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# From Development as Disaster to Disaster as Development: Lessons from the Marseille Plague of 1720

# FROM DEVELOPMENT AS DISASTER TO DISASTER AS DEVELOPMENT: LESSONS FROM THE MARSEILLE PLAGUE OF 1720

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*"And everybody knows that the Plague is coming*
*Everybody knows that it's moving fast"*[1]

*"The disaster ruins everything, all the while leaving everything intact."*[2]

## INTRODUCTION

Much of the contemporary legal scholarship studying disasters understands them as calamitous events best understood within the framework of disaster (management) cycles, comprised of preparedness,

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1 Leonard Cohen & Sharon Robinson, "Everybody Knows" on *I'm Your Man* (Columbia Records, 1988).

2 Maurice Blanchot, *The Writing of the Disaster*, translated by Ann Smock, 1st ed (Lincoln, Nebr: University of Nebraska Press, 1995) at 1.

relief and rescue, and finally, recovery, reconstruction, and mitigation (in turn, flowing back into the preparedness phase).[3] Some proponents of this framework even suggest that a "disaster" be defined as an event requiring the use of this framework of tools.[4] By many accounts, the disaster cycle improves on the scattered beginnings of international legal rules focused on post-disaster emergency response,[5] offering a more holistic imagining where each stage of the cycle is understood to be "part of society's risk management portfolio."[6] This invocation of a pre-emptive approach to disaster risk management tracks the thinking of the Red Cross[7] and the United Nations, placing preparedness and economic development at the heart of a holistic approach to disaster risk management.[8]

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3 See Daniel A Farber, "International Law and the Disaster Cycle" in David D Caron, Michael J Kelly & Anastasia Telesetsky, eds, *The International Law of Disaster Relief* (Cambridge, UK: Cambridge University Press, 2014) 7 [Farber, "International Law"]; Linda Baron, "Disaster Basics: The Life Cycle of a Disaster and the Role of Conflict Resolution Professionals" (2008) 9:2 Cardozo J Conflict Resolution 301 at 302–04; Gary A Munneke, "Disaster Planning: What We Have (and Haven't) Learned" (2008) 17:3 Business L Today 23 at 23.

4 See e.g. Daniel A Farber et al, *Disaster Law and Policy*, 2nd ed (New York: Aspen Publishers, 2010) at 3.

5 See David P Fidler, "Disaster Relief and Governance After the Indian Ocean Tsunami: What Role for International Law?" (2005) 6:2 Melbourne J Intl L 458.

6 Farber, "International Law", *supra* note 3 at 9.

7 See Interview of Bekele Geleta by Jim Luce in Jim Luce, "Interview with the Red Cross Secretary General in Geneva", *The World Post* (21 August 2009), online: Huffington Post <www.huffingtonpost.com/jim-luce/interview-with-the-red-cr_b_240452.html> ("[w]e are moving from disaster relief to disaster preparedness").

8 See *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, UNGAOR, 1991, 78th Plen Mtg, UN Doc A/RES/46/182, at principles 9–10 [UN A/RES/46/183]:

> 9. There is a clear relationship between emergency, rehabilitation and development. In order to ensure a smooth transition from relief to rehabilitation and development, emergency assistance should be provided in ways that will be supportive of recovery and long-term development. Thus, emergency measures should be seen as a step towards long-term development.

Over the last four decades, the language of treaties, rhetoric of politicians, and jargon of legal and other disaster management experts have all progressively tied the idea of economic development (sometimes described as "sustainable economic development") to strategies of disaster risk mitigation. Underlying this master narrative of risk pre-emption and avoidance is the well-documented belief that while hazards may be unforeseen and "natural", disasters are the result of pre-existing background (or structural) vulnerabilities within a given society, ranging from endemic poverty and malnutrition to poor infrastructure and lack of social safety nets.[9] By understanding economic development as a stage of the disaster cycle, and thereby integrating it into a state's overall risk-governance portfolio, at-risk societies can be made safer and less susceptible to disruption. To this extent, the narrative implicitly regards economic development as part of the background (structural) mechanisms that are distinct from the disaster and opposed to the kinds of conditions that increase the risk of its occurrence: disasters thwart economic development, and development is crucial for disaster preparedness and recovery.[10]

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10. Economic growth and sustainable development are essential for prevention of and preparedness against natural disasters and other emergencies. Many emergencies reflect the underlying crisis in development facing developing countries. Humanitarian assistance should therefore be accompanied by a renewal of commitment to economic growth and sustainable development of developing countries. In this context, adequate resources must be made available to address their development problems.

9 See e.g. Greg Bankoff, "No Such Thing as Natural Disasters", (23 August 2010), *Harvard International Review* (blog), online: <hir.harvard.edu/no-such-thing-as-natural-disasters>; Phil O'Keefe, Ken Westgate & Ben Wisner, "Taking the Naturalness Out of Natural Disasters" (1976) 260:5552 Nature 566 at 566; Wolf R Dombrowsky, "Again and Again: Is a Disaster What We Call 'Disaster'? Some Conceptual Notes on Conceptualizing the Object of Disaster Sociology" (1995) 13:3 Intl J Mass Emergencies & Disasters 241.

10 See United Nations Development Programme, Bureau for Crisis Prevention and Recovery, *Reducing Disaster Risk: A Challenge for Development* (New York: UNDP, 2004) at 9 [UNDP 2004]; Lisa Schipper & Mark Pelling, "Disaster Risk, Climate Change and International Development: Scope For, and Challenges To, Integration" (2006) 30:1 Disasters 19 at 20.

The strings of this narrative are primarily in the hands of the sovereign state that, in the eyes of international law, is still primarily responsible for both economic development and disaster risk management within its territory. Accordingly, the state's own legitimacy as the guardian of social order depends on its ability to explain the cause of the crisis and persuade its citizens and, increasingly, the international community[11] of the government's ability to manage the conditions on the ground and forestall future occurrences. Finally, then, a government's ideological positions, policies, and unseen interfaces with civil society—all directed at crafting a persuasive disaster management narrative—inevitably act on the existing social order in the hope of creating a *right* society invulnerable to foreseeable risks.

While decades of controversy and critical legal analysis have significantly challenged the mythical bona fides of economic development[12] and humanitarian intervention,[13] the relationship

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[11] In the aftermath of Cyclone Nargis making landfall in Myanmar in March 2008, leaving some 84,500 dead and another 53,000 missing, the government was widely chastised for not alerting its citizens, for rejecting foreign aid, and for refusing entry to aid workers. See Seth Mydans, "Myanmar Reels as Cyclone Toll Hits Thousands", *New York Times* (6 May 2008) A1, online: <www.nytimes.com>; "Myanmar Government Still Blocking Relief", *New York Times* (14 May 2008) A13, online: <www.nytimes.com>. The government's actual or perceived lack of adequate legal preparedness, or even political will, to develop internationally certifiable standards of disaster management was criticized as breaching the rule of law and possibly the "responsibility to protect" doctrine. See e.g. "The UN and Humanitarian Intervention: To Protect Sovereignty, or to Protect Lives?", *The Economist* (15 May 2008) at 50, online: <www.economist.com>. See also UN GAOR A/RES/46/182, *supra* note 8 at principles 4–7. France and the UK, as well as several Nobel laureates, viewed Myanmar's actions as a crime against humanity. See Roberta Cohen, "The Burma Cyclone and the Responsibility to Protect", *Brookings: On the Record* (21 July 2008) online: <www.brookings.edu>; Philip Sherwell, "Myanmar Cyclone: Burma Junta May Be Prosecuted Over Aid Block", *The Telegraph* (17 May 2008), online: <www.telegraph.co.uk>.

[12] The literature here is vast. A few examples will suffice: Ha-Joon Chang, ed, *Rethinking Development Economics* (London, UK: Anthem Press, 2003); David M Trubek & Alvaro Santos, eds, *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press, 2006).

between a state's legal and administrative governance directed at development on the one hand and pre-emptive disaster risk management on the other has no discernible history, texture, or identity in legal scholarship. This paper contributes to the currently lean legal history of disaster governance. It offers a window into the relationship between early modern economic development and disaster management in the context of the 1720 Marseille plague. Marseille offers one of the earliest instances of a modern "state" government committed to development and aware of the risks involved, struggling with the real-world and narrative (interpretive) consequences of the ensuing crisis. Through a deep study of the everyday legal, political, and administrative life of Marseille, I propose to show how the history of disaster management is inextricable from the history of generalized legal and administrative governance dedicated to securing a particular vision of *right* (i.e., "normal") social order. I hope to suggest that while disasters persist in the popular imagination as drastic and unexpected deviations from the normal conditions of civic life (calling forth a novel, specialized, and temporary form of governance), in fact, sovereign governments, even in the infant years of organized disaster management, anticipated these events as natural occasions for the testing and development of a generalized state power. I propose that the reason for this duality is that the relative success of a disaster management narrative depends on its capacity to explain a given crisis as a temporally limited and unexpected *event*, which can only be properly understood in the context of deeper *structural* causes that may be controlled through organized governance.

Part I of this paper introduces the social order in Marseille between 1660 and 1665. During this period, King Louis XIV's government began to take control of the city's legal institutions and political rhetoric in order to develop it from an isolated, relatively autonomous port into a shining realization of Enlightenment rationality: a *commercial society*, a

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[13] See e.g. Didier Fassin & Mariella Pandolfi, eds, *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (New York: Zone Books, 2010); David Kennedy, The Dark Sides of Virtue: Reassessing International Humanitarianism (Princeton, NJ: Princeton University Press, 2005).

prosperous and egalitarian free trade haven that would attract foreign wealth by proving invulnerable to military invasion, pirates, corruption, and above all, the perpetual threat of plague from Ottoman shores. The notion of a commercial society, in turn, carried with it a metanarrative of the structural causes underlying a particular disastrous event (i.e., what the disaster is), and how a society might prepare for, interpret, and contain such a catastrophic risk. Part II studies how the laws (from trade and medicine to crime and forestry), the judicial, administrative, and financial structures, and the buildings and streets of Marseille were transformed to normalize this *right* social ordering. Finally, Part III describes the impact of the plague, and analyzes the two opposed disaster management narratives that battled to explain the damage. In relating the incidence of the plague to the wider structural context, each narrative offered an account of how, why, and where the risk had emerged, and outlined a mode of disaster management that would prevent future crises. In this sense, the disagreement between proponents of the two narratives was fundamentally a duel over the structural character of risk and thus about causation, responsibility, and the legitimacy of the French state to govern. Part III of this paper will conclude by offering a third reading of the plague: I will argue that the plague supplied a sense of immediacy, temporariness, and moral virtue to the militarized containment efforts that followed. Once the epidemic was under way, the proponents of these opposed narratives gradually but surely aligned behind solutions offered by the pre-existing institutions and practices that comprised this commercial society, now refashioned in an inevitably professional and militaristic form. Marseillaise applauded the organized surveillance, micromanagement, quarantines, cordons, and brute force that they had once despised as royal encroachment. To put it differently, the relative success of the government's efforts to manage the plague was owed to the fact that the original plan for risk governance and the corresponding economic, legal, and administrative apparatus always already[14] envisioned a future of living dangerously.

[14] The phrase "always already" is a concept generally associated with the post-structuralist (or deconstructionist) lineage within continental philosophy. Its

popularization in the 20th century is usually traced to the work of philosophers such as Martin Heidegger and Maurice Blanchot, under whose influence the phrase became central to the writings of literary theorist Jacques Derrida. A critical discussion of the phrase is more than I can dare to attempt here, but methodologically it is useful to think of this concept as a way of warning against complacence about the commonplace notion that things can exist 'as such' independent of the universe of meanings they exist within. One example of how the phrase is used by Derrida is found in his analysis of the linguistic structure of secrets: A secret may be defined as something that cannot and must not be shared. This automatically conveys that one cannot conceptualize what it means for something to be a secret 'as such' without already having an understanding of its binary opposite: what it means for something to be shareable. Thus, it may be said that the concept of a secret *always already* brings to mind the thing it defines itself against: access. The concept of a secret also assumes that one is, first, able to express it to oneself for without such a re-presentation (and implied interpretation) one would not grasp its meaning and implications. But if one can retain the secret in one's mind, and recall it (i.e., re-present or interpret it), then the 'secret' is in principle something that *can* be shared (in this instance, with oneself). Additionally, in telling the secret to oneself, one has already breached the quality that makes something a secret—that it *must not* be shared. Accordingly the very structure of 'a secret' (i.e., the linguistic rules by which we conceptualize it) ensures that every secret in existence has *always already* been shared. See Leonard Lawler, "Jacques Derrida" in Edward N Zalta, ed, *The Stanford Encyclopedia of Philosophy* (Spring 2014 edition), online: <plato.stanford.edu>. See also Jacques Derrida, "How to Avoid Speaking: Denials" in Sanford Budick & Wolfgang Iser, eds, *Languages of the Unsayable* (Stanford: Stanford University Press, 1987) 3 at 25, where Derrida notes that the double negation described above "does not happen . . . by accident; it is essential and originary", i.e., "always already". Perhaps a more accessible instance of this phrase is offered by Stephen Mulhall in his analysis of the quartet of *Alien* films, writing:

> From beginning to end, the 'Alien' films present us with small, isolated groups of human beings framed almost immediately against the infinity of the cosmos. Each individual's inhabitation of the universe appears unmediated by the more complex interweavings of culture and society, those systems of signification which always already determine the meaning of any actions and events encompassed by them...

Stephen Mulhall, *On Film* (New York: Routledge, 2002) at 8. In this paper I use the phrase for the limited purpose of anticipating (for the reader)—in the work and interpretations of economic development in Marseille—the (unspoken) inevitability or at least the (implied) likelihood of a 'disaster'.

## I. GHOSTS OF THE *GRAND SAINT-ANTOINE*

History notes that between the 31 January and the 25 May 1720, the *Grand Saint-Antoine* sailed from the Syrian town of Seyde to the populous commercial port of Marseille[15] carrying bales of cotton, silk thread, wool, mohair, bags of wax, and a single case of *bourre* (cotton waste) from Damascus, amounting to about 300,000 *livres*.[16] Although French officials in Seyde certified the port as free of contagious diseases, the *Grande Saint-Antoine* was menaced by an unseen and lethal malady while crossing the Mediterranean.[17] Delayed for repairs in Tripoli, Captain Jean-Christophe Chataud met rising costs by embarking fifteen passengers including Turks,[18] Armenians, Frenchmen, and several clerics.[19] Soon after, one of the Turks died and was buried at sea.[20] At Cyprus, the ship was again certified as disease-free.[21] Within days, however, two of the ship's sailors fell ill and died soon after; they were followed by the surgeon.[22] By Tuscany, the *Grand Saint-Antoine* had lost eight of its crew. Ashore, the quarantine physician attributed their deaths to a "malignant and pestilential fever."[23] During the remainder of the trip up the Riviera and into the bustle of Marseille, yet another sailor grew sick, ultimately passing away in port.[24]

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15 See Jean-Baptiste Bertrand, *A Historical Relation of the Plague at Marseilles in the Year 1720*, 1st ed, translated by Anne Plumptre (London, UK: Mawman, 1805) at 34 [Bertrand, *Historical Relation*].

16 See Charles Carrière, Marcel Courdurié & Ferréol Rebuffat, *Marseille, ville morte: La peste de 1720* (Marseille: A Robert, 1968) at 240–41.

17 See Bertrand, *Historical Relation*, *supra* note 15 at 34.

18 A designation that generalized Muslims from the Ottoman Empire.

19 See Carrière, Courdurie & Rebuffat, *supra* note 16 at 205.

20 See Bertrand, *Historical Relation*, *supra* note 15 at 35.

21 See Carrière, Courdurie & Rebuffat, *supra* note 16 at 205.

22 See Bertrand, *Historical Relation*, *supra* note 15 at 35.

23 *Ibid* at 35–36.

