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## American Contagions: Epidemics and the Law from Smallpox to COVID-19 by John Fabian Witt

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Book Review

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### Abstract

At the time of writing, the coronavirus known as COVID-19 has swept across the world and affected nearly every aspect of daily life as we know it. Canada has had approximately 20 thousand deaths and about 780 thousand total cases and the United States has had over 400 thousand deaths and more than 25 million total cases.

## Book Review

***American Contagions: Epidemics and the Law from Smallpox to COVID-19* by John Fabian Witt<sup>1</sup>**STEPHANIE CHO<sup>2</sup>

“American law has been liberal for people with political clout—and authoritarian for those without it.”<sup>3</sup>

AT THE TIME OF WRITING, the coronavirus known as COVID-19 has swept across the world and affected nearly every aspect of daily life as we know it. Canada has had approximately 20 thousand deaths and about 780 thousand total cases and the United States has had over 400 thousand deaths and more than 25 million total cases.<sup>4</sup> Masking policies, mandatory lockdowns, and

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1. (Yale University Press, 2020).
  2. JD (2021), Osgoode Hall Law School.
  3. “Fierce cover design for my new book on the legal history of epidemics in the U.S. E-book in August from @yalepress, paper in October. American law has been liberal for people with political clout—and authoritarian for those without it. yalebooks.yale.edu/book/978030025” (10 July 2020), online: *Twitter* <twitter.com/JohnFabianWitt/status/1281544483834863619>.
  4. See Government of Canada, “Coronavirus Disease 2019 (COVID-19) Epidemiology Update” (last visited 29 January 2021), online: <web.archive.org/web/20210131234311/https://health-infobase.canada.ca/covid-19/epidemiological-summary-covid-19-cases.html>; Centers for Disease Control and Prevention, “COVID Data Tracker Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory” (last visited 26 January 2021), online: <covid.cdc.gov/covid-data-tracker/#trends\_totalcases|tot\_cases|select>; Centers for Disease Control and Prevention, “COVID Data Tracker Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory” (last visited 26 January 2021), online: <covid.cdc.gov/covid-data-tracker/#trends\_totaldeaths|tot\_deaths|select>.

public health headlines have created a cacophony of legal actions and rapidly evolving circumstances. *American Contagions: Epidemics and the Law from Smallpox to COVID-19* (“*American Contagions*”) by John Fabian Witt provides some historical context behind the current pandemic response in the US and demonstrates how the pandemics of the past have informed the current US political-legal landscape. Drawing on his experience as a Professor of Law at Yale Law School with a PhD in history,<sup>5</sup> Witt identifies key trends in how the US has responded to epidemics throughout history and exposes the underlying discrimination in the laws governing health policy, which has exacerbated the problem of inequality in the era of COVID-19. Ultimately, this timely book adds to the current discourse on social justice and inequality. With its direct and compelling style, *American Contagions* is a worthwhile read for anyone whose life has been affected by COVID-19.

Beginning with the smallpox epidemic in the 1760s, Witt discusses the historical interplay between the two schools of thought that have emerged within the context of law and public health: “sanitationism” and “quarantinism.”<sup>6</sup> Sanitationism is the liberal movement that aims to “eliminate environments that breed disease.”<sup>7</sup> Quarantinism is described as the authoritarian “exercise of forceful controls over the bodies and lives of [a country’s] subjects,” which includes lockdown and quarantine orders.<sup>8</sup> Through some combination of these two perspectives, governments have used their “police power” or their power to “secure and promote the public welfare...by restraint and compulsion” to achieve certain public health objectives.<sup>9</sup> Witt contends that approaching public health issues from either of these competing theories results in disparate effects on different communities.<sup>10</sup> More specifically, both sanitationism and quarantinism have historically been used to disproportionately favour white middle class or wealthy citizens and oppress minorities, immigrants, and those living in poverty.<sup>11</sup>

Witt makes it clear that, throughout history, public health crises bring about a tension between individual rights and public welfare. This tension manifests itself in legal solutions that fall along a spectrum between the exercise

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5. See Yale Law School, “John Fabian Witt” (last visited 6 Dec 2020), online: <law.yale.edu/john-fabian-witt>.

