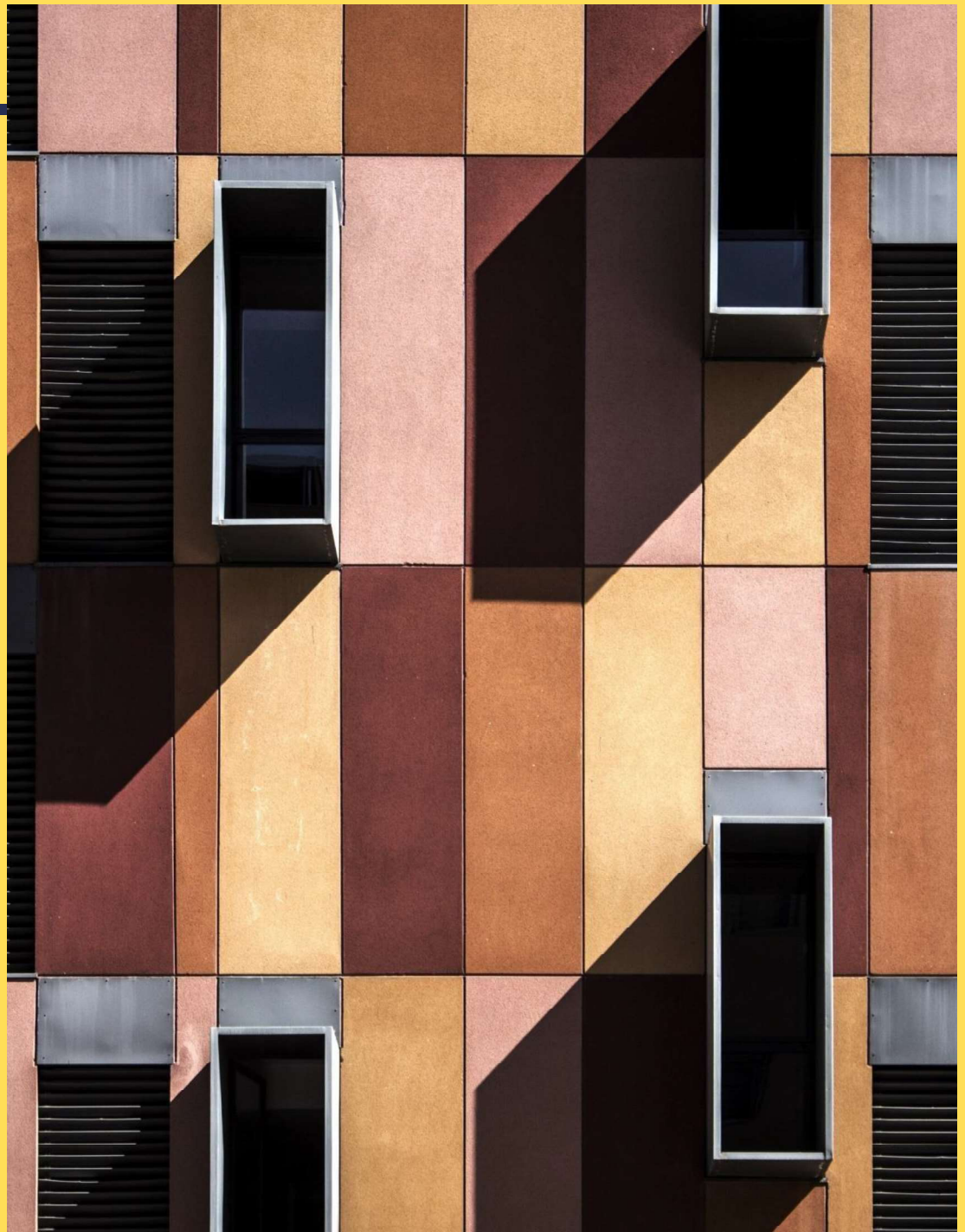


PPGD UNIRIO



DIREITO DAS POLÍTICAS PÚBLICAS

Revista do Programa de Pós-Graduação em Direito
da Universidade Federal do Estado do Rio de Janeiro