24 See *ibid* at 36.

Initially, the local Sanitary Board followed internal protocols (*la purge des marchandises*) and, given the deaths on board, kept the *Grand Saint-Antoine* anchored at a distance from shore.[25] But restrictions threatened the value of imported goods, and during the negotiations that followed, the merchants who owned the cargo pointed out linguistic ambiguities in the quarantine statute that made the application of the law contingent on someone having died of the plague during the voyage itself.[26] Chataud claimed that the deaths on board had been caused by food poisoning,[27] and since it was not readily possible to parse cases of the plague from other maladies, and the autopsy of the last victim did not clearly reveal plague, quarantine requirements were lightened to allow the goods into commerce.[28] In the meantime, through the remainder of May and into early June, four other ships from the Levant pulled into harbor, each displaying signs of infection.[29]

Over the next few weeks, a number of people associated with the *Grand Saint-Antoine* and its cargo died, but the local surgeon certified the deaths as unrelated to the plague.[30] Municipal officials, however, reacted pre-emptively and used a variety of measures (from speedy burials in quicklime to the burning of clothes), and implemented a renewed quarantine period for the ship's cargo.[31] After the appearance of several more cases involving tumours around the thigh and groin of sufferers, the local *bureau de la santé* (Board of Health) invited the opinion of a pair of master surgeons who promptly overruled the local

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25 See Aaron David Abraham Shakow, *Marks of Contagion: The Plague, the Bourse, the Word and the Law in the Early Modern Mediterranean, 1720–1762* (Ann Arbour, Mich: ProQuest Dissertations Publishing, 2009) at 7.

26 See *ibid.*

27 See Raoul Busquet, *Histoire de Marseille* (Paris: Laffont, 1945) at 247 [Busquet, *Marseille*].

28 See *ibid.*

29 See Bertrand, *Historical Relation*, *supra* note 15 at 37.

30 See Bertrand, *Historical Relation*, *supra* note 15 at 38.

31 See Shakow, *supra* note 25 at 8.

surgeon, describing the deaths as resulting from a "pestilential fever."[32] The public report exposed the tense interplay of commercial and governance priorities, quarantine policies, and treatment decisions that were until then known only by local officials within the infirmary. As news of the infection spread to the provincial administration,[33] the ship and its suspect merchandise were removed to the island of Jarre and set afire, while the captain, Jean-Christophe Chataud, was remanded to the *Château d'If*,[34] the site of *Dumas'* thrilling second act in *The Count of Monte Cristo*.

But plagues were hardly uncommon in early modern Europe. Marseille lives on as a striking instance not only because of the scale of the devastation endured by its people, but because the city did not haplessly fall victim to any odd passing malady. Rather, the transformation of the city—its laws and administration, political economy, culture and, indeed, its very rooms and streets—in the half-century prior shows that the French government and city's ruling elite foresaw the plague. They curated its effects, fine-tuned and normalized disaster governance, and thereby strengthened the French state even as thousands perished within the city's walls. In order to sketch the character of disaster management in 1720 Marseille, then, we must begin with a fairly granular account of everyday life and governance in the city leading up to the plague.

### A. MARSEILLE: CITY OF PRE-EXISTING CONDITIONS

In 1486, during the reign of Louis XI, Marseille had become part of France in return for the King guaranteeing the city's administrative and political autonomy. Despite intermittent interference by the monarchy,

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[32] Bertrand, *Historical Relation*, *supra* note 15 at 40.

[33] See *ibid* at 42.

[34] See Christian A Devaux, "Small Oversights That Led to the Great Plague of Marseille (1720–1723): Lessons From the Past" (2013) 14:1 Infection, Genetics & Evolution 169 at 175.

this compromise held for nearly two centuries.[35] Marseillais were governed by an elite comprised of the *échevins* (alderman or municipal magistrate), the *noblesse d'epée* (sword nobility), merchants, financiers, and venal officers, each pursuing their own interests within the bounds of a shared narrative that prioritized the classical Republican ideals of virtue, honor, civic pride, and above all, the subjection of private interests to the public good.[36] Marseillais were loyal to France, but did not take kindly to royal absolutism or the rule of commerce.[37] Luxury and commerce were seen as the enemy of such ideals, and along with their practitioners, the merchants, profit was suspected as a threat to the peoples' virtue and moral fortitude.[38] Nevertheless, the old port had traded across the Mediterranean for over two millennia and therefore offered much to Louis XIV's ambitions for France.[39]

By 1643, Marseille had caught the eye of Louis XIV and been subjected to a level of administrative scrutiny that bordered on general surveillance.[40] The French monarchy under the Sun King was largely bound to Versailles,[41] but controlling Marseille was crucial to the King and his soon-to-be controller general Jean-Baptiste Colbert's plans to transform France into a commercial power.[42] In 1660, continuing clashes between nobility and merchants and open violence between royalists

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35 See Raoul Busquet, *Histoire de la Provence des origines à la Révolution française* (Monaco: Imprimerie nationale, 1954), at 224 [Busquet, *Provence*].

36 See Junko Thérèse Takeda, *Between Crown and Commerce: Marseille and the Early Modern Mediterranean* (Baltimore, Md: Johns Hopkins University Press, 2011) at 3.

37 See *ibid* at 3–4.

38 See *ibid* at 4.

39 See Édouard Baratier & Félix Reynaud, "Le Commerce du Levant" in Gaston Rambert, ed, *Histoire du commerce de Marseille*, vol 2 (Paris: Librarie Plon, 1951) at 339–94.

40 See Busquet, *Marseille*, *supra* note 27 at 235.

41 See Simon Schama, *Citizens: A Chronicle of the French Revolution* (New York: Random House, 1989) at 57 [Schama, *Citizens*].

42 See e.g. Takeda, *supra* note 36 at 3–4, 10–11, 24, 31–34, 38–42, 61, 80–82; Bertrand, *Historical Relation*, *supra* note 15 at 29; and below.

and republicans pursuing civic independence culminated in an uprising against the *viguier* (governor commandant), handing the King a reason to invade. Change was swift and, by many accounts, punitive.[43] Letters patent of 5 March instituted an entirely new administrative regime in Marseille: the *échevins* were to be selected from within a reorganized hierarchy of the city's elite, prioritizing *négociants* (wholesale traders specializing in foreign trade)[44] and financiers, followed by the bourgeois and ordinary (retail) merchants.[45] The local nobility were explicitly excluded from the *échevinage*.[46] The city's annual budget was restricted to 30,000 *livres*, a modest amount that laid the ground for repeated interventions by the Crown whenever the administration sought additional funds.[47] The *viguier*, selected by Versailles, was placed at the head of the municipal council and answered to office of the

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43 See Busquet, *Marseille*, *supra* note 27 at 231–33; Bertrand, *Historical Relation*, *supra* note 15 at 30–31.

44 See "A Memorial of the Deputies of the Trading Towns in the West of France, Concerning the Commerce with the Levant, the Goods Used in That Trade, and Why Marseilles Alone has the Privilege of Trading Thither" in French Conseil de Commerce, *The Report of the Deputies of the Council of Trade, in France, to the Royal Council, Concerning the Commerce of That Nation to their American Islands, Guinea, the Levant, Spain, England, Holland, and the North; the Raising the Nominal Value of the Coin, and the Effect That Has Upon Commerce; The Prejudice the Public Suffers by Monopolies; the Erecting of Exclusive Companies; and Other Chief Points of Trade* (London, UK: Robinson, 1744) 31 (Gale Eighteenth Century Collections Online) [Conseil de Commerce, *Report*]; "A Memorial of the Deputy of Marseilles, in Answer to the Foregoing; Setting Forth the Grounds and Reasons of the Privilege Which That Town Enjoys of Trading to the Levant", in Conseil de Commerce, *Report*, *supra* note 44 at 36.

45 See "A Memorial Concerning the Prerogatives and Advantages, With Which 'Tis the King's Interest to Honour the Merchants, to Encourage Them and Increase Their Number in the Kingdom", in Conseil de Commerce, *Report*, *supra* note 44, 60 ["Prerogatives and Advantages"].

46 See *ibid.*

47 See Busquet, *Marseille*, *supra* note 27 at 233.

*intendant*, resurrected in 1673, in Provence, further minimizing the *échevinage*'s authority.[48]

The reforms were severe, but shrinking Marseille's political autonomy was only a stepstool to a larger design—the reinvention of Marseille as the commercial hub of southern France. In August 1664, Louis XIV announced his desire to resurrect Marseille's rich tradition of local manufacturing and commerce.[49] He promised to empower the Chamber of Commerce, abolish tolls on navigable rivers, and repair public highways. The French state would also afford subsidies to *négociants* involved in import and export, allocate up to a million livres annually for encouraging manufacturing, and use all available diplomatic connections to promote the interests of French traders abroad.[50] The King, whose warmongering had significantly strained the country's coffers, charged Jean-Baptiste Colbert to direct the transformation.[51]

Whereas the Marseillais had previously judged luxury and commercial profit harshly, subjecting them to the demands of civic virtue, Colbert—along with historians, wealthier Marseillais merchants, and even some nobility—now began to alter the traditional republican narrative.[52] The new rhetoric proposed that a balance between commercial expansion and centralized regulation ("mercantilism", as it would come to be known) was *itself* an expression of civic virtue.[53] *Négociants* came to exemplify republican civic-mindedness and were

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48 *Ibid* at 233–35; Busquet, *Provence*, *supra* note 35 at 286–87.

49 See Louis XIV, "Letter to the Town Officers and People of Marseilles (August 26, 1664)" in James Harvey Robinson, ed, *Readings in European History: A Collection of Extracts from the Sources, Chosen with the Purpose of Illustrating the Progress of Culture in Western Europe Since the German Invasions* (Boston: Ginn, 1906) vol 2, 279, online: Hanover Historical Texts Project <history.hanover.edu/texts/louis.html>.

50 See *ibid.*

51 See *ibid.*

52 For a parallel shift across France, see RB Grassby, "Social Status and Commercial Enterprise under Louis XIV" (1960) 13:1 Economic History Rev 19.

53 See Takeda, *supra* note 36 at 5, 50–77.

portrayed as a noble and honorable class that braved physical injury from pirates[54] and disease, as well as financial ruin, to represent the interests of the French state abroad.[55] Theologians turned into apologists of trade, offering moral assurances that commerce was universally beneficial, in keeping with both natural and divine law, and essential to man's existence alongside society and reason.[56] In a more secular and patriotic register, but using similar arguments, pamphleteers across France sought to bridge the divide between the *noblesse* and the *marchands*, arguing that commerce brought prosperity to all, and trade was important and glorious—its own reward.[57] Glamourizing this international enterprise, Jean Eon emphasized the military benefits of increased international commerce.[58] Focused on the home front, Jacques Savary, a prominent *négociant* who would go on to assist Colbert with the codification of French commercial law, wrote the popular *Le parfait négociant* presenting commerce as God's will, and describing merchants as noble-hearted men serving King and society.[59] He lauded Louis XIV for giving *négociants* their due, while protecting them against rivals acting in bad faith.[60] But perhaps the most striking aspect of Savary's text, insightfully attuned to Louis XIV and Colbert's designs for Marseillaise society, was an element of social engineering: the book posed as a manual

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54 See Paul W Bamford, *Fighting Ships and Prisons: The Mediterranean Galleys of France in the Age of Louis XIV* (St Paul, US: University of Minnesota Press, 1973) at 17–19, 23–24 [Bamford, *Fighting*].

55 See Takeda, *supra* note 36 at 50–51, 58–59.

56 See e.g. André de Colonie, *Eclaircissement sur le légitime commerce des intérêts* (Lyon: Cellier, 1675), cited in Takeda, *supra* note 36 at 56–57.

57 See Grassby, *supra* note 52 at 21–22.

58 See Jean Eon, *Le Commerce Honorable ou Considérations politiques, contenant les motifs de nécessité, d'honneur, et de profit, qui se treuvent à former des Compagnies de personnes de toutes conditions pour l'entretien du Négoce de mer en France, compose par un habitant de la ville de Nantes* (Nantes: Guillaume le Monnier, 1646) at 1–9, 44ff.

59 See Takeda, *supra* note 36 at 54.

60 See *ibid.*

directed at parents, explaining how they might raise the *parfait négociant* who could succeed by intelligence and physical strength unencumbered by pedigree or social rank.[61]

Simultaneously, the Sun King's desire to promote international trade provided the public with a measure of confidence in an otherwise wayward marketplace and brought legitimacy to the professionals involved.[62] The reconceived narrative of commerce as a civic virtue (rather than a personal vice) promised a future where the benefits of wealth generation guided by centralized regulation would benefit the citizens of Marseille and secure the future of France.[63] On the one hand, prioritizing merchants would reduce self-interest, promote civil and political *sociabilité*,[64] end wars and domestic political unrest (often the result of squabbling among the non-trading nobility), and usher in a new age of progress through reason. On the other hand, developments in scientific rationality and communication touted commercial society as the key to conquering natural catastrophes.

The hierarchy between *négociants* and retail merchants, non-existent in Marseille until this point, was a symptom of this greater design to encourage the development of a commercial society. *The Ordonnance de 1673*, better known as the *Code Marchand*, was a risky foray into the codification of customary and Roman law intended to standardize domestic commercial relations and bring them into the centralized control of the monarchy. Nevertheless, in Colbert's hands this royal edict assumed a distinction between the two groups of traders (as if it were a

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61 See Takeda, *supra* note 36 at 55.

62 See e.g. Jean-Baptiste Colbert, *Lettres, Instructions et Mémoires de Colbert*, Pierre Clement, ed (Paris: Librairie Imperiale, 1863) vol 2 at 263, 268–71, reprinted in "Jean-Baptiste Colbert (1619–1683): Memorandum on Trade, 1664", *Internet Modern History Sourcebook*, translated by Ruth Kleinman, online: <legacy.fordham.edu /halsall/mod/1664colbert.asp> [Colbert, *Lettres*].

63 See Takeda, *supra* note 36 at 6.

64 See Daniel Gordon, Citizens Without Sovereignty: Equality and Sociability in French Thought, 1670–1789 (Princeton, NJ: Princeton University Press, 1994) at 64–65.

well-known feature of the city's social hierarchy) and then memorialized the same by offering rules that addressed each group differently.[65] In sum, the *Code Marchand* standardized privileges and restrictions across various orders of businesspeople by first assuming *négociants* and *marchands* (retailers) as distinct and stable identities as a matter of law.[66]

Supporting the *Code Marchand's* assumptions was the promise of social mobility. Whereas the existing nobility was an inheritance, *négociants* were noble precisely because of what they did—dedicate themselves the civic virtue of commerce for the benefit of all. Soon after its formation in 1700,[67] the French Council of Commerce capitalized on this upswing and affirmed this promise:

> [S]eeing his Majesty has declared he will be pleased to protect and favour Trade, [the deputies of the Council of Commerce] presume that what might contribute to promote his Majesty's Designs, would be the granting to the Merchants some Marks of Honour and Distinction which might make them value themselves on their Condition ....
>
> That all the King's Subjects, who are noble by Extraction, by Office, or otherwise, may be permitted to traffick and deal in all Commerce by wholesale, as well as by Sea as by Land, either for their own Account or by Commission, without Derogation from their Nobility, in Consequence of the Edict of the Month of August 1669, by which the King has declared that Commerce by Sea does not derogate from Nobility, provided Gentlemen do not sell by Retail....
>
> The Appellation of Merchant being too general and extensive, 'tis necessary to settle a Distinction, and for this purpose, those who Trade

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[65] Jean-Baptiste Colbert, *Ordonnance de 1673: Édit du roi servant de règlement pour le commerce des négociants et marchands tant en gros qu'en détail*, M Edouard Richard, ed (1673), online: <partages.univ-rennes1.fr/files/partages/Recherche/Recherche%20Droit/Laboratoires/CHD/Textes/Ordonnance1673.pdf>.

[66] See *ibid* at *Titres* V art 13, X art 2 (recognizing standardized obligations towards traders from across Europe and speaking to their ability to buy and sell local property).

[67] See *Arrêt portant établissement d'un Conseil de Commerce* (Paris, 1700) (Gale Eighteenth Century Collections) at ii–v.