6. *Supra* note 1 at 8.

7. *Ibid.*

8. *Ibid.*

9. *Ibid* at 3, citing Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Callaghan & Company, 1904) at 3.

10. See *e.g.* Witt, *supra* note 1 at 9.

11. See *e.g. ibid* at 9, 48, 140.

of government control and respect for individual freedoms. Witt reflects upon the historical extremes that have been driven by liberal sanitationism and authoritarian quarantinism, and provides examples of decisions supported by both perspectives, exposing the reader to the complex motivations and contexts that inform each point of view.

For example, on one end of the sanitationism spectrum, “progressive sanitationism” aimed to uplift all members of society by including protection for all members of the community using the definition of good hygiene.<sup>12</sup> It sought to improve the lives of the poorest Americans who were seen as a vulnerable group that could easily contract and therefore perpetuate disease.<sup>13</sup> On the other end of this spectrum, “conservative sanitationism” viewed hygiene as a way to protect “elites” from contagions and maximize the value of the poorer and more vulnerable labour force.<sup>14</sup> Even though both versions of sanitationism share the same baseline belief that hygiene can meaningfully affect public health, Witt makes it clear that a policy’s underlying perspective shapes that policy’s outcome. While progressive sanitationism’s aim is to eradicate the social conditions and environments that are the determinants of disease,<sup>15</sup> conservative sanitationism villainizes those with poor hygiene and equates them to people of poor moral character that deserve coercive action.<sup>16</sup>

The disproportionate effect of public health policy on vulnerable populations also emerges within quarantinism. Witt describes how quarantines have historically been used as tools of control and power over “people of colour, the poor, and immigrants.”<sup>17</sup> For example, Native Americans were quarantined and left to struggle without assistance through infectious disease outbreaks;<sup>18</sup> in the 1900s there was a lockdown of Chinatown in San Francisco due to a suspected case of bubonic plague where only white people were permitted to freely exit the quarantined area;<sup>19</sup> and in the most extreme case, African American communities were used as test subjects to study the effects of syphilis in 1932.<sup>20</sup> Even in the present day, Witt recounts how policies still reflect these warped perceptions of

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12. *Ibid* at 26-27, 32, 140.

13. *Ibid* at 28.

14. *Ibid* at 31.

15. *Ibid* at 28-29.

16. *Ibid* at 30-32.

17. *Ibid* at 36.

18. *Ibid* at 38.

19. *Ibid* at 42, citing Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco’s Chinatown* (University of California Press, 2001) at 120-56.

20. Witt, *supra* note 1 at 45.

protection and justice, using the recent example of President Donald Trump's 2020 immigration ban on Chinese graduate students and researchers amidst the ongoing COVID-19 pandemic.<sup>21</sup> Using the sanitationism and quarantinism schools of thought as examples, Witt discusses the diverse outcomes that result from public health policies informed by different perspectives.

The unequal consequences for different populations as a result of public health policies have also been seen in Canada. Although there have not been any overtly prejudicial policies, widespread quarantine and physical distancing rules have affected subsets of our population in different ways. Without providing adequate alternatives such as opening new shelter spaces or offering individuals other temporary housing options, quarantine and self-isolation rules are difficult to follow in homeless shelters.<sup>22</sup> Creating policies specifically with these populations in mind or in collaboration with local agencies can help to lessen the gap in care, for example, by creating dedicated sites for homeless populations affected by COVID-19, accompanied by the appropriate social support.<sup>23</sup> Neglecting to implement policies for certain populations also exacerbates existing disparities. For example, the lack of access to clean water for many First Nations communities renders them unable to effectively abide by handwashing directives.<sup>24</sup>

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21. *Ibid* at 134.