Public Policy Law

Journal of the Graduate Program in Law
of the Federal University of the State of Rio de Janeiro

VOLUME 2 Nº 1
JANEIRO – JUNHO 2020
JANUARY – JUNE 2020

ISSN: 2675-1143

DIREITO DAS POLÍTICAS PÚBLICAS

REVISTA DO PROGRAMA DE PÓS-GRADUAÇÃO EM DIREITO DA UNIRIO

EXPEDIENTE - Revista Direito das Políticas Públicas, Universidade Federal do Estado do Rio de Janeiro

Vol. 2, n. 1, jan./jul. 2020. ISSN 2675-1143

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Revista Direito das Políticas Públicas [recurso eletrônico] /

Revista do Programa de Pós-Graduação em Direito da UNIRIO.

Vol. 2, n. 1 (2020) - Rio de Janeiro, RJ: Universidade Federal do Estado do Rio de Janeiro, 2020.

Acesso em: <http://www.seer.unirio.br/index.php/rdpp/index>

Semestral

ISSN: 2675-1143

1. Ciências Jurídicas - Periódicos. I. Universidade Federal do Estado do Rio de Janeiro.

CDD: 340

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**ENVIRONMENTAL CATASTROPHES LAW AND LITERATURE:
MAURICE BLANCHOT'S THE WRITING OF THE DISASTER****DIREITO E LITERATURA DAS CATÁSTROFES AMBIENTAIS: A
ESCRITURA DO DESASTRE DE MAURICE BLANCHOT**Leonardo Mattietto¹**ABSTRACT**

Based on *The Writing of the Disaster*, by Maurice Blanchot, this paper proposes connections between this philosophical literary work and the panorama of the law regarding major environmental disasters.

The dense imagery of Blanchot's thought allows us to reflect on the need to get a better knowledge of catastrophes in order to structure appropriate responses to these unfortunate events that happen repeatedly

KEYWORDS

Disaster law. Environmental disasters. Law and literature. Maurice Blanchot.

RESUMO

A partir da leitura do livro *A Escritura do Desastre*, de Maurice Blanchot, o autor propõe conexões entre este texto filosófico-literário e o panorama do direito a respeito dos grandes desastres ambientais.

O denso imaginário do pensamento de Blanchot permite refletir sobre a necessidade de conhecer melhor as catástrofes, a fim de estruturar respostas mais adequadas para esses acontecimentos que infelizmente se repetem.

PALAVRAS-CHAVE

Direito dos desastres. Desastres ambientais. Direito e literatura. Maurice Blanchot.

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1 A BRIEF INTRODUCTION TO LAW AND LITERATURE

Narrative fiction, modeled rhetorically, attracts us in its rich and undisguised contingency, insofar as it is based on historical, social, ethical, and political conditions. The symbolic nature of language appears in the reader's relationship with the text and develops into our association with other people.

The use of non-legal sources allows us to enjoy the multiple perspectives that literature might offer regarding the elaboration, interpretation, and criticism of the law.

While the law codifies reality, instituting it in a tight network of agreed qualifications and marking it up with a whole system of constraints and prohibitions, literature, on the contrary, releases the possibilities within, suspending our certainties, awakening in it dormant energies, shaking up identities and conventions, bringing us back to these crossroads where everything could start again. Whereas the law chooses, hierarchizes, and decides, the narrative gives itself, on the contrary, to infinite "imaginative variations": experimental laboratory of the human, literature explores the whole range of positions, values, and representations, and does not back away from the most vertiginous limits. (OST; VAN EYNDE, 2001, p. 7-8).

As well as romances or fables¹, law is culture, and it is not surprising to conclude that the fields of law and literature combine through interpretation. The dialogue between law and literature nourishes and encourages the development and conclusions of this essay².

¹ Fables "stress the ethical perspective: they are moral parables that often speak of justice miscarried and justice sought" (CARPI, 2016, p. 21).