> by Wholesale, by Sea or Land, shall be named *Négociants*, and those who deal by Retail be called *Marchands*.[68]

The Council of Commerce lobbied for this legal innovation, the hierarchy of merchant identities, to be made hereditary[69] and stable while still allowing, in principle, for social mobility. A retail merchant could become a *négociant* absent "any Blot upon his Reputation"[70], by forsaking his former practice through a declaration to the local governing authority (e.g., the Chamber of Commerce, *échevins*, or *consuls*), but he would forfeit the designation and be financially penalized if he fell back into retail sales.[71]

The overlapping interests of the monarchy and Marseille elite—reflected in the commerce-as-virtue trope, the Crown's reorganization of Marseille's administration, Colbert's codification of the identities of commercial agents, and the culture of nepotism endemic in Louis XIV's France[72]—all worked to the advantage of a handful of local *négociants*. Through intermarriage and a variety of other alliances, this coterie soon came to control "all the wealth and dominated the activity of [Marseille] just as it monopolized its administration" by monopolizing the *échevinage*.[73] In effect, power, privilege, and wealth in the proposed (egalitarian) commercial society passed into the hands of a new elite.

But the busiest port in France needed more than just centralized authority, standardized legal rules, and ideological rhetoric; it demanded a material body worthy of its commercial prospects. In 1660, after subduing the city's administration, Jean-Baptiste Colbert and the

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68 "Prerogatives and Advantages", *supra* note 45 at 60–61.

69 See *ibid* at 62.

70 *Arrêt portant établissement d'un Conseil de Commerce, supra* note 67 at 61.

71 See *ibid* at 61.

72 See Bamford, *Fighting, supra* note 54 at 65.

73 Charles Carrière, *Négociants Marseillais au XVIIIe siècle* (1973), vol 1 at 265, cited in Fernand Braudel, *Civilization and Capitalism, 15th–18th Century: The Wheels of Commerce*, translated by Siân Reynolds (New York: Harper & Row, 1981), vol 2 at 469–70 [Braudel, vol 2].

Sun King, often personally, set about the tenuous business of remaking Marseille.[74]

## II. *MORE THAN BRICKS AND MORTAR*: FROM PORT TOWN, TO FREE PORT, TO A COMMERCIAL SOCIETY

By 1665, the monarchy's involvement in Marseille's affairs and the surveillance of its population went beyond the administrative, taking on an air of centralized militaristic control. Over the next two decades, Marseille underwent an unprecedented *agrandissement* with overlapping, but often conflicting motivations: retaining the old architecture in places, but demolishing it when required, military engineers constructed blockades and outer walls enclosing the waterfront. Simultaneously, the overlapping interests of the Sun King and Colbert (regarding the balancing of military security and commercial expansion) led to the establishment of a well-provisioned armory, an arsenal on the southern bank, a grand galley base, and the citadels of Saint-Nicolas and Saint-John overshadowing the Old Port.

When the *agrandissement* commenced in 1666, Marseille sat confined within its proud walls, its high buildings wrapped oddly around wiry streets that were lined with filth and split by putrid streams; indoor spaces were warm, damp, and a virtual petri dish for diseases.[75] It had been so for over two millennia. Nevertheless, Colbert was convinced that it "was the most important city in the kingdom", for it could be fashioned to "wage continuous economic warfare against all foreign commercial cities, and especially the English and the Dutch, who have long encroached on all Levantine commerce."[76] Redevelopment walked a muddled line between facilitating Louis' desire for naval might and Colbert's plan to enhance the circulation of merchants and commodities, spur industrial recovery, and present Marseille as a truly international

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[74] See Bamford, *Fighting*, supra note 54 at 54.

[75] See Busquet, *Marseille*, *supra* note 27 at 237; Takeda, *supra* note 36 at 25.

[76] Letter from Jean-Baptiste Colbert to M Rouillé, Royal Intendant in Aix (21 September 1879), cited in Takeda, *supra* note 36 at 20.

port able to accommodate an increased volume of commerce. The letters patent of 1666–67 proposed an *agrandissement* that would retain much of medieval Marseille down by the port (quickly becoming the *vieille ville* or old city), and add a modern city space[77] that would triple Marseille's circumference. Whereas the old city was built on hilly terrain on an east–west axis, the new addition grew on the plains with its boulevards organized in a geometric grid along a north–south axis.[78] The old boundary walls were razed, and a city-long *grand cours* allowed for widened streets that intersected like a checkerboard in the east while gathering together by the royal arsenal in the south.[79] When officers of the arsenal noted that the *Quay de la Ville* was too narrow and the southern basin too shallow, the southern bank was deepened to allow access to military galleys as well as heavy load-bearing merchant vessels.[80] The planning also integrated a variety of secondary and politically strategic gains. For example, by royal ordinance, old Marseille set against the Mediterranean Sea to be designated as a commercial quarter, while residential accommodations would be moved outward from the center into the newer extensions to the city. Nicolas Arnoul, who Colbert had charged with the day-to-day affairs of the redevelopment, reasoned that while merchants and nobility would remain close to this commercial space, the general citizenry would drift away from it. He hoped that by planning and zoning strategically, he could separate Marseillais into social groups and thereby isolate the antiroyal nobility from the commoners who supported their political opinions.[81] Any and all opposition was quelled with the threat of

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77 See Musée d'histoire de Marseille, *Le Siècle de Louis XIV a Marseille* (Marseille: Musées de Marseille, 1994) at 25 [*Siècle de Louis XIV*].

78 See Roger Duchêne & Jean Contrucci, *Marseille: 2600 ans d'histoire* (Paris: Fayard, 1998) at 345–46.

79 See Duchêne & Contrucci, *supra* note 78 at 346.

80 See Bamford, *Fighting*, *supra* note 54 at 52–68; Busquet, *Marseille*, *supra* note 27 at 239.

81 Duchêne & Contrucci, *supra* note 78 at 346.

violence, while the promise of commercial profit molded civic pride in support of an emerging commercial society. In effect, through the admixture of rising costs and regular antagonism between the monarchy and the *échevins*, the *agrandissement* produced a city whose structures and arteries were both aesthetically and functionally attuned to the dual goals of commerce and security (against piracy, corruption, smuggling, and contagion). But the collision of monarchic and local interests threatened to boil over with the edict of 1669, which outlined the royal vision behind the *agrandissement* and, in a sense, invited the plague in.

### A. DUTY-FREE MARSEILLE

Colbert's mercantilism was primarily directed at the Levantine trade, dominated by the Dutch and English in the 17th century. He viewed commerce as something of a panacea ("it brings and spreads abundance by the most innocent of means, it renders subjects happy").[82] In keeping with this conviction, he actively encouraged manufacturing in Marseille,[83] and officially backed the efforts of traders by nurturing cooperative military, diplomatic, and cultural relations with the Ottoman bureaucracy.[84] The royal edict of 1669, vanguard of the Crown's desire for commercial expansion, would restructure trade in Marseille by designating it as a duty-free port (albeit with some restrictions on goods from the Levant)[85] with a quasi-monopoly over all

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[82] "Edit pour l'affranchissement du Port de Marseille" (1732), cited in Takeda, *supra* note 36 at 33.

[83] See Busquet, *Marseille*, *supra* note 27 at 242.

[84] See Michèle Longino, *French Travel Writing in the Ottoman Empire: Marseilles to Constantinople, 1650–1700* (New York: Routledge, 2015) at 16; Edhem Eldem, "French Trade and Commercial Policy in the Levant in the Eighteenth-Century" (1999) 79:1 Oriente Moderno 27 at 28–29; John-Paul A Ghobrial, *Whispers of Cities: Information Flows in Instanbul, London, and Paris in the Age of William Trumbull* (Oxford, UK: Oxford University Press, 2013) at 56.

[85] See "Memoire des Députés des Villes du Ponant sur le Commerce du Levant, ses denrées; & pourquoy Marseille seule a le privilege d'y commercer" in Conseil de Commerce, *Report*, *supra* note 44 at 31 ["Memoire des Députés des Villes"].

Mediterranean trade.[86] For the *échevins* and the Chamber of Commerce, however, Colbert's plan meant further loss of control to the Crown as well as diminished competitive advantage and revenues.

During the 16th and 17th centuries, local administrative institutions like the *échevinage* were charged with trade regulation. The *échevins* acted with the authority of royal patents, but were otherwise free to determine policy because they had knowledge of local conditions that the Crown lacked.[87] The Marseillais *échevins* saw the royal edict of 1669 as another centralizing move drawing power from them, the city's true representatives. Their fears were certainly justified given King Louis' propensity for absolute control, well reflected in Colbert's own mercantilism that privileged centralized control over every little aspect of commerce.[88] Alongside his many edicts revolutionizing the identity of trade and traders in Marseille, Colbert had also begun to establish a central administrative archive that gathered information on trade, security, and a variety of other local affairs from intendants across France—a process he had initiated through letters that usually focused on cordial, private concerns, but also invited anecdotal information on local conditions, gradually extending Colbert's personal influence over provincial management.[89]

The Marseillais *échevins* were not the only ones grumbling: the negation of port duty altogether was a novel and strange companion policy for the time and Marseillaise merchants abhorred it.[90] The edict of 1669 would deprive the Chamber of Commerce of the duties it needed to maintain the port and secure its operations from smugglers, gunrunners, and diseases. To encourage investment, the new law also

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86 The edict imposed a 20% ad valorem tax on goods from the Levant that entered France at ports other than Marseille and Rouen. See Busquet, *Marseille*, *supra* note 23 at 241–42.

87 See Abbott Payson Usher, *The History of the Grain Trade in France, 1400–1710* (New York: Octagon Books, 1973) at 268.

88 See Usher, *supra* note 87 at 273.

89 See *ibid* at 269–72.

90 See Takeda, *supra* note 36 at 33–35; Shakow, *supra* note 25 at 175–76.

exempted foreign traders from local taxes, allowed them to buy real estate and, in time, compete with Marseillais merchants as naturalized equals.[91] On a defensive footing, the Chamber of Commerce responded by globalizing the fear of commercial ruin, warning of the edict's deleterious impact on France as a whole.[92] Colbert, in turn, played on the revised narrative of commerce-as-civic-duty, which the merchants had thus far supported. He insisted that the Crown represented a force for civic health and universal munificence while individual Marseillaise merchants were failing to place the public good over their personal gain.[93] The *parlement* of Aix, one of the king's 13 superior courts, registered the edict in April 1669.[94]

Colbert's efforts were rewarded with innovations in manufacturing (with the development of *londrins seconds*: a cloth that quickly caught the fancy of Ottoman consumers) and distribution by the merchants he lionized.[95] While the British funneled their trade through a rigid structure of trading houses in the Levant, French *négociants* were greater in number and well distributed in the Ottoman community, leading to multiple points of local contact and quicker penetration of French products as far as Bursa, Ankara, and Aleppo.[96]

Viewed in the macro, the edict of 1669 was a stunning success: France's share of European trade with the Levant, tabulated at a modest 15% in 1686, would oust the Dutch and English and reach 65% by the middle of the 18th century.[97] At the level of individual Marseillais *négociants*, however, the record of the free port was mixed when not downright sorry. Ironically, the same *négociants* who rejected retail trade

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91 Busquet, *Marseille*, *supra* note 27 at 241.

92 See Takeda, *supra* note 36 at 32–33.

93 See Takeda, *supra* note 36 at 33–34. With respect to Colbert's posthumous influence, see *ibid* at 43–49.

94 See *ibid* at 33.

95 See Eldem, *supra* note 84 at 28.

96 See *ibid* at 28–29.

97 See *ibid* at 27–28, n 2.

back in Marseille were far more ambivalent on the ground in the Levant. But they were customarily denied access to retail distribution networks monopolized by Ottoman guilds.[98] As wholesalers, they lacked information about the local markets, and they had no control over the products once sold in bulk.[99] Under these unhappy conditions, *négociants* were forced to contract with Levantine guilds to distribute their products.[100] The balance of trade would not shift in favor of France until 1740.[101] In the meantime, disadvantaged *négociants* were often motivated, for reasons other than racism, to vilify Ottomans as disease-spreading *Turks*[102]—a slow burn that affected the terms of trade through the 17th and 18th centuries, and finally hit its stride once the plague came ashore in France.

### B. THE VERTEBRAE OF COMMERCIAL SOCIETY: THE LIBRARY, THE LAZARET, AND THE LAW

In Louis XIV's France, efficient governance could not be divorced from a programmatic official ideology characterized by stringent economic regulation, the centralization of disciplinary violence, and a dramatic expansion of military capabilities.[103] For instance, the state systematically appropriated agrarian administrative records,[104] medical knowledge, and authority over what were until then local public health issues.[105] Colbert secretly rewrote legal codes so major administrative and legal records

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98 See *ibid* at 32–38.

99 See *ibid*.

100 See *ibid* at 39.

101 See *ibid* at 39.

102 See *ibid* at 37–38.

103 Schama, *Citizens*, *supra* note 41 at 755–56.

104 See Usher, *supra* note 87 at 269–72.

105 See Mark Harrison, *Disease and the Modern World: 1500 to the Present Day* (Cambridge, UK: Polity Press, 2004) at 60.

were removed from the Paris *Parlement*'s control,[106] thereby depriving its members of a major source of expertise with which to resist the King. He also actively corrupted the class of scholars and archivists, who had so far balanced their role as agents of the state with their reputations as independent scholars conversing with others across a pan-European network: the *Republic of Letters*.[107] Colbert pressured renowned members of the Republic to use their scholarship and communication networks to serve the interests of the royal administration.[108] The assignments were varied: publishing propaganda, maintaining libraries, locating historical documentation to advance the state's claims, and even reviewing legal and policy issues to aid Colbert in his day to day engagements. He even employed scholars to recruit their peers as paid agents of the state, building, in effect, a "shadow [R]epublic of [L]etters".[109]

As early as 1661, Colbert had directed his Council of Police to crack down on libel—the publication and trade in books and other printed materials—going so far as to force the closure of all but 30 printers who were given monopolies and essentially published pre-censored tracts.[110] He developed secure archives, integrating antiquarian, humanist records with industrial and administrative documents (including internal reports, correspondence, statistical data, accounting ledgers, and extensive reports on everything from textiles to shipping).[111] He

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[106] See Jacob Soll, The Information Master: Jean-Baptiste Colbert's Secret State Intelligence System (Ann Arbor: University of Michigan Press, 2009) at 48 [Soll, Information Master].

[107] See James E McClellan III & François Regourd, *The Colonial Machine: French Science and Overseas Expansion in the Old Regime* (Belgium: Brepols, 2011) at 429ff (for an explanation of the Republic of Letters).

[108] See Orest Ranum, *Artisans of Glory: Writers and Historical Thought in Seventeenth-Century France* (Chapel Hill, US: University of North Carolina Press, 1980) at 188–96. See also Colbert, *Lettres*, *supra* note 62 at vol 5.

[109] Jacob Soll, "Jean-Baptiste Colbert's Republic of Letters", online: (2009) 1:1 Republics Letters 1 at 7, n 35 <arcade.stanford.edu/sites/default/files/article_pdfs/roflv01i01_Soll_071609_0.pdf> [Soll, "Republic"]. See also *ibid* at 6–10.

[110] See *ibid* at 14–15.

[111] See Soll, *Information Master*, *supra* note 106 at 1–13.

outfitted these storehouses with archivists and researchers rigorously trained to maintain and adapt information for raison d'État.[112] On one hand, the marketplace was missing books. On the other hand, Colbert's staff produced propaganda and *historie* of France that were based on government publications such as gazettes, rather than primary sources.[113] The centralization of information was part of a larger epistemic shift in Europe[114] as governments used classification to imagine the modern (nation) state into existence,[115] and, in time, as his archives grew and revisionist histories circulated widely, the shadow Republic of Letters, an intelligence and surveillance administration unto itself, became permanent. But Colbert's actions had less to do with a commitment to Enlightenment rationality and more with his own compulsions to make even antiquarian knowledge useful to the needs of governance. Part institution, part micromanaged process, the *library* was also *part* Enlightenment, and *part* Enlightened Despotism—Colbert's private curiosities and obsessions flowing like strands of connective tissue through this historical dialectic.

The health and happiness of citizens was a major concern for Enlightenment discourse. On the one hand, Louis XIV and Colbert were committed to the notion that international commercial interdependence would secure French prosperity, reduce wars, and bring on an age of reason. On the other hand, residual wisdom from the *ancien régime* held that a strong and self-sufficient state required a numerically

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[112] See Jacob Soll, "The Antiquary and the Information State: Colbert's Archives, Secret Histories, and the Affair of the Régale, 1663–1682" (2008) 31:1 French Historical Studies 3 at 3–28.

