation that has as its aim a general consensus of what is "adequate to the purpose it was meant to serve" (Ewald 1990, p. 152). The average is not a stable concept for it is continually changing in a cascade of comparisons. It is "a form of compromise, the common denominator, a point of reference that is destined to disappear—a measurement that expresses the relation of a group to itself, even that of a group as large as the entire population of the globe" (Ewald 1990, p. 152). What this means is that the *average* death rate or *normal* mortality trends are not references to some kind of objective truth no matter how many journalists plead with the public to accept science as a "single voice of truth" (Rait 2020). Rather they are expressions of processes of normalisation that can only ever refer to other norms and to a "normative order" that techniques of power-knowledge, which are immanent in institutions, bring into being. In this schema of normalisation, *excess* mortality is the fruit of a normative process that invites us to measure and monitor death rates, and importantly assign value to a particular kind of death in relation to another. "[T]he norm invites each one of us", Ewald writes "to imagine ourselves as different from the others, forcing the individual to turn back upon his or her own particular case, his or her individuality and irreducible particularity" (1990, p. 154).

The problem of determining a "true" death toll during the first year of the COVID-19 pandemic, and the use of the epidemiological concept of excess mortality to ascertain this purported truth, is that in order to distinguish between the average and excess,

---

post-operational complications due to the general avoidance of medical treatment and care. This was also juxtaposed by research on a lower than average death rate in specific jurisdictions due to governmental interventions in everyday life – uptake in vaccination rates, mandatory testing regimes, mask use and hand washing, and improved infection control protocols in hospitals and aged care homes – which resulted in fewer deaths from influenza, pneumonia, motor accidents and workplace accidents compared to the same time period in previous years. See, for example in Australia, Daly 2020 and Cunningham 2020, and compare with McCauley 2020.

standards and variations, the normal and the pathological, institutions must qualitatively determine that not all deaths are equal. The point here is not that the mathematics of counting death could be true or false, but rather that how states count depends on the creation of a new universal nomenclature for ascertaining causation, which excludes various circumstances of a person's life in order to stabilise SARS-CoV-2 as a normative category for classification. In other words, it depends on technologies of registration that normalise death in comparison to other norms as both a typical and anomalous death. What "excess mortality" shows then is that governmental decisions to count a death during a pandemic in an official COVID-19 toll depend as much on the capacity of state institutions to register a death and determine its cause, as on the making of normative judgements about what kind of deaths should be counted at all. The technology of registration makes use of the bureaucratic logic of the file, classification systems for death causation and tabulation of death rates to normalise death as both an anomaly and the inevitable outcome of a life. For each individual, the registration of a death, its extraction as data in mortality tables and the measurement of an individual death against an average helps them make sense of the exceptional as a normal end point of a life.

5. Conclusion

The history of the technology of registration in the eighteenth and nineteenth centuries reveals how classification systems for death causation and the statistical tabulation of mortality rates occupied a vital role in the emergence of an era of bio-power, where the problem of life and death became conspicuous in arrangements of governmentality. The first year of the COVID-19 pandemic exposed how these technologies continue to play important functions in monitoring, manipulating and cultivating patterns of death at different levels of the population. It also showed how the institutional practices of counting death, that is, recording the death of an individual, assigning it a numerical value and arranging amounts of death in a table are inextricable from how administrative, legal and medical institutions foster life and allow people to die. The epistemological question of what is a "true" death toll thus emerged not because of an institutional appetite for suppressing the collection of death statistics – though this certainly may have been the case in a number of countries in 2020 – but rather due to the technologies for registering death, classifying the causes of death and determining whether amounts of death deviate from an "average", which is isomorphic with a normative judgement of how much mortality suits any given population.

This paper has argued that during pandemics governments harness technologies of registration to pathologise specific kinds of trends in death, while unproblematically reifying the concept of an average or normal death rate. The initial phase of the COVID-19 pandemic rendered visible how technical, scientific and bureaucratic practices self-referentially conceived of death with respect to norms immanent in the population itself; norms that were the fruits of a process of normalisation that did not simply refer to some externally constructed truth. The normative order of classification systems for death causation and the statistical tabulation of mortality rates thereby reminds us of how the transformation from sovereign power to bio-power in the eighteenth and nineteenth centuries did not simply generate technologies that sought to incite, control, optimise and invest life. Governmentality, as a technology of power that optimises life, never shied away from making qualitative judgements about what kind of deaths matter.