² "Students, and law students in particular, must learn about the nature of language. At present the problem is that 'instead of understanding legal discourse as a dynamic product of complex historical, social, and personal forces', students 'treat it as an independent rational structure, built up of stable denotations that correspond to an objective reality'. Thus, crucially, 'they fail to recognize that discourse is itself a polyphonic construct, coloring and colored by human experience'. Because language is dynamic there is a responsibility incumbent upon all members of the discursive community. More particularly lawyers have a responsibility with regard to the language of law. Language is the one thing which can activate the law, and change it" (WARD, 1995, p. 26).

The writing of the disaster (in the original French title, *L'écriture du désastre*), by Maurice Blanchot (1907-2003), was chosen as the literary work³ to support the interchange with the theory of law in this study about environmental catastrophes, in:

(...) a time given over to the infinite so that we might suddenly come across the site of entry, the place for the body that thinks, writes, initiates some kind of reflection of language. This poetic writing of thought, which defies any presumption of language, overwhelms us, opening up, suggesting, laying out the terms available to it (BIDENT, 2018, p. 407).

Blanchot was a French writer, philosopher, and literary theorist, of “a matchless lucidity and relentless commitment to explanation, self-commentary, and gloss”, whose texts “constitute perhaps one of the most remarkable and enduring monuments in the whole of recent intellectual history to the perseverance and assertiveness of thought itself” (HILL, 1997, p. 1).

We are on the edge of disaster without being able to situate it in the future: it is rather always already past, and yet we are on the edge or under the threat, all formulations which would imply the future – that which is yet to come – if the disaster were not that which does not come, that which has put a stop to every arrival. To think the disaster (if this is possible, and it is not possible inasmuch as we suspect that the disaster is thought) is to have no longer any future in which to think it (BLANCHOT, 1986, p. 1).

2 ON DISASTER IN BLANCHOT'S THOUGHT

Etymological roots for the word *disaster* imply the detachment of the star; therefore, bad luck, unfortunate and totalitarian disgrace that annihilates what previously existed:

If disaster means being separated from the star (if it means the decline which characterizes disorientation when the link with fortune from on high is cut), then it indicates a fall beneath disastrous necessity. Would law be the disaster? The supreme or extreme law, that is: the excessiveness of uncodifiable law – that to which we are destined without being party to it. The disaster is not our affair and has no regard for us; it is the heedless unlimited; it cannot be measured in terms of failure or as pure and simple loss. Nothing suffices to the disaster; this means that just as it is foreign to the ruinous purity of destruction, so the idea of totality cannot delimit it. If all things were reached by it and

³ “Maurice Blanchot's writing carries, is carried by the silence of mute humanity, it is its ‘beating heart’ (...) Immensity of this disarmed speech. Dawn of the ‘human weakness’, sovereign” (ANTELME, 1994, p. 122).

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destroyed – all gods and men returned to absence – and if nothing were substituted for everything, it would still be too much and too little. (BLANCHOT, 1986, p. 2)

The disaster plagues reality dramatically and erases all past forms:

We are passive with respect to the disaster, but the disaster is perhaps passivity, and thus past, always past, even in the past, out of date.

The disaster takes care of everything.

(BLANCHOT, 1986, p. 3)

Blanchot's disaster "is not a spectacular catastrophe, but rather that its force unfolds as something neither temporally datable nor geographically locatable in the realm of the unspectacular and ahistorical" (BENGERT, 2018, p. 122). When all has been said about the disaster⁴, "it still stands unexhausted and inexhaustible" (AWALT, 2002, p. 6).

Intensive exploration of the environment has led to an increase in violent and destructive phenomena. Not only the industry, such as, in particular, mining, but virtually all human activities cause disastrous impacts on nature⁵.

In this scenario, the environmental tragedies of Mariana (2015) and Brumadinho (2019), in Brazil, as well as many others around the world, are shameful anthropogenic examples, which provoke unsurpassed indignation, but from which lessons must be learned so that the damage experienced on a disturbing scale does not happen again⁶.