[113] See Soll, "Republic", *supra* note 109 at 8–9.

[114] See Alexis de Tocqueville, *The Old Regime and the French Revolution*, 1st ed, translated by Stuart Gilbert (Garden City, NY: Doubleday Anchor Books, 1955) at 50ff.

[115] See generally Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism, revised ed (New York & London: Verso, 2006) at 167ff, passim; James C Scott, Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed (New Haven & London: Yale University Press, 1998).

large and content population.[116] On the ground in the 17th and 18th centuries, however, people across Europe were threatened by poverty, malnutrition, unemployment, and increasingly, diseases brought home by foreign trade.[117] The resolution of this problem motivated Colbert's dedication to the curation of science in general, and medical knowledge in particular. By the mid 1660s, he had established a number of offices to conserve and analyze scientific and administrative knowledge to advance the needs of governance; through a network of intendants, he received reports from across the country and coordinated the supply of medical remedies to the countryside to battle epidemics.

### 1. PLAGUE-*AVOIDANCE*

By the 18th century, Europeans were well familiar with *la peste* (the plague).[118] While the Black Death in the years 1348 and 1349 had ravaged Northern Africa and the Middle East, and emptied much of Central and Western Europe,[119] it wasn't the last of its kind.[120] Scholars generally agree that life in Europe was cheap, with death ever present in the wings, until the 18th century when the "plague" enjoyed one final

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[116] See George Rosen, "Mercantilism and Health Policy in Eighteenth Century French Thought" (1959) 3:4 Medical History 259 at 259–260.

[117] The literature on this subject is enormous. A somewhat arbitrary sampling may include: William H McNeill, *Plagues and Peoples* (New York: Anchor Books Doubleday, 1998); Mark Harrison, *Contagion: How Commerce Has Spread Disease* (New Haven: Yale University Press, 2012) [Harrison, *Contagion*]; Ronald Findlay & Kevin H O'Rourke, *Power and Plenty: Trade, War, and the World Economy in the Second Millennium* (Princeton, NJ: Princeton University Press, 2007).

[118] See John Frith, "The History of Plague—Part 1. The Three Great Pandemics" (2012) 20:2 J Military & Veterans' Health 11. Until the 17th century, the plague regularly killed off anywhere "up to a third or a half of a city's population in a single year": McNeill, *supra* note 117 at 182.

[119] See Ole J Benedictow, *The Black Death, 1346–1353: The Complete History* (Woodbridge, UK: Boydell Press, 2004) at xi.

[120] See F Braudel, *Civilization and Capitalism, 15th–18th Century: The Structures Of Everyday Life: The Limits Of The Possible*, translated by Siân Reynolds (New York: Harper & Row, 1981) vol 1 at 83–88 [Braudel, vol 1].

hurrah in Marseille before *disappearing* from Europe.[121] And yet, this was precisely the moment when a variety of traditional *ancien régime* structures fell away (spurring a global economy, for instance)—a phenomenon that has led one observer of the era to call it a "watershed of biological regimes" originating four centuries prior.[122] But the wide swathe of death notwithstanding, Europeans were not a homogenous group united in victimhood. War, epidemics, famine, and their kin pulled the scabs off the existing class structure and rivalry between town and country,[123] but also hardened interactions within it. Governments and the bourgeois kept peace through a variety of measures ranging from the English Poor Laws, to Louis XIV's lauded system of "charitable" hospitals and orphanages where the poor, disabled, and those abandoned or otherwise disenfranchised could be productive and do no harm.[124] The plague, in particular, was seen not only as a corruption of the flesh, but also of public morality. It arrested the movement of goods and people, weakened governance institutions, and destabilized the civic and cultural life of the state. Even the suspicion of plague could throw a city into disorder. But the disease would not be understood in terms of a bacillus (the *Yersinia pestis*) until 1894; its etiology—on the backs of rodents, through the entrails of fleas, and into the blood stream of bitten

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[121] There are a variety of explanations for this phenomenon. See e.g. Ann G Carmichael, "Infectious Disease and Human Agency: An Historical Overview" (2006) 106:1 Scripta Varia 3 [Carmichael, "Disease"]; Andrew B Appleby, "The Disappearance of Plague: A Continuing Puzzle" (1980) 33:2 Economic History Rev 161; Paul Slack, "The Disappearance of Plague: An Alternative View" (1981) 34 Economic History Rev 469.

[122] Braudel, vol 1, *supra* note 120 at 70. See also *ibid* at 70–92.

[123] "The contradiction between town and country begins with the transition from barbarianism to civilization, from tribe to State, from locality to nation, and runs through the whole history of civilization to the present day": Karl Marx & Friedrich Engels, *The German Ideology* (New York: Prometheus Books, 1998), vol 1 at 72.

[124] See Brian Pullan, "Orphans and Foundlings in Early Modern Europe" in *Poverty and Charity: Europe, Italy, Venice, 1400–1700*, vol 3 (Aldershot, UK: Variorum, 1994) at 8, 21; Braudel, vol 1, *supra* note 120 at 75–76.

humans—unknown for a further four years.[125] During the late 17th and early 18th centuries, three patterns featured prominently in the European repertoire of common knowledge surrounding the plague: that the plague entered uncontaminated spaces aboard ships in port, hibernated through the winter, and blossomed with spring;[126] that the only meaningful weapon against it was the physical separation of the infected from the healthy;[127] and finally, that the plague was *Asiatic* or *Oriental* in pedigree, hailing near exclusively from the Ottoman Empire.[128] Under the influence of such narratives, the medical and legal orders in Marseille were bound together in a complex system of preventive quarantine involving two central components: the material infrastructure and disciplinary protocols of the *lazaret* (a hybrid infirmary and quarantine station separating people based on signs of infection), and the legal infrastructure of the *patente de santé* or bills of health (separating people and goods based on site of origin).

Preventive quarantines emerged in 1377, following the Black Death, when the Rector of the port of Ragusa (Croatia) issued a *trentina* (from the Italian *trenta*, meaning 30), declaring that all ships arriving from shores suspected of harboring the plague would be isolated off shore for 30 days; for inland movements, people and goods were to remain outside the city limits for 40 (*quaranta*) days, eventually developing into the

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[125] See Devaux, *supra* note 34 at 170. See also *ibid* at 179–180.

[126] See David Herlihy, *The Black Death and the Transformation of the West*, edited by Samuel K Cohn, Jr (Cambridge, Mass: Harvard University Press, 1997) at 24.

[127] See Paul S Sehdev, "The Origin of Quarantine" (2002) 35:9 Clinical Infectious Diseases 1071.

[128] Panzac estimates that through the 18th century, the plague existed across 64 years in Constantinople (Istanbul), 44 years in Egypt, 57 years in Anatolia, and 49 years in Syria. See Daniel Panzac, *Quarantaines et Lazarets: L'Europe et la peste d'Orient* (Aix-en-Provence, France: Édisud, 1986) at 11. See also Richard Mead, *A Discourse on the Plague*, 9th ed (London, UK: 1744) at 1–41; Mark Harrison, "Disease, Diplomacy and International Commerce: The Origins of International Sanitary Regulation in the Nineteenth Century" (2006) 1:2 J Global History 197 at 199–200 [Harrison, "Disease"].

"quarantine" protocol.[129] These periods of isolation followed the 5th century Hippocratic notion that an illness that did not manifest within 40 days was not acute but chronic, and, therefore, not the *pestis*.[130] Venice built the first *Lazaretto* in 1423, a structure that became the material heart of comparable quarantine laws that spread across the commercial centers of Europe, albeit on an ad hoc basis,[131] through the 16th and 17th centuries.[132] This method of health surveillance was functionally popular and symbolically powerful, and in time the capacity and sophistication of lazarets became *the* metric by which people estimated the volume of commerce passing through a given port and consequently its importance on international trade routes.[133] Even before European states began to harmonize their quarantine protocols, the construction and maintenance of a lazaret was understood as a display of political commitment to commerce—it was no coincidence that the royal edict of 1669, establishing Marseille as a free port, followed within a year of the construction of a new lazaret in the city.[134]

The first French lazaret was built in 1557 along Marseille's southeastern shore. Subsequently, another, the *Anse de l'Ours*, was erected in the northwest. The success of this local system of quarantine influenced the *Parlement* of Provence to decree, in 1622,that merchant ships arriving from the Levant could only dock at Marseille or Toulon.[135] This pre-existing and largely effective quarantine system was a large part of what attracted Colbert to Marseille. The construction of a new lazaret was central to the *agrandissement* and would eventually justify the royal

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[129] See Gian Franco Gensini, Magdi H Yacoub & Andrea A Conti, "The Concept of Quarantine in History: From Plague to SARS" (2004) 49 J Infection 257 at 258.

[130] See *ibid* at 258.

[131] See Harrison, "Disease", *supra* note 128 at 199.

[132] Panzac, *supra* note 128 at 33–34.

[133] See *ibid* at 37.

[134] See "Memoire des Députés des Villes", *supra* note 85 at 31; *Siècle de Louis XIV*, *supra* note 77 at 9.

[135] See Panzac, *supra* note 128 at 33.

decision to give Marseille a monopoly over Levantine commerce.[136] Construction of the new quarantine facilities began in 1663 in a locality called *La Joliette*, where they would ultimately occupy 18 hectares on the western edge of the city and exist almost as a second city within Marseille. Unlike much of the *agrandissement*, which was built through local taxes, Louis XIV personally invested 62,000 *livres* towards the new lazaret whose layout exemplified the Foucauldian identifications of segmentation, disciplining, and panopticism.[137] The *bureau de la santé*

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[136] See *ibid* at 34.

[137] Disciplining is a strategy that seeks to negate the unintelligibility of an anonymous crowd of people by identifying and fixing individuals in space. In philosopher Michel Foucault's analysis it is an exercise of political power visible at such disparate locales as the school, the hospital, the plague-infested city, the mental asylum, the military, the factory, and eventually across society at large. In the 19th century Jeremy Bentham developed an architectural blueprint for this strategy in the form of a prison, the Panopticon, which would exist as a space of total surveillance where the guard's ability to monitor was most effective because it was known about but could not be precisely identified, studied and predicted by his prisoners. Foucault traced the design of Bentham's creation to practices in early modern lazarettos battling plague (see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (New York: Penguin Books, 1991) at 198–200). Within a panoptic hospital or prison, "each individual," may be "securely confined to a cell from which he is seen from the front by the supervisor; but the side walls prevent him from coming into contact with his companions. He is seen, but does not see; he is the object of information, never a subject in communication" (*ibid* at 200). With no companions or visible captors to revolt against, order is guaranteed. As Foucault summarizes:

> . . . if the inmates are convicts, there is no danger of a plot, an attempt at collective escape, the planning of new crimes for the future, bad reciprocal influences; if they are patients, there is no danger of contagion; if they are madmen there is no risk of their committing violence upon one another; if they are schoolchildren, there is no copying, no noise, no chatter, no waste of time; if they are workers, there are no disorders, no theft, no coalitions, none of those distractions that slow down the rate of work, make it less perfect or cause accidents. The crowd, a compact mass, a locus of multiple exchanges, individualities merging altogether, a collective effort is abolished and replaced by a collection of separated individualities. From the point of view of the guardian, it is replaced by a multiplicity of that can be numbered and supervised; from the point of view of the inmates, by a sequestered and observed solitude." (Discipline and Punish, at 200–01)

The ideal (ultimate) effect of such surveillance is that each individual grows hyper self-conscious—concerned that she is always being monitored and studied—and

(bureau of health) was situated on the mainland, while the lazaret compound was built on the *Ile de Pomègues* at the end of the bay.[138] The enormous lazaret compound was bound by a windowless wall (which, after the plague of 1720, would be buffered by a second wall another 12 metres out).[139] The internal space was segregated into 7 discrete sectors often separated by wooden balustrades and wire lattice, and accommodated by 18 warehouses, a chapel, a tavern, a restricted visiting gallery, residential space for a dedicated staff of surgeons and soldiers, and its own harbour on the seafront.[140] The governor of the lazaret lived in a house in the interior of the compound, isolated from the surrounding spaces in a way that allowed him to surveil the entire lazaret unnoticed.[141]

In Mediterranean Europe, religious fervor and medical quarantine practices had been structured into public law since the 16th century.[142] Some scholars have even argued that the intimate connection between international trade and the spread of disease prompted the creation of specialized health offices and the standardization of prevention rules across Europe and the Levant.[143] Though this assertion is not universally accepted, there is general agreement that the efficiency with which these institutions functioned varied by country. The lazaret was a space where the already infected would be interned, but first and foremost, its

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begins to self-discipline and conform without being physically forced. For Foucault's foundational analysis of discipline, see *ibid* at 196ff.

138 See John Howard, *An Account of the Principal Lazarettos in Europe; With Various Papers Relative to the Plague: Together with Further Observations on Some Foreign Prisons and Hospitals; and Additional Remarks on the Present State of Those in Great Britain and Ireland* (London, UK: Johnson, Dilly & Cadell, 1791) at 3–4.

139 See Devaux, *supra* note 34 at 181.

140 See Howard, *supra* note 138 at 4; Devaux, *supra* note 34 at 172.

141 See Panzac, *supra* note 128 at 38–39.

142 See McNeill, *supra* note 117 at 270.

143 See Laurence Brockliss & Colin Jones, *The Medical World of Early Modern France* (Oxford, UK: Clarendon Press, 1997) at 352–53; Carmichael, "Disease", *supra* note 121 at 4–5, 14, 17–19.

protocols formed the primary defense against the entry of the plague by sea. At the heart of the lazaret's operations was a hierarchy of bills of health, the *patente de santé*, which were issued, reviewed, and amended by health officials at ports of call across the Mediterranean.[144] These bills were both a legal record of the existence (or absence) of the plague at various ports and determined the length of quarantine required of incoming ships before they could dock.[145] In general, a ship could be deemed clear, suspect, or *brute*, though the amount of detail provided on a bill varied by country.[146] On approaching Marseille, the captain of the ship would drop anchor off the lazaretto's facilities on the *Ile de Pomègues* and present the bill of health to the officials of the *bureau de la santé* on a floating dock off the coast near Fort Saint-Jean.[147] The review would determine for how long the cargo and crew would be quarantined at the lazaretto, or if the vessel would simply be relocated off the island of *Jarre* and burned. This period of review, however, often served as a window during which cargo was secretly offloaded and transported ashore.[148]

In Louis XIV's France, the possibility of plague was a problem for the entire state and influenced virtually all laws and regulations in Marseille. But there would be no central state authority to regulate health affairs until the establishment of the Royal Society of Medicine under Louis XVI.[149] Alongside the *agrandissement* of 1666, royal orders reimagined Marseille's *bureau de la santé*, consisting of 16 intendants, 2 *échevins*, and

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[144] See Devaux, *supra* note 34 at 172; Shakow, *supra* note 25 at 169; Paul Slack, "Responses to Plague in Early Modern Europe: The Implications of Public Health" (1988) 55:3 Social Research 433 at 441–42 [Slack, "Responses"]; Howard, *supra* note 138 at 4.

[145] See Howard, *supra* note 138 at 4–5.

[146] Panzac, *supra* note 128 at 41.

[147] See *Siècle de Louis XIV*, *supra* note 77 at 8; Simon Schama, *Landscape and Memory* (New York: Alfred A Knopf, 1995) at 245.

[148] Panzac, *supra* note 128 at 43.

[149] See Caroline C Hannaway, "The Société Royale de Médecine and Epidemics in the Ancien Régime" (1972) 46:3 Bulletin History Medicine 257 at 257.

14 prominent *négociants* familiar with conditions in the Levant.[150] The Crown charged this collective with administering the lazaret and the entire time-consuming procedure of isolation and staggered reviews, reasoning that, given the deleterious effect of the plague on commerce, the merchants would be naturally motivated to secure the port from this scourge.[151] Ironically, it was for this very reason that merchants across Europe, afraid that the mere suspicion of plague would ruin trade, were loathe to acknowledge the possibility of contagion.[152] However, this potential conflict of interest did not gain traction because in 1660s Marseille, the *négociants* not only dominated the Chamber of Commerce and the *échevinage*, but were also upheld as paragons of virtue.