While the exercise of bio-power fosters life, it also visibly lets people die, whether at the hands of the state or through the absence of care. What the pandemic demonstrated though is that death is as much a normal as it is a pathological outcome of a life, and a panoply of state and non-state institutions quantitatively and qualitatively determine what is typical in contrast to what is exceptional, and thus whether all deaths, or only abnormal deaths, should be recorded, narrativised and counted in official state-based tolls. These infinitesimal bureaucratic decisions, made by different institutions throughout society, depend on a *thanato-politics*, an array of administrative practices for classifying the causes of a death, tabulating death rates and monitoring mortality trends, which involve qualitative judgements about what amount of death is normal for any given population.

References

Australian Bureau of Statistics, 2008. *Cause of Death Certification, Information Paper, 1205.0.55.001*, 1.

Briggs, C., 2020. Coronavirus deaths could be much higher than official toll due to number of "excess deaths". *ABC News* [online], 30 April. Available from: https://www.abc.net.au/news/2020-04-30/coronavirus-deaths-likely-higher-due-to-excess-deaths/12200850 [Accessed 23 July 2021].

Canguilhem, G., 1991. *The Normal and the Pathological*. Trans.: C.R. Fawcett. New York: Zone Books.

Communicable Diseases Network Australia, 2020. *Coronavirus Disease 2019 (COVID-19) CDNA National Guidelines for Public Health Units*. Version 3.8, 23 August. Canberra: Department of Health.

Cunningham, M., 2020. "I couldn't let a mate die": Study shows hidden spike in cardiac deaths. *The Sydney Morning Herald* [online], 26 September. Available from: https://www.smh.com.au/national/i-couldn-t-let-a-mate-die-study-shows-hidden-spike-in-cardiac-deaths-20200924-p55ysx.html [Accessed 23 July 2021].

Daly, N., 2020. Cancer tests and operations dropped up to 50 per cent during April lockdown, data shows. *ABC Online* [online], 14 September. Available from: https://www.abc.net.au/news/2020-09-14/cancer-tests-operations-drop-up-to-50-per-cent-april-coronavirus/12622396 [Accessed 23 July 2021].

Ewald, F., 1990. Norms, Discipline, and the Law. Trans.: M. Beale. *Representations*, 30, 138.

Foucault, M., 1988. The Political Technology of Individuals. *In:* L.H Martin, H. Gutman and P.H. Hutton, eds., *Technologies of the Self: A Seminar with Michel Foucault*. London: Tavistock.

Foucault, M., 1991a. *Discipline and Punish: The Birth of the Prison*. Trans.: A. Sheridan. New York: Penguin Books.

Foucault, M., 1991b. Governmentality. *In:* G. Burcell, C. Gordon and P. Miller, eds., *The Foucault Effect: Studies in Governmentality*. University of Chicago Press.

Foucault, M., 1998. *The History of Sexuality. Volume 1: The Will to Knowledge*. Trans.: R. Hurley. New York: Penguin Books.

Foucault, M., 2003a. *Abnormal: Lectures at the Collège de France, 1974–1975*. Trans.: G. Burchell. New York: Picador.

Foucault, M., 2003b. *Society Must Be Defended: Lectures at the Collège de France, 1975–1976.* Trans.: D. Macey. New York: Picador.

Laqueur, T., and Cody, L., 2010. Birth and Death under the Sign of Thomas Malthus. *In:* M. Sappol and S.P. Rice, eds., *A Cultural History of the Human Body: In the Age of Empire (Volume 5).* Oxford/Providence: Berg.

Martino, M., 2020a. How accurate are Australia's coronavirus numbers? The answer lies in our death data. *ABC News* [online], 23 June. Available from: https://www.abc.net.au/news/2020-06-23/coronavirus-australia-excess-deaths-data-analysis/12321162 [Accessed 23 July 2021].

