



PERSPECTIVES

THE BEGIN-SADAT CENTER FOR STRATEGIC STUDIES

How Coronavirus Emergency Measures Threaten Civil Rights

by Dr. Manfred Gerstenfeld

BESA Center Perspectives Paper No. 1,570, May 18, 2020

EXECUTIVE SUMMARY: Many governments have responded to the coronavirus pandemic by pushing aside civil rights. It is not yet clear whether this shift in national attitudes toward fundamental rights will continue over the long term or how that trend will manifest. During the crisis, governments approved the tracking of citizens as well as other tools that infringed their privacy. Once the need for emergency measures has passed, discussions—both civil and legal—will grow more intense over how much longer civil rights should remain compromised.

In response to the coronavirus pandemic, many governments approved the wholesale infringement of their citizens' civil rights. Large populations accepted the dramatic curtailment of their civil liberties for weeks and even months on end on the understanding that that curtailment was temporary. One wonders, now that the crisis is beginning to abate, whether their rights will be fully restored.

Many governments approved tracking measures and other privacy-breaching capabilities that can have long-term consequences. Albert Fox Cahn of the Surveillance Technology Oversight Project said, "We could so easily end up in a situation where we empower local, state, or federal governments to take measures in response to this pandemic that fundamentally change the scope of American civil rights."

Once most of the emergency measures have ended, discussion is likely to intensify about the extent to which civil rights were abolished at the height of the crisis. Robert Seegmüller, chairman of an organization of German constitutional judges, said that future courts will have to decide whether his country's constitution gives parliament the right to transfer so much of its

operational competence to the executive branch. He added that it has not yet been determined whether the closure of many institutions in the first weeks of the crisis was legally acceptable.

The first step in tackling these questions is to identify the fundamental rights that were limited or canceled entirely. The most important was the right to move freely in the streets of one's own city, a right that was summarily stripped from citizens during periods of lockdown. Lockdowns also infringed people's freedom to gather or to visit friends or family. (During the lockdown in the UK, Prof. Neil Ferguson, an epidemiologist and the top British government adviser on the virus issue, had to resign his position after it became known that in direct contravention of the social distancing limits he himself had convinced the government to impose on the general public, he had allowed his lover to visit him repeatedly at his home.)

The obligation to wear a face mask outside one's home is another major limitation of civil rights. This precaution not only infringes personal freedom but makes people difficult to recognize. In Western societies, recognition of faces is part of the culture. In some European countries the wearing of veils is forbidden. One cannot detach this issue from prior debates in these societies about expressions of Muslim fundamentalism. Similarly, social distancing rules have prohibited handshakes, which are a hallmark of Western culture and one to which religious Muslims have long objected (when they compel contact with women).

It is part of the culture of Western society to be able to socialize in physical proximity. The obligations of social distancing have had many consequences for this tradition. People in southern European countries kiss good friends on the cheek when they meet, a habit that has had to be abandoned. British pubs, where friends have gathered for generations, have been decimated by the crisis. Social distancing will go on in many places after the crisis is over, with British Chief Medical Officer Professor Chris Whitty forecasting that it will go on for another year.

The crisis has also had a sharp impact on the free movement of people across borders, which, though not exactly perceived as a civil right, was considered normal and a development in which many Europeans took great pride. Several European countries closed their borders during the pandemic, and the EU closed its external borders to foreign nationals.

Lockdowns and social distancing have had a heavy impact on religious freedom. While individuals are permitted to pray at home, religious gatherings are still prohibited in many countries. This is irrespective of how important community meetings are for some religions. In the US, multiple

lawsuits have been filed arguing that coronavirus-related restrictions violate the First Amendment's guarantee to freely exercise religion.

For the most part, the crisis has not limited freedom of speech, with the right to demonstrate often permitted during lockdown. The German Constitutional Court decided health concerns linked to the outbreak were not grounds for a general ban on demonstrations. Several anti-lockdown demonstrations were held in German cities toward the end of the emergency, some of which turned violent. There were also public protests against the lockdown in the US.

Privacy is a fundamental right, and data protection is a growing concern. Even before the coronavirus, it was generally known that companies like Google and Facebook have access to a wealth of data on huge numbers of individuals. Facebook had to pay a \$5 billion fine to the US government for deceiving users about its ability to keep personal information private. This occurred as a result of the [Cambridge Analytica data breach](#). The security, freedom, and privacy triangle will probably become a major area of debate.

The more populations distrust their governments, the more problematic tracking applications become. Governments claim the data acquired through such apps will be anonymized—but as the data is held at central databases, full anonymity is cast into doubt.

In some countries, there is serious fear of the abuse of power by governments and police overreach. Belgian Minister of Interior Affairs Pieter De Crem sent a letter in early April to mayors and chiefs of police calling on them to apply rigorous measures to people who went to stay in their second homes. Drones were employed to locate offenders near the coast, a measure that prompted liberal politicians to protest the use of the emergency conditions to set up the beginnings of a police state.

Another civil rights issue concerns equality. In places where there were more people in need of respirators than there were available, choices had to be made. Equality would mean that those who came first were given respirators, but in many places, priority was determined by the patient's state of health and age. Triage protocols for critical care provision during a pandemic are a policy choice that values the right to life of some over others.

Major economic intervention will be necessary to mitigate the effects of the economic recession that is likely to follow the pandemic in many countries. Government measures in pre-virus society often ran into both public protests and legal problems. Governments may well decide they cannot afford to delay measures to restart the economy. This can lead to emergency measures that can in turn limit civil rights. It would be very problematic if parliaments

are not allowed proper verification procedures, provided they do not stall decision-making.

The Hungarian parliament has given up part of its rights, which has led to limitations on speech. PM Victor Orban can declare emergency measures by decree. If he wishes, he can prolong those measures without the approval of parliament. The measures allow jail sentences of up to five years for distribution of “fake news” about the pandemic or the government. The Hungarian government has accused some independent media of propagating “fake news.”

Thirteen members of the EU have signed a declaration warning of the danger to fundamental rights posed by some responses to the coronavirus emergency. They express concern about risks to the state of law that can occur as a result of certain emergency measures. The declaration does not mention any specific country, but it is understood that it is addressed to the Hungarian Parliament. It is telling that about half the EU member states have not signed it.

A fundamental question has to be asked: Is it by chance that the great majority of the sick and the dead were in Western liberal democracies? Is there something inherent in the societal modus operandi that causes those governments to have more difficulty reacting to and controlling an emergency situation than non-democratic states?

Dr. Manfred Gerstenfeld is a Senior Research Associate at the BESA Center and a former chairman of the Steering Committee of the Jerusalem Center for Public Affairs. He specializes in Israeli–Western European relations, antisemitism, and anti-Zionism, and is the author of The War of a Million Cuts.