⁴ "Blanchot says that the disaster, though it evades our attempts in language to express it and evokes initially only silence from us, gives rise to writing. We must seek to write the disaster, even though that writing will always be fragmentary and incomplete. In no way can we totally name or inscribe the disaster" (AWALT, 2002, p. 6).

⁵ "The permanence of extinction, combined with the knowledge that biodiversity collapse is anthropogenically caused and in many cases avoidable, at least in the near term, now prompts frequent use of the rhetoric of disaster to portray the human-induced shock to earth's ecosystems. Intertwined with biodiversity depletion are a whole host of human-caused planetary dis-tresses, including global warming, melting glaciers that will change the ocean currents, peak extraction of natural resources, vast zones of structural poverty across the globe, and pollution-heavy, high-risk industries and monocultural farming. Amid such environmental distress, in a time of what has been called the 'sixth mass extinction', what could Blanchot's book tell me about the scenario of a planet becoming orphaned of life? (SCHUSTER, 2014, p. 164-165)

⁶ "The notion of disaster is a particularly complex movement of thinking, because as is often the case with Blanchot, concepts unfold in paradoxes, or even in aporias. The notion of disaster firstly challenges our representation of time in so far as it includes at the same time what has already taken place and, also, what is most near. Thus, there is neither a precise space, nor a time that can welcome disaster. But the present is the time of the return of disaster, that moment when time itself can come back, but as if pulverized by the disaster. Thus the apocalypse 'has always already' occurred even if it is still yet to come" (HOPPENOT, 2014, p. 193).

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A nonreligious repetition, neither mournful nor nostalgic, a return not desired. Wouldn't the disaster be, then, the repetition – the affirmation – of the singularity of the extreme? The disaster or the unverifiable, the improper (BLANCHOT, 1986, p. 5-6).

The delicate balance that allows, in different contexts, our survival, does not last forever:

To think the way one dies: without purpose, without power, without unity, and precisely, without “the way”. Whence the effacement of this formulation as soon as it is thought - as soon as it is thought, that is, both on the side of thinking and of dying, in disequilibrium, in an excess of meaning and in excess of meaning. No sooner is it thought than it has departed; it is gone, outside (BLANCHOT, 1986, p. 39)⁷.

If it is not too late and there is still a chance of a reaction⁸, what is up to the law? The usual answer in the context of environmental responsibility has been the notion of full compensation for damages. From the angle of environmental protection, the connection with the polluter pays principle must be assessed.

The disaster, that which disestablishes itself – disestablishment without destruction's penalty. The disaster comes back; it would always be the disaster after the disaster – a silent, harmless return whereby it dissimulates itself. Dissimulation, effect of disaster (BLANCHOT, 1986, p. 6).

Given this, the polluter pays principle stimulates liability but does not identify with it indiscriminately, being a postulate aimed at redistributing the costs of environmental deterioration.

It is the other who exposes me to “unity”, causing me to believe in an irreplaceable singularity, for I feel I must not fail him; and at the same time he withdraws me from what would make me unique: I am not indispensable; in me anyone at all is called by the other – anyone at all as the one who owes him aid. The un-unique, always the substitute. The other is, for his part too, always other, lending himself, however, to

⁷ In French, “en excès de sens et en excès sur le sens” (BLANCHOT, 1980, p. 67). “Even if he also underlines the power of disorientation that lies at the heart of the speech, the way in which Blanchot thinks of the heterogeneity between the space of speech and the space of perception is nevertheless different. There is certainly in Blanchot an excess of saying – understood both as speech and as writing – over the perceptive configuration. This excess, which cannot be absorbed into the perceptive configuration, is not the meaning. It is this ‘excess over the meaning’ to which Blanchot seeks to give space” (LANNON, 2008, p. 132).

⁸ “(...) the ruin as noun and as effect of the disaster is replaced by an incessant discursive process that ruins meaning, unity and order. The fragment is transferred to a mode of fragmentary writing that self-referentially practices fragmentation at the level of its own discursive constitution” (BENGERT, 2018, p. 122-123).