Eventually, the management of the bureau of health and the antiplague apparatus would each, in its own way, betray the people of Marseille—the lure of commercial success would overwhelm a civic administrator's integrity, and once the plague arrived ashore, the lazaret, the *cordon sanitaire*, and the disciplined city itself, would become a tourniquet fortifying France against its own.

## 2. PLAGUE-*CURATION*

James Scott began his significant study of the taxonomic roots of high modernism by asking: "How did the State gradually get a handle on its subjects and their environment?"[153] The problem of plague pushes the boundaries of this question because in being identified as entering France from the Levant, French antiplague mechanisms functioned in relation to a medico-legal script that was recognizable to the Marseillais but also

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[150] See Takeda, *supra* note 36 at 122.

[151] See *ibid* at 122.

[152] See MW Flinn, "Plague in Europe and the Mediterranean Countries" (1979) 8:1 J European Economic History 131 at 142.

[153] Scott, *supra* note 115 at 2.

inherently international in scope.[154] On the one hand, legal characterization fixed a differential image of countries, races, and classes by curating perceptions of where the contagion originated, who was responsible for its dispersion, and the possibilities for those the disease threatened. On the other hand, medical classification understood people as roughly the same, facilitating the idea that a thing called "plague" would affect everyone equally, and could be identified through comparable *marks* on these equivalent bodies.

*Treacheries of precaution*

If early modern *négociants* were weary of excessive scrutiny of their vessels and cargo, it was because plague prevention protocols were easy targets for political manipulation and regularly produced *plagues* that benefitted one or other group of merchants. Aaron Shakow has powerfully summarized this state of affairs, observing: "The artificial nature of many plague epidemics was an open secret of early modern commerce and medicine."[155] Trade across 17th and 18th century Mediterranean was a cesspool of false accusations of plague that each country's ambassadors, lazarets, and boards of health enforced to varying degrees of exactitude against their trading partners and rivals. This status quo, which Mark Harrison calls "'tit for tat' diplomacy", was particularly evident in Anglo-Dutch relations.[156] Dutch accusations against English vessels gradually eroded the latter's command over Turkish cotton, while the English institutionalized their attacks through rumor, consular conveyances, and formal medical treatises.[157] Richard Mead, then personal physician to George II, pushed these accusations even farther,

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[154] For a discussion of the relationship between sovereignty and the prevalence of disease, see Shakow, *supra* note 25 at 27–32.

[155] *Supra* note 25 at 169.

[156] See Harrison, *Contagion*, *supra* note 117 at 24–27.

[157] See Nathaniel Hodges, *Loimologia, sive, Pestis nuperæ apud populum Londinensem grassantis narratio historica* (London, UK: Nevill, 1672) at 35–36, translated and cited in Shakow, *supra* note 25 at 170.

calling for a permanent quarantine of Turkish cotton.[158] Notably, he offered no comparable critique of the Indian textiles that were a significant part of the British East India Company's bounty, widely available in England.[159]

In the decades leading up to the Marseille plague, French traders struggling to regain dominance over Mediterranean commerce from the English and the Dutch became a third prong in this saga. When the plague reached Amsterdam, killing 35,000 in 1664, the French "placed an embargo on all commerce and traffic coming from Holland and Zeeland, whether by sea or land, applicable to all merchandise without exception",[160] which lasted into the following year. The Dutch interpreted the severity of the French embargo (on *all* merchandise, including from Zeeland, which was by all accounts plague-free), and comparable responses by other European states, as reflecting political stratagem, rather than an exceptional medical safeguard.[161] As the Sun King and Colbert went about the business of inspiring a commercial renaissance, the Enlightenment trope of commerce as a path to salvation grew murky. On the one hand, antiplague measures became synonymous with political aggression and soured trade relations for what remained of the 17th century.[162] On the other hand, the measures often failed to stop the spread of infection, instead producing *négociants* who manipulated perceptions of trading rivals, while themselves growing weary of tenuous mercantile information networks and the resulting *patentes*.

### *Legal codes and the structuring of social hierarchy*

In the domestic context, Colbert's web of information management (the *library*) expanded as he elevated members of his archival workforce,

158 See Mead, *supra* note 128 at 93–94.

159 See Shakow, *supra* note 25 at 173.

160 Letter from M Borcel to States General (23 August 1664) [author's translation], cited in Harrison, *Contagion*, *supra* note 117 at 26–27.

161 See Harrison, *Contagion*, *supra* note 117 at 27.

162 See *ibid.*

often lawyers, to positions of leadership in the bureaucracy and even charged some as royal intendants overseeing provincial administration.[163] But while these agents kept Colbert apprised of local actors (from priests to counterfeiters) and conditions,[164] propaganda and surveillance were of limited use against endemic inefficiency, arbitrariness, and corruption stemming from irregular laws and the hodgepodge of competing jurisdictional claims between feudal and ecclesiastical courts, as well as royal magistrates.[165]

From the twelfth century onward, various French laws had been altered by royal ordinances, but the amendments were substantive and did little to simplify or systematize the overall scheme.[166] Across the country, legislation existed in two parallel systems: customary and written, each of which varied by region.[167] Some of these customs remained tied to millennia-old Roman norms, while others could not have been less Roman.[168] Simultaneously, French courts also applied Roman law, the laws of the Prince, and the pronouncements of local *Parlements*.[169] This multiplicity of legal orders, in turn, was articulated with little consistency across jurisdictions: the *gens du roi* (royal magistrates) in the lower jurisdictions held extensive and arbitrary power over customary law issues (such as family and property), though some scholars have argued that local judicial decisions were on the whole

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163 See Soll, "Republic", supra note 109 at 10–14.

164 See William Beik, *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (New York: Cambridge University Press, 1985) at 98–116.

165 See HA de Colyar, "Jean-Baptiste Colbert and the Codifying Ordinances of Louis XIV" (1912) 13:1 J Society Comparative Legislation 56 at 66; Gerald A Greenberger, "Lawyers Confront Centralized Government: Political Thought of Lawyers during the Reign of Louis XIV" (1979) 23:2 Am J Leg Hist 144 at 151–52.

166 See Sir Courtenay Ilbert, "The Centenary of the French Civil Code" (1905) 6:2 J Society Comparative Legislation 218 at 221.

167 See de Colyar, *supra* note 165 at 68.

168 *Ibid.*

169 *Ibid.*

measured, competent, and professional.[170] More generally, the prosecution's power and resources far outweighed those of the accused, and at any point, the King could (potentially) void, revert, or otherwise alter decisions, remove judges, and even suspend the courts.[171] In Voltaire's classic summary: "a traveller changed his law codes more often than he changed his horses",[172] though this may be an exaggerated account of a more paradoxical system where magistrates depended on the Crown but were also "a nascent bureaucracy increasingly cut adrift from their state."[173]

If the *Code Marchand* brought the plague to Marseille's door, it also transformed social relationships and political power, molding the crucible within which the disease would find its victims. For all its claims to being a commercial society, early modern Marseille was neither egalitarian nor democratized: the *échevinage*, Chamber of Commerce, and the *bureau de la santé* were controlled by a handful of families who, despite their occasional dissatisfaction with royal meddling, remained beholden to the royal intendant in Aix. The professional middle class—largely comprised of legal and administrative professionals—remained committed to a traditional, *ancien régime* system of class and privileges that could only be acquired through formal recognition by royal, legal formulations.[174] Unsurprisingly, the existing legal and bureaucratic mechanisms were primarily concerned with mediating disputes over the distribution of wealth, rank, and political

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[170] See Zoë A Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (Rochester, NY: University of Rochester Press, 2008) at 213–29.

[171] See Foucault, *supra* note 137 at 75–79.

[172] Greenberger, *supra* note 165 at 152, citing LED Moland & G Bengesco, eds, *Oeuvres complètes de Voltaire*, vol 2 (Paris: Garnier Frères, 1877–85) at 427 [*Oeuvres complètes de Voltaire*].

[173] Schneider, *supra* note 170 at 222.

[174] See Greenberger, *supra* note 165 at 155–56; Lucien Goldmann, *The Hidden God: A Study of Tragic Vision in the Pensées of Pascal and the Tragedies of Racine*, translated by Philip Thody (London, UK: Routledge & Kegan Paul, 1964) at 107.

authority within the ruling elite, when not spent shoring their collective interests against the poor and foreign.[175] These mechanisms, in turn, produced the sundry background rules and conditions of survival once the disease washed ashore. For instance, the *Ordonnance Criminelle* (1670) would become the French *Code d'Instruction Criminelle* and survive for over a century,[176] and the *Ordonnance sur le fait des eaux et forêts* (1669),[177] through which Louis XIV proposed to manage French forests that he felt were endangered by various forms of "abuse".[178]

In the 1660s, as Colbert went about codifying French law with the dual goal of condensing the country's chaotic jurisprudence into a single body of Ordinances and drastically reducing the number of people wielding judicial power across the country,[179] he was personally involved in codifying criminal justice and police procedures.[180] But the resulting ordinance, while systematic and detailed in style, remained focused on reforming the magistracy and did little to reform the severe content of existing penal laws and procedures.[181] In its translation to police practice in Marseille, the code facilitated the usual prejudices. Authorities in the port city had long understood the bulk of criminal activity as the mischief of foreigners or others lacking family, home, or related economic roots in the local community—sailors, peddlers, and the homeless were, by definition, qualified and often served as scapegoats.[182] Through the late 17th and 18th centuries, the political and judicial

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[175] See David Parker, "Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France" (1989) 122 Past & Present 36 at 70–74.

[176] See de Colyar, *supra* note 165 at 75.

[177] 13 August 1669.

[178] See See Paul Walden Bamford, "French Forest Legislation and Administration, 1660–1789" (1955) 29:3 Agricultural History 97 at 97 [Bamford, "Forest"].

[179] See de Colyar, *supra* note 165 at 67.

[180] See Paul Viollet, *Précis de l'histoire du droit français, accompagné de notions de droit canonique et d'indications bibliographiques* (Paris: Larose and Forcel, 1886) at 186.

[181] See de Colyar, *supra* note 165 at 76.

[182] See RC Cobb, *The Police And The People: French Popular Protest, 1789–1820* (Oxford: Oxford University Press, 1970) at 32–33.

mentality—particularly in urban regions—shifted from focusing on crimes on the person to crimes against property (theft, fraud, smuggling, and corruption).[183] The severity of punishment diminished and the process grew more efficient, pressing shut "spaces of tolerance" in the earlier disordered system, which allowed the socio-economically marginalized some respite.[184] For Voltaire, the criminal code was a clear reflection of the contempt with which the powerful regarded the powerless.[185] More specifically, it was a set of rules that interacted with the *poor* and *deviant*, in each of their three avatars: as carriers of disease, as its victims, and also its potential beneficiaries (to the extent the disease emptied the city and rendered it ripe for acquisition, lawlessness, and general foment).[186]

The poor in early modern Europe had, in the words of one English bishop, "no friends nor place to flee unto, more than the poor house they dwell in."[187] Since the 15th century, the *poor*—including homeless vagabonds, beggars, members of the working class, prostitutes, the physically or mentally infirm, prisoners, slaves, and the seemingly endless stream of paupered peasants immigrating into urban spaces[188]—who had little by way of possessions[189] and lived in abject squalor, were deemed

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183 See Foucault, *supra* note 137 at 82; Benoît Garnot, "Une illusion historiographique: Justice et criminalité au XVIIIe siècle" (1989) 281:2 Revue Historique 361 at 373. For a critical review of theories proposing and contesting the cause of this shift, see Garnot, *supra* note 183 at 367–76.

184 Foucault, *supra* note 137 at 82.

185 "Le Code Criminel est une preuve du mépris que des hommes qui se croient au-dessus des lois osent quelquefois montrer pour le peuple": *Oeuvres complètes de Voltaire*, *supra* note 172 at 507, n 1, cited in de Colyar, *supra* note 165 at 76, n 4.

186 See Brian Pullan, "Plague and Perceptions of the Poor in Early Modern Italy" in Pullan, *supra* note 124, vol 7 at 107 [Pullan, "Italy"].

187 Bishop Hooper, cited in Paul Slack, *The Impact of Plague in Tudor and Stuart England* (Oxford: Routledge & Kegan Paul, 1985) at 43 [Slack, *England*].

188 Pullan, "Italy", *supra* note 186 at 107.

189 See Braudel, vol 1, *supra* note 120 at 283–84.

breeders and carriers of disease.[190] Poverty was both ubiquitous and without respite,[191] evoking pity and scorn but also fear in the nobility, bourgeois, and the middle class.[192] This state of permanent ambivalence on the part of the powerful meant that even in times when plague was only a threat, the marginalized were suspected, surveilled, restricted, rounded up, and on the slightest hint of offence, imprisoned or executed. In times of plague, as desperation heightened and self-centredness grew to threaten the public good, such severe fates were all but assured.

And yet, what choice did these marginal populations have? If seclusion was indeed the greatest weapon against the plague, the poor were doomed by their very presence in a commercialized urban space that deprived them of all shelter. Closely tied to the criminalization of the poor were their everyday use of forest products and the possibility of escape out of the city into the forests during times of plague. The wealthy survived the plague by secreting themselves and their valuables to closely guarded country estates, to await the end of the scourge. They left with the confidence that the police, even in times of plague, kept vigil over their homes and possessions in the city. In France, the majority of the homeless and destitute survived in threadbare shelters often lining the edges of forests, much like their English equivalents in England who had been lucky enough to survive the plague of 1665–66 in this manner.[193] There is some divergence of opinion on the beneficial impact of Louis XIV's *Ordonnance sur le fait des eaux et forêts* on the health of the country's forests and rivers.[194] But driven by the edict's mandate, soldiers

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[190] See Ann G Carmichael, *Plague and the Poor in Renaissance Florence* (Cambridge: Cambridge University Press, 1986) at 100–04, 123–26.

[191] See generally Braudel, vol 1, *supra* note 120 at 266–333.

[192] See Pullan, "Italy", *supra* note 186 at 106–07.

[193] See Daniel Defoe, *A Journal of the Plague Year* (Middlesex, UK: Penguin Books, 1966) at 155.

[194] "It has been said [that the ordinance is] one of those monuments of human skill and forethought in which order and reason are combined": de Colyar, *supra* note 165 at 79. For a contrasting and more detailed review of the legislation, see Bamford, "Forest", *supra* note 178 at 97–107.

held all such makeshift shelters as abuses of the Crown's lands (the King effectively saw all of France as royal land) and in demolishing them,[195] *produced* a poor that would remain in the city, unsheltered.

Finally, if the "plague" was not caused by a particular germ (as emphasized by royal medical experts during the Marseille plague), but rather owed to pre-existing conditions of malnutrition, poisoning (from rotten food, or polluted water), overcrowding, and the ignorant and uncultured practices of commoners (who, apparently, got infected by leaving their homes to behold the infected and the dead)—then average to poor citizens were also primed for infection by the legal stratification of Marseillaise society and the limitations of a France on the brink of economic collapse.

*That new money smell*

Seventeenth century France had no real system of public finances, and without some measure of centralization there was little control and almost no forecasting. Financial mechanisms were almost entirely controlled by intermediaries, a group of a few hundred individuals knitted together by marriage and business that functioned as a lobby, its members becoming an aristocracy unto themselves.[196]

By 1664, Colbert had begun to overhaul the state's finances—he systematized public accounts, prosecuted embezzlers, and implemented a new system to simplify *taille* (tax) collection, eventually tripling state revenues.[197] By the end of the century, however, the French economy lay badgered by war expenses. The *Revocation of the Edict of Nantes* (1685), the Nine Years' War (1689–97), and a pair of famines (1693, 1694) had cost the state more than could be recovered by the *Treaty of Ryswick* and

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[195] See *supra* note 177 at 146.

[196] See Braudel, vol 2, *supra* note 73 at 537–38. For a comprehensive survey of the financial system, see Daniel Dessert, *Argent, pouvoir et société au Grand siècle* (Paris: Fayard, 1984).

