

Civil Liberties and Surveillance Programs in Times of COVID-19 Pandemic

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ABSTRACT

There are extreme situations in human history, such as the current one of the coronavirus disease-2019 (COVID-2019) pandemic, where governments must take extraordinary measures. Although the initial intent would be the noble goal of protecting the health of people, these measures could also be used for other purposes that have nothing to do with the original plan.

Keywords: Civil liberties, COVID-19, Surveillance programs.

RESUMEN

Hay situaciones extremas en la historia de la humanidad, como la actual pandemia COVID-19, donde los gobiernos deben tomar medidas extraordinarias. Aunque la intención inicial sería el noble objetivo de proteger la salud de las personas, estas medidas también podrían usarse para otros propósitos que no tienen nada que ver con el plan original.

Palabras clave: Libertades civiles, COVID-19, Programas de vigilancia.

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At the end of 2019, virus-induced pneumonia was described in several hospitals in Wuhan, Hubei Province, China. While initial epidemiological investigation suggested the origin exposure to a live wild animal market in Wuhan, the earliest case identified had no reported link to the market.¹ Questions have been raised on the reporting of the disease at its initiation as different strains of SARS-CoV-2 may have appeared a few months earlier.² As of October 9, 2020, there are more than 36 million cases of coronavirus disease-2019 (COVID-2019) worldwide and over 1 million deaths, according to Johns Hopkins University Coronavirus Resource Center.³

There are extreme situations in human history, such as the current one of the COVID-19 pandemic, where governments must take extraordinary measures. Although the initial intent would be the noble goal of protecting the health of people, these measures could also be used for other purposes that have nothing to do with the original plan.

To fight against the COVID-19 pandemic, governments are analyzing the movement of citizens using anonymized cell phone location data. This is being used to track locations of scrutinized crowds' behaviors, the spread of the virus, and to help identify trends. Additionally, the individual location information is used to help to identify contacts of any sick individuals.

This is not unprecedented. There have been previous surveillance and massive data collection as occurred after the 9/11 terrorist attack.⁴ However, after several years, the Department of Defense found that machine learning systems were ineffective to anticipate terrorist threats.^{5,6} Despite the lack of useful evidence, those programs remain in effect today (Patriot Act).

This experience and many like it raises the ongoing questions with the use of technology today and the risk to individual liberties. To identify persons who test positive for COVID-19, geolocation, personal activities, and even religious beliefs can be tracked if said individual is attending their place of worship. Moreover, not only the individual's data will be tracked down, but that of all their contacts as well. Although the tracking of infected people

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is of great importance, the potential for using this data is always present. A recent study using simulation showed that the pandemic could be suppressed with 80% of all smartphone users utilizing the application.⁷ However, how much information from the user is required remains problematic. Reports indicate that even when in some countries these systems were presented as anonymous, it was shown that it is possible and relatively simple to re-identify previously anonymous data.⁸ At least one known commercial entity specializes in finding connection points between different data sets, thus making sure that this anonymous information does not remain that way for a long time.⁹ This indicates that the use of anonymous data should be used with strict privacy measures, such as, who accesses that information, the intended purpose of the data, limitation of its use by police and intelligence agencies, and a maximum time stipulated in which this information will be retained. All are measures that allow a permanent audit and do not erode privacy.

Law and public policy have a long history of deference to intrusive action by public health authorities, especially during deadly infectious disease outbreaks.¹⁰ However, some limits always must be considered. To respect civil liberties, courts have insisted that when coercive restrictions are necessary, they must be designed as clear as possible in terms of intrusiveness, duration,

and scope to achieve the protective goal and must not be used to target specific groups.¹¹

Deprivations of basic liberties in response to epidemics have been focused on infected or exposed people or defined groups. Because restrictions related to COVID-19 are motivated by community-wide risk and apply to entire populations, legal protections focused on how much risk one person poses to others have little relevance.¹²

China, faced with the first outbreak, chose strict quarantine and isolation after an initial delay. These measures were severe but effective, essentially eliminating transmission at the point where the outbreak began and reducing the death rate to a reported 3 per million, as compared with more than 500 per million in the United States. Countries that had far more exchange with China, such as Singapore and South Korea, began intensive testing early, along with aggressive contact tracing and appropriate isolation, and have had relatively small outbreaks. New Zealand has used these same measures, together with its geographic advantages, to come close to eliminating the disease, something that has allowed that country to limit the time of closure and to largely reopen society to a pre-pandemic level.¹³

At the same time, there are situations created in some Latin American countries regarding the indiscriminate use of quarantines. Some countries are being in quarantine for more than 6 months since March 20,^{14–16} becoming the longest, even more than the one instituted in Wuhan. Great care must be taken while deciding to implement these confinements, especially in countries whose rulers may be tempted by certain authoritarian attitudes. Freedom to move, work, and experience leisure are not superficial events, but the heart and soul of many countries. Not having an intelligent plan for circulation and relying purely on strict quarantines “to adequately prepare health systems”, and using medieval measures to alleviate a 21st-century pandemic that restricts stated liberties can create more risk and dangers that surpass any future benefits. Isolation from friends and family, frustration with the inability to fill time as well as the loss of personal liberties have been described as contributory factors to suicide¹⁷ and intimate partner violence, truly a pandemic inside another pandemic. Furthermore, non-governmental organizations (NGOs) have reported the imprisonment of a civil citizen by police officers enforcing the quarantine measures followed by death while in custody in South American countries; counting in one of them up to 92 people murdered during the last 4 months.^{18–20} Work habits are also affected. After the first SARS pandemic, healthcare workers who had undergone quarantine were found to be more likely to develop avoidance behaviors, such as minimizing direct contact with patients and not reporting to work.²¹

Limitations to dispose of large quantities of tests and personal protective equipment are very clear; in those cases, there are no obvious obstacles in quarantine or curfew imposed by law. With the high rate of ineffectiveness and transmission of COVID-19 and the presumed low rate of acquired immunity, mass testing has a legitimate public health purpose. Consequently, it is highly recommended to institute smart application of testing which in turn may ease the need for ongoing restrictions, and thus rendering this vital in restoring civil liberties.¹²

Emergencies test the strength of states and democracies. While tracking citizens’ activities and restriction of liberties may be necessary for a pandemic crisis, these are well-documented

tactics of dictatorial states and stable and lasting democracies could succumb to the temptation to create a police state with absolute control over the population. The importance of protecting individual liberties and constitutional rights, therefore, becomes paramount. If policies are created based solely on fear without following decisions founded on evidence, we run the risk that this could impact our way of life and permanently become our future. Physicians must play a vital role at this intersection of public health, civil liberties, and surveillance programs.

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