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unity; he is neither this one nor that one, and nonetheless it is to him alone that, each time, I owe everything, including the loss of myself.

The responsibility with which I am charged is not mine, and because of it I am no longer myself (BLANCHOT, 1986, p. 13).

On the other hand, responsibility is not based on the exclusive ground that whoever pollutes must pay. Of course, polluters should compensate damages, but law may attribute liability not only to the direct polluters, based on an *ethos* of protection of the environment⁹.

The disaster - experience none can undergo - obliterates (while leaving perfectly intact) our relation to the world as presence or as absence; it does not thereby free us, however, from this obsession with which it burdens us: others. For the lack of reciprocity with the Other toward which it turns us - the immediate and infinite question - is no part of sidereal space, to which, were disaster the substitution of a radical heterogeneity, it would be subordinated. This does not mean that we are unconcerned for those who, unlike ourselves, suffer from an unjust order, our own suffering being ever justified - beyond justice. For we are responsible for whoever would cause us to suffer, but rather that the patience which surpasses every conceivable passive mode - the patience to which they assign us - leads us back toward a past without any present. The pseudo-intransitiveness of writing is linked to this patience which no complement - life or death - can ever complete (BLANCHOT, 1986, p. 120).

Neither government nor society-at-large, however, should subsidize pollution. It is up to the legal system to impose that polluters internalize the costs of pollution abatement (NASH, 2000, p. 468).

Despite its genesis linked to market efficiency, the polluter pays principle became a shaping aspect of economic activity, achieved by the ethical, social, and political dimensions, aiming at internalizing the costs of prevention and control of pollution and promoting the rational use of natural resources.

Where is there the least power? In speech, or in writing? When I live, or when I die? Or again, when dying doesn't let me die?

⁹ “It is not another man, another self or another myself, whom I encounter but rather an unknown, which, to be sure, can come to me only through man but which, when it does, makes man into something the concept of man can't begin to account for. This strangeness and this separation have to do with the discrepancy or deviation that we've thought of in connection with man and with two; this foreignness is that of man as 'autrui', to borrow another expression Blanchot often uses; it is the unreachableness of man as 'the other' and as 'more Other than all that is other'” (SMOCK, 2003, p. 3).

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It is an ethical concern that distances you from power? Power links, un-power detaches. Sometimes un-power is sustained by the intensity of the undesirable (BLANCHOT, 1986, p. 12).

All spheres of power are powerless¹⁰, resulting in permanent marks for ecosystems and affected populations, aggravated by the loss of many lives and the compromise of well-being.

The disaster is what one cannot welcome except as the imminence that gratifies, the wait for un-power.

May words cease to be arms; means of action, means of salvation. Let us count, rather, on disarray (BLANCHOT, 1986, p. 11).

The liability system, when applied to repair social and environmental damage, has not been effective: it shows signs of exhaustion¹¹. Preventive measures deserve to be expanded, not to be obscured by the repressive dimension, for compliance before and after damage.

To have a clear understanding of the polluter pays principle and what it expresses as a matter of public policy and international law, “one must maintain the distinction between the assessment of liability for the abatement of specific harms on the one hand and the allocation of the costs of broad preventive measures on the other” (GAINES, 1991, p. 468).

It is advisable “to use prudence based on previous experiences and not getting impressed by mere claims of possible risks” (ANTUNES, 2016, p. 85). In order to better control those risks from now on, past disasters must be examined, and their reasons must be scrutinized:

The disaster, depriving us of that refuge which is the thought of death, dissuading us from the catastrophic or the tragic, dissolving our interest in will and in all internal movement, does not allow us to entertain this

¹⁰ “Blanchot offers no counter-politics of human liberation, self-affirmation or the retrieval of some lost relation to ‘nature’ as ground. His affirmation of the impossible offers a chastening step sideways, the cultivation of a force of natality, ‘beginning’ as a discontinuous, unmeaning and acultural element in the human realm generally, one that also affirms the uniqueness and singularity of natural phenomena, of *physis*. This is the ‘wild’ in the sense of a space outside use, something which is not part of the realm of human power” (CLARK, 2007, p. 138).