[197] See Henri Martin, *Martin's History of France: The Age of Louis XIV*, 4th ed, translated by Mary L Booth (Boston: Walker, Wise and Co, 1865) at 21–35.

the accompanying four years of peace.[198] The 18th century began poorly with the War of the Spanish Succession (1701–14) and found French soldiers, far from home, cut down by the "Grand Alliance" (of Austria, Holland, Great Britain, Portugal, as well as Spain factions) in a war that punctured the King's pockets. The winters of 1708 and 1709 were exceptionally cold and decimated wheat crops, spiking grain prices.[199] The price of bread was strictly controlled (with mixed results), but people lost much of their income tied to cattle, fruits, and grapevines. By September 1715, when Louis XIV died, the national debt was over 2.6 billion *livres*, and the Crown's economic advisers recommended that the state declare bankruptcy.[200]

Into this maelstrom slipped John Law (1671–1729), the Scottish banking scion, bookmaker, incorrigible rake, and fugitive from England where he had been sentenced to hang for killing his opponent in a duel over a woman.[201] On the lam, Law earned a living by constantly relocating between commercial centers across Europe, in the process acquiring considerable knowledge of monetary policy and financial institutions. Law was convinced that a modern state's political power was determined by its ability to generate and maintain "credit".[202] In practical terms, he proposed the idea of a national bank which could help the state make good on its debts, lower interest rates, and generate economic growth by increasing the total volume of currency.[203] Unhappily, Law's

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[198] See Earl J Hamilton, "The Political Economy of France at the Time of John Law" (1969) 1:1 History of Political Economy 123.

[199] See Hamilton, *ibid* at 124; Mark Blaug, ed, *Pre-Classical Economists: John Law (1671–1729), and Bernard Mandeville (1660–1733)*, vol 3 (Vermont, US: Edward Elgar, 1991) at 180.

[200] See *ibid* at 180; Thomas E Kaiser, "Money, Despotism, and Public Opinion in Early Eighteenth-Century France: John Law and the Debate on Royal Credit" (1991) 63:1 J Modern History 1 at 2–3.

[201] See Antoin E Murphy, *John Law: Economic Theorist and Policy-Maker* (Oxford: Clarendon Press, 1997) at ch 3–5 (though the identity of the woman at the heart of the duel remains in dispute).

[202] See Kaiser, *supra* note 200 at 3.

[203] See *ibid.*

proposal understood stocks and bonds to be the equivalent to paper money, and his future *Système* expanded on this original error.

In 1716, following Louis XIV's passing, the Duke of Orleans accepted Law's proposal for the establishment of a state bank, administered by Law himself.[204] The bank initiated Law's *Système*, which involved floating company shares, issuing paper money, and converting government debt into equity.[205] In 1718, following widespread public approval, the bank was nationalized as the General Bank, and in April 1720, the regency repealed gold clauses in legal contracts and mandated that all citizens to swap their gold and silver for paper currency.[206] In effect, the quick success of Law's system was a testament to the government's ability to establish a financial system's credibility in the eyes of the public.

The denouement of Law's *Système* came swiftly. In 1717, he took over the *Compagnie d'Occident*, which held monopoly trading rights in Louisiana, expecting to barter the company's trading rights for the ability to offer the government low interest rate loans.[207] By mid 1719, the company's shares had risen to 600,000 (50 times its initial offering), each valued at some 15,000 *livres*,[208] spurring a speculative orgy that consumed the interests of the aristocrats, royals, bureaucrats, and peasants alike. For Law, his *Système* required absolutism but thrived because it replaced arbitrariness with a commitment to rational "principles" of public finance that tied the Crown's fate to those of its subjects, in turn binding the value of credit to the fickleness of public opinion.[209] The bank's paper

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204 See François R Velde, "John Law's System" (2007) 97:2 American Economic Rev 276 at 276.

205 See *ibid.*

206 See *ibid* at 277.

207 See *ibid.*

208 James Narron & David Skeie, "Crisis Chronicles: The Mississippi Bubble of 1720 and the European Debt Crisis" (10 January 2014), *Liberty Street Economics* (blog), online: <libertystreeteconomics.org>.

209 See Kaiser, *supra* note 200 at 7–8.

notes, backed by the government's seal, gave citizens access to the emerging realm of public finance, transforming them into "judges of the crown's financial conduct, rendering verdict after verdict through their decisions to purchase or sell Bank notes and Company shares."[210] Unsurprisingly, despite the inflation and rising cost of living, impoverished citizens undertook increased hardships to get their hands on the government's paper.

The crash was quick and deafening. In January 1720, share prices began to fall. In February, the General Bank was merged with Law's *Compagnie* and Law pegged his company's stock to paper money. The inflation worsened and when Law devalued the *livres tournois* there was widespread panic amongst the public who now distrusted bank notes, which were quickly worth less than half their original value and falling.[211] Between 1719 and 1720, commodity prices rose by 80 percent, ultimately doubling. In Marseille, the price of cereals rose by 60 percent,[212] while wage rates fell by 25 percent as the speculation boom drew skill and manpower away from traditional farming and manufacturing.[213] At the same time, Provence endured two successive years of drought punctuated by torrential rain and winds giving rise to a generalized dearth of grain and wine.[214] When the Marseillais *échevins* transacted with foreign traders for additional grain, the supply was held up for fear that the French would pay in French (paper) money; when trade eventually resumed, grain prices had increased by 38 percent.[215]

In late May 1720, as Law's system teetered and its widely loathed founder considered fleeing the country, a 3-masted, 35-metre merchant vessel called the *Grand Saint-Antoine* breezed into Marseille.

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[210] *Ibid* at 4.

[211] See Braudel, vol 1, *supra* note 120 at 356–57.

[212] Carrière, Courdurie & Rebuffat, *supra* note 16 at 49.

[213] See Hamilton, *supra* note 198 at 202.

[214] See Shakow, *supra* note 25 at 89.

[215] See Shakow, *supra* note 25 at 90.

## III. SOMETHING WICKED THIS WAY COMES

By 1720, then, the French emphasis on economic development in Marseille had led to the imposition of a liberalized trade regime that was established by wrenching legal and political control away from citizens. The city's everyday affairs were effectively in the hands of a ruling class of merchants and professionals beholden to Versailles and who fixed wealth generation and social mobility in their own favor while continuing to tout the rhetoric of an egalitarian commercial society. The French economy, impoverished by a series of foreign wars, was virtually bankrupted by the collapse of Law's *Systѐme*, leaving citizens with bills barely worth the paper they were printed on. Food prices soared while production across Provence suffered from successive droughts, as well as a variety of vulnerabilities related to the wholesale foreign trade in grain. And civic life as a whole was permeated by an overlapping array of medico-legal and administrative-archival institutions and practices that heightened surveillance and centralization in order to sponsor economic development and promote free trade by preparing for its least desirable import: contagion.

### A. ENTER THE GOD OF CARNAGE

Despite the deaths incurred during its trip back to Marseille, the *Grand Saint-Antoine* was favorably received because part of its cargo was owned by a prominent *échevin* on the City Council (the institution that managed the *bureau de la santé*).[216] Soon after docking, a substantial portion of the *Saint-Antoine's* cargo was secretly brought ashore and transported to the lazaret at *La Joliette* instead of being remanded to the island of Jarre and burned.[217] The infected textile was then smuggled out from the lazaret at La Joliette to be sold at fairs across Provence.[218]

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[216] See Devaux, *supra* note 34 at 174.

[217] Busquet, *Marseille*, *supra* note 27 at 248.

[218] See Devaux, *supra* note 34 at 173–174.

The deaths began with the porters at the lazaret charged with airing out the ship's cargo. At the time, the local surgeon dismissed the possibility of a pestilential disease.[219] But the death count quickly mounted as the infection wove itself into the fabric of life in Marseille. Until the end of July, the lazaretto was nearly at capacity, though many died soon after arriving there.

Symptoms were diverse and difficult to diagnose. Some patients were presented with "pestilential fevers," headaches, lowered pulse, acute pain in the heart and abdomen, but no carbuncles or buboes. Other had buboes the size of a hen's egg.[220] People who developed the infamous tumours had dry tongues and sunken eyes, but no signs of fever. These differential symptoms that confounded local surgeons[221] chimed well with the *échevinage*'s weariness to declare a plague, for fear that it would ruin commerce. In their reports to the royal intendant at Aix, the *échevins* insisted it was only a malignant fever that was well under control.[222] Nevertheless, following further scrutiny by the intendant at Aix, the *échevins* expanded their surveillance over multiple localities within the city, hastily burying bodies in quicklime and, often under the cover of night, spiriting away entire households suspected of infection.[223] The city's slum population was triaged into victims destined for the lazaret, while others were sequestered within their homes until they succumbed or were deemed infected enough for the entire household to be moved to the infirmary.[224] The *Bureau de la Santé* appointed health intendants for various sectors of the city, who, in turn, supervised citizen sentinels who held keys to all the homes on their beat. Every day, citizen-sentinels went door-to-door counting deaths and collecting

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219 See Bertrand, *Historical Relation*, *supra* note 15 at 38.

220 See *ibid* at 40.

221 See *ibid* at 48–49.

222 See *ibid* at 63–64.

223 See Shakow, *supra* note 25 at 14.

224 See Bertrand, *Historical Relation*, *supra* note 15 at 44–46.

medical information and communications from the imperiled.[225] Law prohibited public assembly,[226] and citizens found outdoors without the requisite permit were arrested by sentinels comprised of people who may have once been their friends and neighbours.[227] As the deaths continued, word of mouth inspired a general air of dread and thousands fled the city, until July 1720, when the Aix *Parlement* prohibited citizens of Marseille from interacting with the rest of Provence.[228] By the end of August, the infirmary was filled while others awaited death in their homes.[229]

With no other means at their disposal, families took to carrying their sick and dead outside, leaving thousands of purifying bodies on the city's streets and squares,[230] while the harbour was littered with floating corpses.[231] Caught between fleeing citizens and the dead, the *échevins* found themselves short on manpower.[232] And yet, the corpses could not be left on the streets. The cleanup was formalized by an ordinance that required citizens to bring bodies out into the street from where they would be removed to the outskirts of the city, a distance that significantly slowed down the process, as more died in a day than could be removed.[233] Initially, beggars and vagabonds were hired, though usually coerced, into carrying the bodies and burying them in lime.[234] But

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225 See Takeda, *supra* note 36 at 134–35.

226 See Slack, "Responses", *supra* note 144 at 443.

227 See Bertrand, *Historical Relation*, *supra* note 15 at 84; Foucault, *supra* note 137 at 195–96; Takeda, *supra* note 36 at 134.

228 See Bertrand, *Historical Relation*, *supra* note 15 at 54; Devaux, *supra* note 34 at 175; Jean-Nöel Biraben, "Certain Demographic Characteristics of the Plague Epidemic in France, 1720–22" (1968) 97:2 Daedalus 536 at 537–39.

229 See Bertrand, *Historical Relation*, *supra* note 15 at 57.

230 See *ibid* at 357.

231 Busquet, *Marseille*, *supra* note 27 at 248.

232 See Biraben, *supra* note 228 at 538. Scholars unanimously acknowledge the lack of reliable demographic data. Biraben's is a representative set.

233 See Bertrand, *Historical Relation*, *supra* note 15 at 166.

234 See *ibid* at 164.

soon the city seemed empty of the homeless as they either succumbed or found places to hide.[235] Convicts from the galley were coerced or promised their liberty in return for services to the city, and by the end of September 1720, 260 convicts had removed over 10,000 bodies, as they themselves died on the streets of the city.[236] By October, some 39,000 had died within the city's walls and another 6,000 on its outskirts.[237] Some reports indicated that at the height of the plague over 1,000 people died every day,[238] but mortality statistics from this time are notoriously controversial and are only offered as indicative.

### B. THE MINGLED CLAMOR OF EXPLANATIONS: REVOLUTIONARY READINGS OF THE PLAGUE

Against this backdrop, a pair of oppositional disaster risk management narratives emerged to explain the plague and speculate about how it may be beaten or avoided. In so doing, these narratives were also battling over the power and legitimacy of the French administrative state to govern. Yet it is less their rancorous emergence and more their quiet assimilation into the *work* of the state's administrative machinery that marked the relative success of disaster management operations in Marseille.

#### 1. DISENCHANTMENT, THE ANTICONTAGIONIST—RATIONALIST READING

In July 1720, the Parisian government charged a contingent of physicians from the Montpellier Medical Faculty to oversee medical control of the plague in Marseille.[239] These physicians saw themselves as the authoritative voice of the state, in addition to being socially and professionally superior to the Marseillais surgeons and spicer apothecaries who struggled against the infection. The dominant

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[235] See Bertrand, *Historical Relation*, *supra* note 15 at 164.

[236] See Bamford, *Fighting*, *supra* note 54 at 246–47.

[237] See *ibid* at 247; Biraben, *supra* note 228 at 538.

[238] See e.g. "The Plague of Marseilles" (1889) 2:1502 British Medical J 827 at 828.

[239] See Bertrand, *Historical Relation*, *supra* note 15 at 97–98.

epistemology of the time was a blend of Hippocratic science and European imperialism, increasingly justified by the rising tide of reason. But in their hands-on craft, the Montpellier physicians were classical anticontagionists who trusted bleeding, clay, spirits, and a variety of herbal purgatives.[240] Their consensus on the plague, however, was unique.

Most prominent amongst the anticontagionists was François de Chicoyneau, then Dean of the Medical Faculty and son-in-law to the Regent's personal physician, who rejected the notion that the plague involved an external agent that was contagious and used merchant vessels to pass between the Levant and Europe.[241] Relying on Thucydides' characterization of plague in his *History of the Peloponnesian War*, Chicoyneau perceived the Marseille plague as the recent iteration of an old malady that had historically overwhelmed many a political order, and was now something familiar.[242] Not only was the condition predictable, it was practically non-existent outside the fractured minds of the afflicted—its victims were really victims of their own ignorance, irrationality, and fear. Of the plague's etiology Chicoyneau wrote:

> [T]he concept of contagion gives birth to fear, or a conviction that one will be attacked; from this fear, a perpetual imbalance of the mind; from this imbalance, a quivering of the brain; from this quivering a vertigo and a strong belief that illness and death are not far off; from this belief a growth of terror; from this a stoppage of the blood and lymph or the blockage of fluids and solids; from this blockage, inflammations and

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[240] See M Chicoyneau, Verney & Soulier, *A Succinct Account of the Plague at Marseilles, Its Symptoms, and the Methods and Medicines Used for Curing It*, translated by "a Physician" (London, UK: S Buckley, 1721) at 19–38.

[241] See François de Chicoyneau, *Lettre de Monsieur Chicoyneau, Conseiller du Roi . . . écrite à Monsieur de la Monière, Doyen du Collège des médicins de Lyon, pour prouver ce qu'il a avancé dans ses observations et réflexions touchant la nature, les événements et le traitement de la peste de Marseille et d'Aix, du 10 décembre 1720* (Lyon: Frères Bruyset, 1721) at 8–10, cited in Shakow, *supra* note 25 at 41.

[242] See Takeda, *supra* note 36 at 110–11.

> gangrene; and finally the plague and death, which arrive sooner or later in accordance with the degree of terror.[243]

While often incorrigible, for Chicoyneau the disease was essentially psychosomatic.

In August 1720, Chicoyneau completed his inquest concluding that the disease was caused by unwholesome food. The *échevins* may not have been convinced of his conclusions, but the infirmaries were already at capacity. Amidst a swell of public ire[244] the *échevins* attempted to ease tensions by posting a public advisory declaring: "the malady which now reigns here is not pestilential, but only a common malignant fever, the progress of which, it is hoped, will speedily be stopped, by separating those who are suspected of being diseased from those in perfect health".[245]

The *échevinage*'s vacillation is understandable given the lack of consensus among physicians: historically, the symptoms of plague were so varied that even late, early modern dictionaries and medical treatises offered little more than contradictory lists and acknowledgements of what could be considered as plague. The profusion of symptoms, the inability to distinguish between terms such as "contagion", "mal", "gangrene", "worm", "bubo", "pestilential fever", and the seeming impossibility of connecting either symptoms or terminology to the plague, meant that *échevins*, merchants, the church, and the public at large[246] remained in a sustained state of confusion, but also made strategic use of this state of uncertainty. For instance, despite the catastrophic body count in and around Marseille, neither ecclesiastical nor municipal

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[243] François de Chicoyneau, *Discours prononcé le 26 octobre de l'année 1722* (Montpellier, 1723) at 59, cited in Daniel Gordon, "Confrontations with the Plague in Eighteenth-Century France" in Alessa Johns, ed, *Dreadful Visitations: Confronting Natural Catastrophe in the Age of Enlightenment* (New York and London: Routledge, 1999) 3 at 22 [Gordon, "Confrontations"].