22. See Melissa Perri, Naheed Dosani & Stephen W Hwang, "COVID-19 and People Experiencing Homelessness: Challenges and Mitigation Strategies" (2020) 192 CMAJ E716 at E716. For example, areas such as Montreal, Calgary, and the Region of Peel in Ontario have enacted procedures to move homeless people into hotels or motels. See *ibid* at E717, citing Sarah Leavitt, "Homeless Montrealers tested for COVID-19 will be housed in hotel for now," *CBC News* (25 March 2020), online: <[www.cbc.ca/news/canada/montreal/montreal-homeless-covid19-1.5509806](http://www.cbc.ca/news/canada/montreal/montreal-homeless-covid19-1.5509806)>; Madeline Smith, "Some of Calgary's homeless to be sheltered in hotel, motel rooms during COVID-19 outbreak," *Calgary Herald* (20 March 2020), online: <[calgaryherald.com/news/local-news/some-of-calgarys-homeless-to-be-sheltered-in-hotel-motel-rooms-during-covid-19-outbreak](http://calgaryherald.com/news/local-news/some-of-calgarys-homeless-to-be-sheltered-in-hotel-motel-rooms-during-covid-19-outbreak)>; Region of Peel, News Release, "Peel implements COVID-19 prevention measures in shelter system and collaborates with community partners to create isolation and recovery programs" (23 April 2020), online: <[www.peelregion.ca/news/archiveitem.asp?year=2020&month=3&day=23&file=2020323.xml](http://www.peelregion.ca/news/archiveitem.asp?year=2020&month=3&day=23&file=2020323.xml)> [Region of Peel, "Shelter Programs"].
23. See Perri, Dosani & Hwang, *supra* note 22 at E717-18. Notably, such dedicated sites have already been established in the Region of Peel and in Toronto. *Ibid* at E717, citing Jaspreet Khangura et al, "Why communities need to move fast, get creative to protect homeless from COVID-19," *CBC News* (2 April 2020), online: <[www.cbc.ca/news/opinion/opinion-covid-19-homeless-1.5516075](http://www.cbc.ca/news/opinion/opinion-covid-19-homeless-1.5516075)>; Region of Peel, "Shelter Programs," *supra* note 22.
24. See Anne Levesque & Sophie Thériault, "Systemic Discrimination in Government Services and Programs and Its Impact on First Nations Peoples During the COVID-19 Pandemic" in Colleen M Flood et al, eds, *Vulnerable—The Law, Policy and Ethics of COVID-19* (University Ottawa Press, 2020) 381 at 385.

Overcrowding and inadequate housing on reserves prevent community members from effectively quarantining or social distancing.<sup>25</sup> Ultimately, whether or not there is a direct correlation between poorer outcomes and implemented policies, in Canada, COVID-19 has disproportionately affected low-income residents, recent immigrants, and neighbourhoods that are the most ethnically and culturally diverse.<sup>26</sup> Compared to the least diverse neighbourhoods in Ontario, the most diverse communities had an infection rate that was three times higher, a rate of hospitalization that was four times higher, and death rates that were twice as high, even after adjusting for differences in age structure.<sup>27</sup> In the context of the privately funded US healthcare system discussed in Witt's book, these risks of unequal outcomes have likely been exacerbated.

To counter these injustices, Witt provides examples of advocacy that have resulted in positive change within the context of sanitationism. In the twentieth century, advocates like Lillian Wald and Florence Kelley sought to improve conditions for poor urban dwellers.<sup>28</sup> "New sanitationists" believed that civil liberties were key to achieving public health goals,<sup>29</sup> which was effectively demonstrated by Witt's discussion of the widespread discrimination at the peak of the HIV/AIDS epidemic. Proponents of new sanitationism advocated for greater civil liberty, as quarantines counterproductively prevented those infected from seeking testing and treatment.<sup>30</sup> Witt also discusses the power of individual advocacy. Doctor Jonathan Mann and subsequently Lawrence Gostin and Wendy Parmet were instrumental in calling for increased education and clean supplies as appropriate solutions to the HIV/AIDS epidemic, and eventually proved that civil liberties were "now smart policy."<sup>31</sup> Similarly, by choosing to address one of the largest healthcare crises in history from the perspective of the vulnerable,

25. *Ibid* at 385-86.