¹¹ “As such, it insists not on the necessity of obeying wordly law, but on the need to contest all such laws; but if it chooses to defy these laws, it can only be in the name of the higher law that comes before all codes of law and morality, and which is the law of that from which law derives, which is responsibility towards the Other, and to which responsibility is owed not because it is the law but because, like passion, it is what precedes freedom, choice, deliberation as such” (HILL, 1997, p. 207).

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question either: what have you done to gain knowledge of the disaster?
(...)

The disaster: stress upon minutiae, sovereignty of the accidental
(BLANCHOT, 1986, p. 3).

The successive ruptures of mining tailings dams warn of the need for a sustainable political-legal structure, with scientific bases.

Un-knowledge is not a lack of knowledge; it is not even knowledge of the lack but rather that which is hidden by knowledge and ignorance alike: the neutral, the un-manifest (BLANCHOT, 1986, p. 63).

Environmental management is indeclinable, in addition to the improvement of public policies: “the global ecological crisis could be called precisely ‘Blanchotian’ in its demand that we think increasingly”, not only in terms of specific projects “of management or conservation within received frameworks of thought, but anew about the totality of human life” (CLARK, 2007, p. 123).

I will not say that the disaster is absolute; on the contrary, it disorients the absolute. It comes and goes, errant disarray, and yet with the imperceptible but intense suddenness of the outside, as an irresistible or unforeseen resolve which would come to us from beyond the confines of decision (BLANCHOT, 1986, p. 4).

Management fosters “an analytical, systemic, and constructivist response to disaster” (CARVALHO, 2019, p. 289), circularly or cyclically, in several phases: prevention and risk mitigation, the occurrence of the disaster, emergency response, means of compensation and, finally, rebuilding (FARBER, 2012, p. 6).

The I that is responsible for others, the I bereft of selfhood, is sheer fragility, through and through on trial. This I without any identity is responsible for him to whom he can give no response; this I must answer in an interrogation where no question is put; he is a question directed to others from whom no answer can be expected either. The Other does not answer (BLANCHOT, 1986, p. 119).

Large-scale environmental catastrophes emphasize the lack of legislative and administrative provisions¹², and they underscore “the need for lawmaking institutions that

¹² “However, if Blanchot questions the reciprocity between justice and finishing, this does not mean that justice sinks into indeterminacy because, if references to justice are characterized by something in his work, it is because it is linked to an urgency that makes it peremptory. This does not determine that it acts moved by an impatience that seeks the conclusive, but, on the contrary, by the patience of passivity. In this way one can understand, provided that passivity is not simply opposed to activity, patience to impatience” (QUINTANA DOMÍNGUEZ, 2015, p. 145).

are better able to overcome the human tendency to fail to apprehend the full spatial and temporal scope of the environmental risks generated by modern technology” (LAZARUS, 2007, p. 1020).

3 CONCLUSION: FROM LITERARY NARRATIVE TO DISASTER KNOWLEDGE

The disaster, unexperienced. It is what escapes the very possibility of experience – it is the limit of writing. This must be repeated: the disaster de-scribes. Which does not mean that the disaster, as the force of writing, is excluded from it, is beyond the pale of writing or extratextual.

It is the dark disaster that brings the light (BLANCHOT, 1986, p. 7).

It is credible that Blanchot’s catastrophe would refer to the destruction caused by wars or the moral degeneration of humanity, however than directly to environmental protection. This essay tried to propose an environmental reading of *The Writing of the Disaster*, in a way that we might reappraise the ethical challenges finitude necessarily imposes.

From the author’s dense symbolic representations of disaster, we may learn that knowledge, science, and the law must prevail over common sense. Prudence and the gradual scale of actions and interventions should override improvisation and untimely policy-making.

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