[244] See Bertrand, *Historical Relation*, supra note 15 at 54–57.

[245] *Ibid* at 99.

[246] See Marie-Hélène Huet, *The Culture of Disaster* (Chicago, US: University of Chicago Press, 2012) at 19–21; Bertrand, *Historical Relation*, *supra* note 14 at 125.

documents ever used the word "*peste*".[247] While accusations of plague openly construed international relations between sovereign nations, *there was no legal record of its existence in Marseille.*

The legal and medical contingencies of the day were not the only criteria to explain the onset of plague and the possibilities for risk-mitigation. Chicoyneau, for instance, took his own well-being, amidst a sea of the infected, as a sign that the disease was not contagious,[248] but rather owed to a generalized state of malnutrition,[249] food poisoning,[250] and a vicious cycle of fear and hysteria.[251] The doctor's use of his own health as a barometer for the communicability of the plague was not accidental—behind his radical but "scientific" diagnosis that plague symptoms were psychosomatic lay the traditional logic of social stratification that characterized the French legal regime, as well as the everyday operations of quarantines and lazarets, targeting the poor and "unclean". As fervent anticontagionists, Chicoyneau and his peers repudiated the construction of the plague as an infection that could travel between persons and places. But by tracing its cause to the diet, ignorance, fear, and general lack of rationality and nobility on the part of the poor, they nevertheless affirmed the existing social hierarchy. Specifically, Chicoyneau felt the disease affected people "who live in the

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[247] See Auguste Laforet, *Souvenirs Marseillais: La peste de 1720* (Marseilles: Marus Olive, 1863) at 10, cited in Shakow, *supra* note 25 at 57.

[248] Shakow, *supra* note 25 at 43.

[249] See John McManners, *Death and the Enlightenment: Changing Attitudes to Death Among Christians and Unbelievers in Eighteenth-Century France* (New York and Oxford: Oxford University Press, 1981) at 17–19.

[250] Ergot poisoning from moldy bread was a common phenomenon in 18th century Europe, and the resulting inflammations were comparable to symptoms of plague. See Shakow, *supra* note 25 at 93–96.

[251] The government's position is partly vindicated by social historians who point to structural causes underlying the city's devastation (though not fear and hysteria); however, most contemporary scholars, unlike the Crown's doctors in 1720, accept the presence of the plague bacillus (the *Yersinia pestis*) in Marseille. See e.g. Slack, *England*, *supra* note 187 at 7; Colin Jones, "Plague and Its Metaphors in Early Modern France" (1996) 53:1 Representations 97.

same climate, live under the same roof, are nourished in the same manner, and whose character is uneasy, and do not know how to master their passions."[252] But whereas a diet can be improved, under this narrative, the naturally weak and corrupt character of certain classes rendered them irredeemable, unless trained to be otherwise.[253] The official explanation of the crisis, then, reinforced traditional social stratification while opening the door to modern, rationalized disciplining of everyday citizens.

Additionally, as Daniel Gordon has noted, the rationalization of plague in Marseille helped muddle pre-Enlightenment notions of the plague as the disaster with a new sense of the plague *as the irrational dread* of disaster.[254] Following Chicoyneau's diagnosis, Chevalier de Jaucourt, author of many plague-related entries in Diderot and d'Alembert's *Encyclopédie*, which is a foundational text of the Enlightenment,[255] concluded: "The plague does not produce such great losses among the Turks and the other peoples of the Orient who are accustomed to it as epidemics produce here, even though they take few or no precautions—and this is because they are not afraid."[256] Accordingly, the French state's responsibility for the crisis was held mitigated by the failure of citizens to cope with a common fever.

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[252] Chicoyneau, *supra* note 241, cited in Shakow, *supra* note 25 at 126.

[253] See Shakow, *supra* note 25 at 126–12. Shakow argues that while Chicoyneau understood class virtues to be inevitable, it was Jean-Baptiste Bertrand, a severe critic of the Montpellier crowd, who saw the poor as choosing to act irrationally and therefore deserving blame. See *ibid.* I contend that Chicoyneau himself straddles the fate–volition distinction.

[254] See Gordon, "Confrontations", *supra* note 243 at 13.

[255] See Huet, *supra* note 246 at 22.

[256] Chevalier de Jaucourt, "Peste (Médecine)", in *Encyclopédie*, vol 12 (1765) at 454, cited in Gordon, "Confrontations", *supra* note 243 at 12.

## 2. RE-ENCHANTMENT, THE CONTAGIONIST—PARANORMAL READING

Jean-Baptiste Bertrand, one of 12 physicians guild-licensed to practice in Marseille in 1720, was a vehement contagionist, severely critical of the merchant *échevins* and nostalgic for Marseille's political autonomy. His *Relation historique de la peste de Marseille* is a touching, if sometimes exaggerated, account of the plague that is chock full of "many curious and interesting particulars relative to that period."[257] But unlike Chicoyneau's scientific taxonomy of the disease as a known and curable malaise, Bertrand's theory is almost prophetic and embedded in a rhetoric that ties the suffering of citizens to the hubris of the French state in imposing a homogenizing model of development upon the city. Relating the history of plague in Marseille through the 16th century, Bertrand does not see necessity give birth to progress. Rather, he reports the same fatalism in his countrymen that early modern Europeans regularly associated with Turks and other Orientals. Where Chicoyneau's theorizing remained undeterred by a multitude of contradictory symptoms, for Bertrand, the plague was a shape-shifting admixture of multiple diseases beyond the reach of the state's scientific knowledge.

Bertrand started his etiological inquiry with the idea that plague was caused by a pollution of blood and lymph introduced into the city through people's veins.[258] A talented diagnostician, he studied the contagion's spread and speculated that the infection was caused by *insectes étrangères* too small to be seen by the naked eye, which reproduced quickly and flowed between people and places.[259] He extended this thesis noting that the plague did not differentiate between the rich, poor, and non-human (dogs).[260] But despite this prescient diagnosis, made without the aid of a microscope and long before the

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[257] Bertrand, *Historical Relation*, *supra* note 15 at title page.

[258] Bertrand, *Historical Relation*, *supra* note 15 at ch 2.

[259] See Jean-Baptiste Bertrand, *Observations faites sur la peste qui règne à présent à Marseille et dans la Provence* (Lyon: André Laurens, 1721) at 10–36.

[260] Bertrand, *Historical Relation*, *supra* note 15 at 60, 296–98, 305.

advent of bacteriology, Bertrand's analysis was layered with a sense of awe at the multitudinous symptoms of the plague and his beloved city's fall from a vibrant port into the helplessness he saw around him. Accordingly, Bertrand expressed his etiological conclusions within the terms of an emerging revolutionary rhetoric, which understood the plague not merely as a corruption of the body, but as a crisis at the heart of commercial society itself.[261] In its paranormal character, the plague appeared not only as a critique of human abilities and knowledge,[262] but also of the reinvented social order: commerce had brought the disease into Marseille, while its twin, social exchange, had propagated the contagion into the city's cracks and crevices. In an era when the city was idealized and its identity constructed around the notion of *sociabilité* (the antithesis of Hobbesian self-absorption),[263] the shock was literally and metaphorically devastating:

> "[The plague] stops commerce in the city, it seems to dissolve society, it interdicts the communication of mutual assistance among the sufferers, it tears asunder all the ties of blood and friendship, annihilates conjugal love, extinguishes even paternal affection. Every source of human assistance exhausted and dried up, the sick remain in a state of neglect and horror more cruel even than death itself. Each individual, attentive solely to his own preservation, considers himself as dispensed with from giving to his neighbour that assistance we naturally owe to each other . . ."[264]

The plague was not simply a physiological dysfunction that revealed the withered insides of the social order in Marseille; rather, the plague was a supernatural reckoning which tore through easy assumptions about the absolute power of the state and the innocence of a prosperous

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261 See Gordon, "Confrontations", *supra* note 243 at 16, 18–21.

262 See Huet, *supra* note 246 at 20–24; Daniel Gordon, "The City and the Plague in the Age of Enlightenment" (1997) 92:1 Yale French Studies 67 at 86.

263 See Gordon, *supra* note 64 at 63–65.

264 Bertrand, *Historical Relation*, *supra* note 15 at 3. See also *ibid* at 85.

commercial society, condemning citizens to wander in a fugue of "frenzied pointlessness."[265]

### 3. ADMINISTRATIVE CATHARSIS, A DIALECTICAL READING

On the ground in 1720s Marseille, neither the contagionist nor the anticontagionist narrative was an entirely convincing account of what the plague was, or how it could be defended against. On the one hand, the plague would not be deemed contagious until well into the 19th century. On the other hand, in 1726, Antoine Deidier, *Conseillier-Médecin du Roy* and one of Chicoyneau's close collaborators, used the opening address inaugurating the Montpellier School of Medicine to present an "ambidextrous" dissertation on the plague arguing that "the plague is only too contagious, and . . . that contagion not produced by a simple atmosphere carrying pestilential atoms, but only by immediate and prolonged contact."[266] Deidier's construction did not allege a supernatural invasion, but certainly retreated from his own earlier (anticontagionist) prognosis that the symptoms were born of malnutrition, ignorance, and fear.

But if neither the official narrative nor its revolutionary opponent persuaded the citizenry, how did containment ever succeed? And why did these rivalrous disaster management narratives not wrench the French state apart?

To shorthand an answer we might say that the French and European interior was secured and what remained of Marseille rescued by the militarization of the medical, legal, and administrative apparatus and practices developed in the half-century before the plague occurred. Conceptually, this mode of disaster governance was anticipated by the mythology of the commercial society, which allowed citizens to interpret

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[265] Antonin Artaud, "The Theater and the Plague" in *The Theater and Its Double*, translated by Victor Corti (London, UK: Calder, 1993) at 18, cited in Gordon, "Confrontations", *supra* note 243 at 15.

[266] Antoine Deidier, *Dissertation où l'on établit un sentiment particulier sur la contagion de la peste, pour l'ouverture solennelle de l'Ecole de Médecine de Montpellier* (Paris: Charles d'Houry, 1726) at 9, translated by and cited in Huet, *supra* note 246 at 32.

the plague as a singular, temporally limited, unexpected *event* that nevertheless existed as a more global, existential threat that could be controlled through organized governance. But in order to appreciate how militarized disaster management took hold quickly and effectively, we must note that the two duelling narratives each understood the plague as an unforeseen and abnormal "event", but one that could only be properly understood in relation to wider and more universal ('structural') conditions that characterized early modern Marseille. For the state-authorized anticontagionists, the crisis was owed to structural characteristics such as economic dearth, malnutrition, ignorance, and low moral character (resulting in widespread fear and hysteria); for the authority-resistant contagionists, the crisis erupted because Louis' had forced his homogenizing, commercial vision for France upon Marseille, and this act of hubris had earned the displeasure of something supernatural which then deployed an enigmatic "plague" to put the rationalistic state in its place. In this sense both narratives implicated a dualistic view of what the disaster actually was: an aberrant event, and something with deep societal roots. The structural nature of the crisis was, in turn, intimately connected to the commercial society that courted foreign trade and investment by offering a pre-emptive legal and medical, administrative regime (dedicated to avoiding and containing plague) designed to advance the goal of international commerce. Once the plague metastasized within the social body and citizens experienced the epidemic as an imminent existential event, they fell back on the pre-existing mythology of the commercial society, which could, through militarized rationalistic governance, contain invasive "natural" calamities invading from the outside. In effect, Marseillais reauthorized their criticism of the pre-existing structure as politically and morally virtuous.

Citizens gratefully accepted the militarization of the existing mechanisms of centralization, surveillance, micromanagement, public health protocols, lazarets, quarantines, and cordons. And by their very mobilization, these mechanisms stabilized the commercial society that had once cost Marseille its material form and values, produced endemic poverty, new orders of inequality, cultural corruption, social homogeneity, and (for the contagionists) a malevolent specter that didn't like what it saw. Put differently, at the height of the plague as the streets

and squares lay overwhelmed with corpses, those left standing readily submitted to the bulwarks of the Sun King and Colbert's commercial society (the library, the lazaret, and the law) and allowed its administrative machinery (now rid of self-interested merchants) to perform as brutally and efficiently as needed, doing what it was always designed to do: enact a plague control experiment that the original goal of economic development had made inevitable.

In late August 1720, Marseille was isolated from France much the same way its citizens, in lazarets, hospitals, and their own homes, were cut off from each other. The *cordon sanitaire*, first deployed in 1374 Milan, arose in Marseille in the form of a 24-kilometre *mur de la peste* girdling the city, its guarded egresses securing the country against its own.[267] In September, the Crown established the *Conseil de la Santé* to oversee disease control operations across France, and introduced an overarching *arrêt* regulating quarantines, establishing *cordon sanitaires*, and prohibiting travel to and from Provence except when accompanied by *certificats de santé*.[268] In support of this *arrêt*, the intendant in Provence demanded that health bureaus supply monthly registers systematically detailing everything from mortality figures and grain supplies to hospital linen inventory.[269] To ensure that the plague and its sufferers remained contained, the Regent backed the administrative orders by ordering six battalions of soldiers to hold the line in Provence.[270]

With the establishment of the cordons and the deployment of soldiers to Provence, the plague in Marseille took on a national character the way the development of commerce had only a few decades prior. By

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[267] See Cindy Ermus, "The Plague of Provence: Early Advances in the Centralization of Crisis Management" (2015) 9 Arcadia (Environment & Society Portal, Rachel Carson Centre for Environment and Society), online: <www.environmentandsociety.org/node/7029>; Biraben, *supra* note 228 at 539; Slack, "Responses", *supra* note 144 at 441; Jones, *supra* note 251 at 99.

[268] See Takeda, *supra* note 36 at 127.

[269] See Takeda, *supra* note 36 at 127. See also Slack, "Responses", *supra* note 144 at 442.

[270] See Takeda, *supra* note 36 at 127.

October 1722, the plague had spread across Provence along major travel and communication routes to Aix, Aubagne, Toulon, Martigues, Salon, Tarascon, Marvéjols and Languedoc, Mende, Avignon, and Alès.[271] Struggling for traction, the monarchy dispatched military commandants to Marseille,[272] and returned to the *échevins* near-absolute executive and judicial power over their citizens and environs. Where the onset of plague, once traced back to commercial deceit, had reinvigorated the city's Republican spirit, the extent of the chaos added a brutal and authoritarian edge. Surveillance was heightened as citizens emerged as members of *corps de garde*, as spies, and importantly, as witnesses greasing the wheels of frequent summary trials that regularly resulted in execution.[273] Popular opinion believed the plague had inspired a moral degeneration in the city.[274] In response, the reinvigorated rhetoric of civic virtue cast a deep shadow over all activities related to commerce. Sex crimes were targeted, and their perpetrators usually summarily executed. Prostitutes, seen as engaging in "commerce with men," were whipped and either incarcerated for lengthy terms or simply killed.[275] Selfishness was outlawed, and "corruption" understood as an instance of moral depravity emerged as a crime against the public.[276] Property crimes like theft drew severe penalties even when they were committed in relation to corpses (often by family members) abandoned buildings; a similar fate befell the streets, which were watched, patrolled, and cordoned off.[277] This was

[271] See Biraben, *supra* note 228 at 539.

[272] See Bertrand, *Historical Relation*, *supra* note 15 at 180–198.

[273] See Takeda, *supra* note 36 at 144.

[274] See *ibid* at 133.

[275] See *ibid* at 145.

[276] See *ibid* at 144–45.