26. See Aaron Wherry, "One Country, Two Pandemics: What COVID-19 Reveals About Inequality in Canada," *CBC News* (13 June 2020), online: <[www.cbc.ca/news/politics/pandemic-covid-coronavirus-cerb-unemployment-1.5610404](http://www.cbc.ca/news/politics/pandemic-covid-coronavirus-cerb-unemployment-1.5610404)>; "Lower Income People, New Immigrants at Higher COVID-19 Risk in Toronto, Data Suggests," *CBC News* (12 May 2020), online: <[www.cbc.ca/news/canada/toronto/low-income-immigrants-covid-19-infection-1.5566384](http://www.cbc.ca/news/canada/toronto/low-income-immigrants-covid-19-infection-1.5566384)>; Public Health Ontario, "Enhanced Epidemiological Study: COVID-19 in Ontario—A Focus on Diversity" (14 May 2020), online (pdf): <[www.publichealthontario.ca/-/media/documents/ncov/epi/2020/06/covid-19-epi-diversity.pdf?la=en](http://www.publichealthontario.ca/-/media/documents/ncov/epi/2020/06/covid-19-epi-diversity.pdf?la=en)> [PHO, "Epidemiological Study"].

27. PHO, "Epidemiological Study," *supra* note 26.

28. See Witt, *supra* note 1 at 29.

29. *Ibid* at 87.

30. *Ibid* at 89.

31. *Ibid* at 90, 91, 94, 95.

Witt's book, perhaps purposefully, also gives a voice to many populations who have been historically overlooked.

Advocacy was also examined carefully in Witt's discussion on the role of courts in the context of a pandemic. Witt thoughtfully assesses the tension between their competing responsibilities of judicial oversight and constitutional protection of civil liberties, and their need to ensure public welfare without overstepping their jurisdiction. First recognized by the United States Supreme Court in 1824 in the case of *Gibbons v. Ogden*, the courts have acknowledged the state's authority to create and enforce policies in response to an epidemic.<sup>32</sup> For example, state courts have found it permissible for governments to clean streets, destroy dangerous buildings or property, and request mandatory vaccinations.<sup>33</sup> The courts stood by while federal immigration and border control measures included discriminating legislation such as the *Chinese Exclusion Act* in 1882 and the *Alien Labor Immigration Act* of 1891.<sup>34</sup> Courts also made it clear that authorities could impose quarantines and "other forceful health measures."<sup>35</sup> For example, *Jacobson v. Massachusetts* gave expansive authorization for the state to require mandatory vaccinations for smallpox,<sup>36</sup> and the US Court in *Buck v. Bell* allowed the government to forcibly sterilize a young woman whose "feeble-mindedness" was supposedly at risk of being passed onto her offspring.<sup>37</sup> In juggling the tension between civil liberties and state authority, Witt concedes that the courts have upheld individual liberties in the form of constitutional rights,<sup>38</sup> with some courts recognizing that "sometimes constitutional questions could not be avoided."<sup>39</sup> For example, judges in the District of California deemed the government-mandated, racially-targeted quarantine in San Francisco to be discriminatory.<sup>40</sup> In other circumstances, courts have placed limitations on strict government quarantine orders.<sup>41</sup> However, Witt also finds that the judiciary could have been more assertive in their stance rather than avoiding the question

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32. *Ibid* at 22.

33. *Ibid* at 23.

34. *Ibid* at 51, 57.

35. *Ibid* at 54.

36. *Ibid* at 57-59, citing *Jacobson v Commonwealth of Massachusetts*, 197 US 11 (1905).

37. Witt, *supra* note 1 at 59, citing *Buck v Bell*, 274 US 200 (1927).

38. Witt, *supra* note 1 at 73-74.

39. *Ibid* at 73.