Martino, M., 2020b. The covid-19 pandemic is worse than official figures show. *The Economist* [online], 26 September. Available from: https://www.economist.com/briefing/2020/09/26/the-covid-19-pandemic-is-worse-than-official-figures-show [Accessed 23 July 2021].

Martino, M., 2020c. Tracking covid-19 excess deaths across countries. *The Economist* [online], 15 July. Available from: https://www.economist.com/graphic-detail/2020/07/15/tracking-covid-19-excess-deaths-across-countries [Accessed 23 July 2021].

McCauley, D., 2020. Aged care deaths fall during pandemic with influenza at record levels. *The Sydney Morning Herald* [online], 12 September. Available from: https://www.smh.com.au/politics/federal/aged-care-deaths-fall-during-pandemic-with-influenza-at-record-lows-20200912-p55uzt.html [Accessed 23 July 2021].

Milan, S., 2020. Techno-solutionism and the standard human in the making of the COVID-19 pandemic. *Big Data & Society* [online], July-December, 1–7. Available from: https://doi.org/10.1177%2F2053951720966781 [Accessed 23 July 2021].

Rait, J., 2020. A single "voice of truth" from governments and health authorities is critical during this crisis. *Guardian Australia* [online], 23 March. Available from: https://www.theguardian.com/commentisfree/2020/mar/23/a-single-voice-of-truth-from-governments-and-health-authorities-is-critical-during-this-crisis [Accessed 23 July 2021].

Sainato, M., 2020. Texas hospital forced to set up "death panel" as Covid-19 cases surge. *The Guardian* [online], 26 July. Available from: https://www.theguardian.com/world/2020/jul/26/covid-19-death-panels-starr-county-hospital-texas [Accessed 23 July 2021].

Shields, B., 2020. Italian doctors propose intensive care age limit to save younger patients. *The Sydney Morning Herald* [online], 12 March. Available from:

https://www.smh.com.au/world/europe/italian-doctors-propose-intensive-care-age-limit-to-save-younger-patients-20200312-p5499t.html [Accessed 23 July 2021].

Smith, A., 2020. How many died? Different ways of counting make the COVID-19 tally elusive. *NBC News* [online], 16 June. Available from: https://www.nbcnews.com/politics/politics-news/covid-19-death-tally-different-ways-counting-make-number-elusive-n1216801 [Accessed 23 July 2021].

Szreter, S., 1991. Introduction: The GRO and the Historians. *The Society for the Social History of Medicine,* 4(3), 401.

Szreter, S., and Brechenridge, K., 2012. Editors' Introduction: Recognition and Registration: The Infrastructure of Personhood in World History. *Proceedings of the British Academy*, 182, 1–36.

Taleb, N.N., 2010. *The Black Swan: The Impact of the Highly Improbable*. 2nd ed. New York: Random House.

Trabsky, M., 2014. Institutionalising the Public Abattoir in Nineteenth Century Colonial Society. *Australian Feminist Law Journal*, 40(2), 169.

Trabsky, M., 2019. *Law and the Dead: Technology, Relations and Institutions*. London: Routledge.

Trabsky, M., and Hempton, C., 2020. "Died from" or "died with" COVID-19? We need a transparent approach to counting coronavirus deaths. *The Conversation* [online], 9 September. Available from: https://theconversation.com/died-from-or-died-with-covid-19-we-need-a-transparent-approach-to-counting-coronavirus-deaths-145438 [Accessed 23 July 2021].

Viglione, G., 2020. How many people has the coronavirus killed? *Nature* [online], 585, 22–24. Available from: https://doi.org/10.1038/d41586-020-02497-w [Accessed 23 July 2021].

Vismann, C., 2008. *Files: Law and Media Technology*. Trans.: G. Winthrop-Young. Stanford University Press.

World Health Organization (WHO), 2018. *International Statistical Classification of Diseases and Related Health Problems (ICD-10).* 10th Revision [online]. Code U07.1. Available from: https://icd.who.int/browse10/2019/en#/XXII [Accessed 23 July 2021].