[277] See Takeda, *supra* note 36 at 144–45.

particularly tragic for the poor, homeless, and "deviant", who earned their living on the streets, begging, pilfering, and scavenging to survive.[278]

Within the city walls, surveillance, restraint, disinfection,[279] and punishment extended to the closure of markets and public houses, while security blockades inevitably restricted the flow of grains to the people. As Marseille closed its doors to the world, the world reciprocated: within months, Spain, Britain, Venice, and Malta established blockades on routes to Marseille.[280] Levantine traffic had slackened from over 200 ships in 1718 to a mere 71 by 1721.[281] Despite parliamentary decrees targeting food distribution, meat and grain scarcity caused riots within the city while soldiers secure in the bordering citadels threatened to attack their own city if supplies lines did not resume.[282] In August 1720, fearing that water runoff from the hills would swamp the already infested streets, the *échevins* prohibited the use of public water for irrigation. But water contamination was an even greater danger in early modern France and inspired many to drink only wine;[283] predictably, wine shortages in Toulon and Marseille inspired riots of their own.

If the initial failure of Marseilles' plague-avoidance apparatus had victimized citizens, the relative success of its militarized containment measures transformed the city into an extended lazaret cum prison, which protected the French and European interiors by maximizing mortality within the *cordon sanitaire*.[284] A number of scholars have observed the efficacy of the cordons especially when coordinated with

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278 See McManners, *supra* note 249 at 19. For an overview of the political economy of poverty during this period, see Olwen H Hufton, *The Poor of Eighteenth-Century France, 1750–1789* (Oxford: Clarendon Press, 1974).

279 See Bertrand, *Historical Relation*, *supra* note 15 at 312–26.

280 See Paul Gaffarel & Armand (Le Marquis) de Duranty, *La peste de 1720 à Marsielle & en France d'après des documents inèdits* (Paris: Perrin et cie, 1911) at 50–51, 425.

281 See *ibid.*

282 See Bertrand, *Historical Relation*, *supra* note 15 at 65.

283 See McManners, *supra* note 249 at 20–21.

284 See OJ Benedictow, "Morbidity in Historical Plague Epidemics" (1987) 41:3 Population Studies 401 at 416.

other states or regions.[285] Nevertheless, there is something to Shakow's observation that the Marseille plague "may have represented the birth of the modern individual, the population statistic, the identity card, but more in the breach than the observance."[286] But neither failure nor success was immediate or absolute. Marseille was quickly transformed into a "somber desert" where "everything is generally closed and forbidden,"[287] and by its very activation, the administrative regime of the commercial society was normalized. In effect the French state realized in the chaos of a plague-stricken Marseille "the utopia of the perfectly governed city."[288]

## IV. CONCLUSION

The history of Marseille from 1660 to 1723 ought to resonate strongly with observers of disaster management in the 21st century. In its attempt to transform the city into a free trade haven, Louis XIV's government modelled its economic development on an idealized, prosperous, and egalitarian utopia invulnerable to the plague. The development of such a society, however, required the transformation of virtually every aspect of the existing social order—from the legal codes to social hierarchies, from architecture to medical protocols, from a culture built on civic virtue to one favouring commercial profit—turning an autonomous Republican city by the sea into a highly surveilled symbol of the modernizing French state. At the core of this transformation was the state's self-awareness of the perpetual risk of plague, and the increased likelihood of the disease finding its way into Marseille as a result of increased trade across the Mediterranean. The plan for economic development, in other words, was not automatically antithetical to the occurrence of a disaster, the way it is often conveyed in our time.[289] Rather, the state self-consciously

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285 See e.g. Slack, *England*, *supra* note 187 at 315–21.

286 Shakow, *supra* note 25 at 142.

287 Carrière, Courdurie & Rebuffat, *supra* note 16 at 104.

288 Foucault, *supra* note 137 at 198.

289 See e.g. UNDP 2004, *supra* note 10 at 9.

courted the risk of plague (by expanding trade volume, privileging the social value of private greed, and charging merchants with the city's infrastructure and government), while guarding against it (through medico-legal codes and bills, the *bureau de santé*, lazarets and *cordon sanitaire*). Simultaneously, the government curated the explanations and experiences surrounding the possibility of an epidemic (by developing an intelligence network and scientific archives dedicated to *raison d'État*, as well as through close surveillance, and widespread censorship and propaganda). Each of these projects was as much part of economic development as it was of a pre-emptive plan for disaster risk management. Thus, even as citizens in the twenty-first century continue to perceive disasters as unexpected deviations from the normal conditions of civic life calling forth a novel and temporary form of governance, as far back as the early 18th century, sovereign states as part of their own development anticipated such events as natural occasions for the testing and development of a generalized state power. Sociologist Robert Stallings eloquently captures this insight, noting that "exceptions are simultaneously routines"[290] and, further, "[t]he state's disaster functions and its everyday functions are the same."[291] Even in 1720, the French government understood disaster risk as a permanent burden and the goal of economic development—including laws, economic policies, physical infrastructure, political rhetoric, and public health norms—that we now take for granted, was part of society's risk-management portfolio but not necessarily directed against the occurrence of a disaster.

Disasters are indeed major disruptions of the social order. But the state's awareness of the risk and consequent efforts to bring meaning to the experience (by explaining its causes, enacting preparedness, relief and rescue, as well by allocating blame), inevitably render disaster management narratives into perennial blueprints for the creation of a new "normal" (or, "right") social order that is invulnerable to certain

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[290] Robert A Stallings, "Disaster and the Theory of the Social Order" in EL Quarantelli, ed, *What is a Disaster?: A Dozen Perspectives on the Question* (New York: Routledge, 1998) at 138.

[291] *Ibid* at 142.

(pre-determined) orders of risk. For instance, in Marseille, "plague" was an acceptable risk, but the actual disease introduced because of institutional failures or by supernatural causes was not. In the same way, contemporary societies may accept the presence of nuclear power plants and oil rigs, but balk at the possibility that experts may be mistaken, or guard against the perception of insecurity with complacence,[292] that long and short-term degradation (on or off-site),[293] negligence, mismanagement and regulatory failure,[294] overly complex and tightly coupled technological systems,[295] or simply the weather,[296] may cause meltdowns or spills that can never be undone. This attitude of denial and disbelief pervades contemporary reportage, whether official or journalistic, even though all such *explanations* are by now quite predictable and mundane. Back in Marseille, official records pointed not

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[292] See "Nuclear Crisis: How It Happened: Safety Vows Forgotten, 'Safety Myth' Created", *Yomiuri Shimbun* (15 June 2011), online: <www.europe-solidaire.org/spip.php?article 21953> ["Nuclear Crisis"].

[293] See e.g. International Atomic Energy Agency, The Great East Japan Earthquake Expert Mission: IAEA International Fact Finding Expert Mission of the Fukushima Dai-Ichi NPP Accident Following the Great East Japan Earthquake and Tsunami, Mission Report (IAEA, 2011) at 20, 80–81, online: <www-pub.iaea.org /mtcd/meetings/pdfplus/2011/cn200/documentation/cn200_final-fukushima -mission_report.pdf> [IAEA Mission Report].

[294] See e.g. US, National Comission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*, Report to the President (2011) at 122–27, online: US Government Publishing Office <www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf /GPO-OIL COMMISSION.pdf> [*BP Report*] (blaming public officials for not adequately scrutinizing oil industry representatives' claims about the safety and sanctity of their systems).

[295] See e.g. Charles Perrow, "Normal Accident at Three Mile Island" (1981) 18:5 Society 17; Sara B Pritchard, "An Envirotechnical Disaster: Nature, Technology and Politics at Fukushima" (2012) 17:2 Environmental History 219, online: Oxford Journals <envhis.oxfordjournals.org/content/17/2/219.full.pdf>.

[296] In 2011, the tsunami off the coast of Japan produced 14m high waves that easily washed over the Fukushima Dai-ichi power station's 5.7m defences. See *IAEA Mission Report*, *supra* note 293 at 11.

to a *peste* but rather to poverty, malnutrition, ignorance, and fear as if such factors were politically neutral and just part of life among the lower classes, meriting headshakes but not scrutiny. In our era, the notion of "vulnerability" has established that disasters affect the poor, elderly, socially isolated, and politically disenfranchised the most.[297] But, in turn, causal explanations based on social hierarchy have been replaced by the scientism and legalism of technocratic experts[298] and popular assertions that risk management tropes (such as cost–benefit analyses), or "rule of law", "good governance", and "economic development" tropes (such as transparency and anticorruption) are not themselves cultural and political artefacts lacking any inherent claim on truth or safety.[299]

These rationales and expert narratives, among others, reflect powerful ways of beholding and explaining away disaster risk based on

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[297] See Eric Klinenberg, *Heat Wave: A Social Autopsy of Disaster in Chicago* (Chicago: University of Chicago Press, 2002). For a variety of analyses that share this conclusion, see Social Sciences Research Council, "Understanding Katrina: Perspectives from the Social Sciences" (2006), online: <understandingkatrina.ssrc.org>.

[298] See e.g. Sheila Jasanoff, *Designs on Nature: Science and Democracy in Europe and the United States* (Princeton, NJ: Princeton University Press, 2005) at 252–55; Brian Wynne, "Seasick on the Third Wave? Subverting the Hegemony of Propositionalism: Response to Collins & Evans" (2003) 33:3 Social Studies Science 401 at 408–11; Kenneth Hewitt, "The Idea of Calamity in a Technocratic Age" in Kenneth Hewitt, ed, *Interpretations of Calamity from the Viewpoint of Human Ecology* (Boston: Allen & Unwin, 1983) 3 at 9–12; Kenneth Hewitt, "Sustainable Disasters? Perspectives and Power in the Discourse of Calamity" in Jonathan Crush, ed, *Power of Development* (London and New York: Routledge, 1995) 111 at 118–21; Ann Varley, "The Exceptional and the Everyday: Vulnerability in the International Decade for Disaster Reduction" in Ann Varley, ed, *Disasters, Development and Environment* (Chichester, UK: John Wiley and Sons, 1994) 1 at 3; Michael J Watts & Hans G Bohle, "Hunger, Famine and the Space of Vulnerability" (1993) 30:2 GeoJournal 117 at 118–20; Ben Wisner & Henry R Luce, "Disaster Vulnerability: Scale, Power and Daily Life" (1993) 30:2 GeoJournal 127 at 131–33; Terry Cannon, "Vulnerability Analysis and the Explanation of 'Natural' Disasters" in Varley, *supra* note 298, 13 at 16.

[299] See e.g. Damon P Coppola, *Introduction to International Disaster Management*, 2nd ed (Burlington, Mass: Butterworth-Heinemann, 2011).

naturalized constructions of normalcy and value, often neglecting the ways in which legal rules and regulations teach people what is normal, dangerous, and valuable.[300] The continual stabilization of a new "normal" is, of course, the lifeblood of any state. The new normal, in turn, implies a larger universe where things have changed in some fundamental, structural sense. As in Marseille, contemporary narratives of disaster management depend on their ability to interpret the disaster as both a temporally limited (often unforeseen) event that is properly understood in the context of some wider metric of risk that can be regulated through organized disaster governance—even when said risk arises because of government sanctioned activities. At their most effective, such narratives of an invulnerable social order are so powerful that even when the underlying assumptions and regulatory mechanisms fail, these failures can be explained away without damaging the authority of the state or the legitimacy of experts.[301]

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[300] Cognitive psychologists who claim that people tend to undervalue extraordinary risks when they arise in relation to accepted or desirable activities tend to ignore how existing legal frameworks play a fundamental role in training people to interpret risk and reward. See Roger G Noll & James E Krier, "Some Implications of Cognitive Psychology for Risk Regulation" in Cass R Sunstein, ed, *Behavioral Law & Economics* (Cambridge: Cambridge University Press, 2000) 325 at 325, 337.

[301] For instance, as recently as 2006 the Japanese government felt comfortable that the "robust sealed containment structure around the [Fukushima] reactor" was more than sufficient to guard against a tsunami: see Charles Perrow, "Fukushima, Risk, and Probability: Expect the Unexpected" (2011) Bulletin Atomic Scientists, online: <thebulletin.org/fukushima-risk-and-probability-expect-unexpected-0>. In the aftermath of the disaster, officials and industry experts protested that the technology and regulatory mechanisms in place were sound but had been overwhelmed because the tsunami was of an unimaginable magnitude. See "Nuclear Crisis", *supra* note 292; Rodney C Ewing & Jeroen Ritsema, "Underestimating Nuclear Accident Risks: Why Are Rare Events So Common?", (3 May 2011), *Bulletin of the Atomic Scientists* (blog), online: <thebulletin.org>. Eerily similar arguments had been rehearsed a few years prior during the widespread criticism of the US Corps of Engineers following Hurricane Katrina. And even though deeper investigations in Louisiana and Japan have effectively debunked such defenses, the most that can be said is that officials knew or should have known, but did nothing—i.e., these are isolated instances of communication failure and negligence.

But how risk is produced and interpreted, how certain problems in certain regions of the world become worthy of action, and how these problems are triaged and represented are all questions that relate to how a social order is organized when there is no crisis in sight. Just as the early modern commercial society carried with it a vision of the kind of social order that could resist the threat of plague and prosper, each narrative responding to the disaster—by explaining the event as part of some deeper (structural) *wrong* in the social order realized in Marseille—also contained the prescription of an alternate *right* social order. Accordingly, the remaking of Marseille presents a situation where the narratives and practices of disaster management constructed (or *corrected*) people, spaces, and the character and authority of those who performed such management. This, after all, was the basis of the new social contract at the heart of a commercial society in Marseille—a riskier, more lavish future secured through heightened control; much as, in our time, people may profit from developing real estate in flood plains and along insecure coastlines, backed by governmental efforts to secure such investments through mechanisms ranging from urban planning to insurance. Marseille shows us how the assessment of risks and appropriate responses are continually coded into the structure of commercial exchange (and the ensuing division of labour) by the macro actions of governments, as well as the mundane, micro choices of citizens. The plague bacillus may have been out there across the Mediterranean, but the risk of plague was cultivated in the everyday political practice of governance in early modern France.

Once the disease had burned itself out, the narrative of disaster management reverted back to its position of prosperity and development through commerce. The virtues of foreign trade were rediscovered and the legal, medical, and administrative structures that formed the commercial society (and failed to guard the city against the plague) were deemed vindicated and institutionalized as a part of "normal" good governance across France. Students of disaster management may compare this history to the litany of contemporary, post-disaster reports that, far from generating fundamental reconsiderations of dangerous

technologies and economic trajectories,[302] predictably explain disasters[303] as the result of some combination of: insufficient economic development; tightly coupled, "closed" technologies governed by imperfect safeguards;[304] administrative confusion;[305] regulatory holes;[306] and incestuous relations between public regulators, experts, and industry insiders.[307] These problems are then deemed correctable through more development, "smarter" and even more complex technologies, the adoption of international standards and more (or less) regulation as may be determined by public officials in cooperation with experts and industry insiders—outlining a curious, if ironic, disaster cycle of its own.

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[302] See e.g. Pritchard, *supra* note 295; Richard J Lazarus, "Environmental Law After Katrina: Reforming Environmental Law by Reforming Environmental Lawmaking" (2007) 81:4 Tul L Rev 1019.

[303] For a thoughtful critique of such predictable explanations, see Peter Shulman, "A Catastrophic Accident of Normal Proportions" (7 June 2010), online: H-Energy Discussion Logs <h-net.msu.edu/cgi-bin/logbrowse.pl>.

[304] See e.g. James M Acton & Mark Hibbs, *Why Fukushima was Preventable* (Washington, DC: The Carnegie Papers, 2012) at 3, online: <carnegieendowment.org/files /fukushima.pdf>.

[305] See e.g. US, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: White House, 2006) at 51–65, online: <www.disastersrus.org /katrina/White%20House%20Katrina%20report.pdf>.

[306] See e.g. *BP Report*, *supra* note 294 at 122–27; Akira Nakamura & Masao Kikuchi, "What We Know, and What We Have Not Yet Learned: Triple Disasters and the Fukushima Nuclear Fiasco in Japan" (2011) 71:6 Public Administration Rev 893 at 893, 897; US, Senate Committee on Homeland Security and Governmental Affairs Report, *Hurricane Katrina: A Nation Still Unprepared: Special Report of the Committee on Homeland Security and Governmental Affairs* (S Rept No 109-322) (Washington, DC: US Government Printing Office, 2006) at 589–605.

[307] See e.g. *BP Report*, *supra* note 294 at 127; Nakamura & Kikuchi, *supra* note 306 at 897.