40. *Ibid* at 73-74.

41. *Ibid* at 70, citing *Sumner v Philadelphia*, 23 F Cas 392 (CCED Pa 1873), where a judge deemed the government to not have absolute, unreviewable discretion in quarantine decisions.

of individual liberties.<sup>42</sup> He points out that throughout history “judges could acknowledge the demands of state emergency powers without having to decide once and for all thorny questions about individual freedom... By finding technical failures in the public health laws in the state, courts accommodated both state power and individual liberty.”<sup>43</sup> Whether or not this amounts to indifference on the part of the courts or a reluctance to decide whether civil liberties take precedence is unclear. Interestingly, Witt mentions that individual jurists have actually been found to voice opinions that generally “plac[e] social solidarity over individual liberty.”<sup>44</sup> Therefore, when describing the relationship between the competing perspectives, Witt concludes that the role of civil liberties are not “trumps” over seemingly oppressive public health policies but rather “guidelines by which courts have navigated enduring questions about individual rights and collective well-being.”<sup>45</sup>

The courts have also played a role in enforcing the division of governmental powers between the state and the federal government, which Witt confirms is one of the reasons why there has been a lack of federal oversight and disjointed policies between different states in the time of COVID-19.<sup>46</sup> The courts have defined the federal government’s “plenary” and interstate commerce powers over questions of immigration,<sup>47</sup> and the power of the states to enact public health mandates.<sup>48</sup> According to Witt, this division of power has resulted in the lack of a cohesive, coordinated public health strategy, which has similarly been raised as a concern across Canada’s provinces and territories.<sup>49</sup> Interprovincial (and territorial) discrepancies become acutely visible when we look at another vulnerable group in the context of COVID-19: elderly residents in the Long-Term Care (LTC) sector. In Canada, at one point during the early peak of the pandemic, more than

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42. Witt, *supra* note 1 at 72. It should be noted that Witt does discuss the importance of the judiciary deferring to scientific experts in matters of public health, as “[c]ourts are ill-trained to make hard judgments about the course of an infectious disease” (*ibid* at 81).

43. *Ibid* at 72.

44. *Ibid* at 82.

45. *Ibid* at 83.

46. *Ibid* at 111.

47. See *ibid* at 4-5, 55-56, 112.

48. *Ibid* at 54.

49. For a discussion of the division of powers in the American context, see *ibid* at 109-111. For the same discussion in the Canadian context, see Marium Nur Vahed, “COVID-19 Federalism: Disparate Government Responses in Canada” (4 January 2020), online: <[munkschool.utoronto.ca/covid-19-federalism-disparate-government-responses-in-canada](http://munkschool.utoronto.ca/covid-19-federalism-disparate-government-responses-in-canada)>.

80 per cent of deaths due to COVID-19 were within the LTC sector.<sup>50</sup> From the first outbreak in a Canadian LTC home on 7 March 2020<sup>51</sup> until the end of May 2020, Newfoundland and Labrador, Prince Edward Island, New Brunswick, and the territories all reported no deaths in LTC facilities, whereas over 70 per cent of all deaths in Quebec, Ontario, and Alberta, and 97 per cent in Nova Scotia were in LTC facilities.<sup>52</sup> These discrepancies have been partially attributed to the differing policies implemented by different provincial governments and the timeliness with which they exercised stricter measures.<sup>53</sup> Notably, the contrasting approaches taken by the governments of Ontario and British Columbia have resulted in drastically different outcomes: By January 2021, Ontario had 1,160 facility outbreaks and 3,518 resident deaths, whereas British Columbia had 262 outbreaks and 773 deaths.<sup>54</sup>

Witt also points out the uniquely American, deeply partisan nature of US politics, and how it has become a driving force in the implementation of public health policy (or the lack thereof). Witt points out that the United States is undergoing a time of deep public unrest, citing the racially motivated protests surrounding George Floyd<sup>55</sup> and the rampant racism against those of Asian descent due to the “China virus.”<sup>56</sup> He contends that “the law of public health has always been political because disputes over the basic rights of individuals and the power of the state pose questions about the values by which we order our communities,” and therefore government policies and US court decisions

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50. See Nathan M Stall et al, “For-profit Long-term Care Homes and the Risk of COVID-19 Outbreaks and Resident Deaths” (2020) 192 CMAJ E946 at E946.

51. See Michael Liu et al, “COVID-19 in long-term care homes in Ontario and British Columbia” (2020) 192 CMAJ E1540 at E1542.

52. See Canadian Institute for Health Information, “Pandemic Experience in the Long-Term Care Sector: How Does Canada Compare With Other Countries” (June 2020) at 2, online (pdf): <[www.cihi.ca/sites/default/files/document/covid-19-rapid-response-long-term-care-snapshot-en.pdf](http://www.cihi.ca/sites/default/files/document/covid-19-rapid-response-long-term-care-snapshot-en.pdf)>.

53. See Liu et al, *supra* note 51; Tori Marlan, “The Avoidable Tragedy: How Canadian Public Health Failed to Curb the Carnage of COVID-19,” *Capital Daily* (30 May 2020), online: <[www.capitaldaily.ca/news/preventable-tragedy-covid19-long-term-care-homes-canada-public-health](http://www.capitaldaily.ca/news/preventable-tragedy-covid19-long-term-care-homes-canada-public-health)>.

54. See Public Health Ontario, “Ontario Daily Epidemiologic Summary COVID-19 in Ontario: January 15, 2020 to January 27, 2021” (2021), online (pdf): <[files.ontario.ca/moh-covid-19-report-en-2021-01-28.pdf](http://files.ontario.ca/moh-covid-19-report-en-2021-01-28.pdf)>; BC Centre for Disease Control, “British Columbia (BC) COVID-19 Situation Report. Week 2: January 10–January 16, 2021” (2021) at 1, 11, online (pdf): <[www.bccdc.ca/Health-Info-Site/Documents/COVID\\_sitrep/Week\\_2\\_2021\\_BC\\_COVID-19\\_Situation\\_Report.pdf](http://www.bccdc.ca/Health-Info-Site/Documents/COVID_sitrep/Week_2_2021_BC_COVID-19_Situation_Report.pdf)>.

55. Witt, *supra* note 1 at 139.

56. *Ibid* at 133.

have been prone to reflect the current political and often religious inclinations.<sup>57</sup> Delving into politics without being overtly political, Witt tactfully but pointedly raises some of the recent issues that emerged within the controversial Trump administration. With some thinly veiled remarks about Justice Brett Kavanaugh's dissenting opinion in a religious case where he "did not address the state's concerns that worship involves extended social contact in ways that supermarket shopping does not,"<sup>58</sup> and President Trump's role in "adding his weight to the thuggish attackers who had been spitting on and attacking people of Asian descent for months,"<sup>59</sup> Witt voices some much-needed cynicism about the way those living in the United States have responded to the government. He also offers some thoughts as to how we, as a society, should question the decisions of our governments and courts alike.

Witt also discusses how other areas of the law have been affected by COVID-19 and in turn have affected vulnerable populations. He declares that "the virus targeted the poor and disenfranchised because its spread was abetted by housing insecurity, economic inequities, crowded living conditions, poor access to health care, mass incarceration, and myriad other artifacts of disadvantage,"<sup>60</sup> and the law did nothing to stop it, but rather perpetuated "the divergent impacts of the coronavirus."<sup>61</sup> He examines the bloated American prison system where "not one person in the prison system had been sentenced to be involuntarily exposed to a potentially deadly infectious disease."<sup>62</sup> He points to laws of private property, contract, and tort which facilitated privilege, allowing white workers to self-isolate and take advantage of other resources, such as health insurance or paid sick leave, yet left many minority workers struggling to remain afloat.<sup>63</sup> He even discusses how triaging calculations and the hypothetical debate over who gets the last ventilator disproportionately disfavour lower-income communities because life expectancy, which in many ways is tied to income, affects a key component of

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57. *Ibid* at 116.

58. *Ibid* at 119. The case referred to was *South Bay United Pentecostal Church v Gavin Newsom*, where plaintiffs sued the Governor of California claiming that the restrictions placed on religious gatherings (permitting only the lower of 25 per cent of legal occupancy or one hundred attendees) due to COVID-19 measures violated their right to religious freedom. See 590 US (2020). The Court ultimately found by a slim five-judge majority that they would not intervene in the COVID-19 orders. See Witt, *supra* note 1 at 117-18.

59. *Ibid* at 134.

60. *Ibid* at 128.

61. *Ibid*.

62. *Ibid* at 124.

63. *Ibid* at 129-31.

the calculation.<sup>64</sup> Finally, Witt argues that intellectual property laws inadvertently result in the “double-edged sword” of producing powerful incentives for firms to create life-saving medicines but in the process exclude the people who need them the most from accessing them.<sup>65</sup> This is a very pertinent issue considering the ongoing developments in the administration of the COVID-19 vaccination and the implications of national vaccination shortages.<sup>66</sup>

Witt’s takeaway point and underlying theme throughout is that

[a] decent society that relies in ordinary times on private property and the market to create and distribute wealth and flourishing must have legal arrangements that are up to the task of providing for basic needs in crisis times. Therein lies the wisdom in the ancient Ciceronian idea that the health of the people is the supreme law. American legal rules and institutions utterly failed to enact this moral imperative in the coronavirus pandemic.<sup>67</sup>

Witt’s book is not a deep dive into any one particular issue within the context of COVID-19 and the law, but that is also why it is so provocative. Its overarching view of multiple areas of the law identifies the glaring reality that every area of the law has played its part in oppressing vulnerable populations in the context of public health, and therefore every person has a responsibility to advocate for counteraction.

At its heart, *American Contagions* is a call to action, as Witt warns that “[e]ach new infection presents a risk of entrenching existing inequities.”<sup>68</sup> By pointing out the insidious nature of the biased beliefs surrounding law in the context of healthcare, Witt challenges the public to compel both the judiciary and policymakers to choose between perpetuating historical imbalances and advocating for change. He poignantly states that “calamity can be an occasion for

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64. *Ibid* at 131-32. “[Q]uality-adjusted life years” (QALY) takes into account life expectancy which is lower in low-income communities with poor medical care and thus “[t]riaging systems reproduced and reflected discriminations that had helped cause disparate health and life expectancies in the first place” (*ibid* at 132).

65. *Ibid* at 100-104.

66. See Graham Slaughter, “Explained: What the Pfizer shortage means for Canada’s vaccine rollout,” *CTV News* (26 January 2021), online: <[www.ctvnews.ca/health/coronavirus/explained-what-the-pfizer-shortage-means-for-canada-s-vaccine-rollout-1.5283261](http://www.ctvnews.ca/health/coronavirus/explained-what-the-pfizer-shortage-means-for-canada-s-vaccine-rollout-1.5283261)>. Canada alone has invested over \$1 billion in purchase agreements to secure enough COVID-19 vaccines. See Government of Canada, “Procuring Vaccines for COVID-19” (last visited 30 Jan 2021), online: <[web.archive.org/web/20201217201035/https://www.canada.ca/en/public-services-procurement/services/procuring-vaccines-covid19.html](http://web.archive.org/web/20201217201035/https://www.canada.ca/en/public-services-procurement/services/procuring-vaccines-covid19.html)>.

67. *Ibid* at 132-33.

68. *Ibid* at 140.

making intolerable social conditions visible—and for reforming them.”<sup>69</sup> As the story of COVID-19 has yet to come to its conclusion (and, as Witt makes clear, history will inevitably repeat itself), Witt suggests that we have been presented with an opportunity to transform our existing frameworks. It is his hope that we will come together to ultimately “make the right choice.”<sup>70</sup>

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69. *Ibid.*

70. *Ibid.* at 141.

