

COVID-19 AND TERRORISM: when the exception locks down the rule

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Exceptional measures have been called upon to fight the spread of the coronavirus. But while they may be justified in times of health emergency, there are risks of normalising the exceptional that prompt concerns for the future. Can the history of fighting terrorism help us anticipate post-pandemic challenges?

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Imaging the post-COVID-19 world can seem like a dubious exercise in futurology. But it is a necessary exercise for one essential reason: the decisions being taken to tackle the current pandemic will one way or another end up shaping our political and legal systems in the future. Given this reality, the history of the fight against terrorism can help us understand the risks the fight against COVID-19 may entail.

Although different in origin, COVID-19 and terrorism share certain features. First, the coronavirus and terrorist attacks have the same modus operandi: they are invisible; they pose both an endogenous and exogenous “threat”; and they choose their victims indiscriminately. Secondly, a number of governments are approaching the fight against the virus like a war. From Latin America to Asia, via Europe, several governments have invoked war references to mobilise their population against a “common enemy”. Some, like Donald Trump and his French counterpart, Emmanuel Macron, have even gone as far as to declare “war on the virus”, redeploing their predecessors’ words about global terrorism. Third, just like a terrorist attack, the current pandemic is an exceptional and unexpected event, and therefore calls for exceptional measures to stop it. And, finally, both phenomena pose a threat that is not limited by time, as there is always the possibility of a new outbreak or, in the case of terrorism, of a new wave of attacks. This last aspect is fundamental, as it means that the responses to both phenomena, especially preventive ones, have long-term repercussions on our societies. The most significant of these is the possibility that some of today’s exceptional measures may become tomorrow’s normal practice. So what lessons from the fight against terrorism can help us anticipate post-pandemic challenges?

Following an attack, states often take exceptional measures to find those responsible and prevent the country from being destabilised. But as

society attempts to return to normality, some of these measures do not automatically disappear even when the terrorist threat level drops. In certain cases, the opposite may even happen. The USA Patriot Act enacted in the United States a few weeks after 9/11 is one example. The new legal framework gave the George W. Bush administration a number of exceptional powers and tools to strengthen the capacity of the intelligence services and security forces to fight terrorism. Among such powers was the potential for mass surveillance of the population beyond those suspected of terrorism. And yet, despite the scandal caused by the Edward Snowden revelations in 2013, which revealed the existence and real scope of these surveillance programmes inside and outside the United States, the Patriot Act was extended four times between 2001 and 2019, and remains in force. A similar dynamic occurred in France after the Paris attacks in November 2015. The French government declared a state of emergency and took “exceptional” measures to reinforce the authorities’ surveillance powers to facilitate the neutralisation of potential terrorists. But, again, although these were temporary measures, the state of emergency was renewed six times between 2015 and 2017 before being incorporated into law on November 1st 2017.

Thesetwoexamples, towhichothersfrombothdemocraticandauthoritarian contexts might be added, show how exceptional and temporary measures for facing an immediate threat can become standardised and permanent. This is most troubling when it comes to measures that may affect the balance of powers (especially between the executive and the judiciary); give rise to abuses by law enforcement agencies (e.g. ethnic/religious discrimination); produce human rights violations (e.g. secret detentions); or restrict individual liberties. Indeed, in both authoritarian and democratic regimes, the exceptional circumstances of the fight against terrorism were also used to justify monitoring and investigating individuals for reasons unrelated to terrorism. In this regard, it should be remembered that the Patriot Act laid the foundations for the most expansive mass surveillance operation in the world and set a precedent for other countries to adopt anti-terrorism laws along these lines. In both the United States and France, the need to tackle a diffuse, permanent threat justified endowing the authorities fighting terrorism with broader powers. It also normalised the use of mass surveillance programmes. And this theoretically exceptional situation seems to continue once the emergency is over or the threat level drops.

The fight against the pandemic is currently marked by two trends that are very similar to those described above. On the one hand, some governments are using the battle against COVID-19 to grab more powers, to restrict certain freedoms and even to repress certain individuals and groups. Philippine President Rodrigo Duterte has authorised his army to shoot anyone who does not respect confinement; the Algerian, Egyptian and Turkish regimes are using the pretext of the fight against COVID-19 to limit freedom of expression and silence critical voices. And the pandemic of authoritarian measures is also affecting Europe. In Hungary, a legal amendment has given the ultranationalist Prime Minister Viktor Orbán almost unlimited powers: the executive can now govern by decree, without parliamentary oversight or time limit.

Elsewhere, the use of mass surveillance technologies has become a key weapon in several countries’ fight against the pandemic, such as China

and Israel, where anti-terrorist resources have been used to stop the virus spreading. Technology is being used to accurately track encounters between people, biometric data is being mobilised, and artificial intelligence deployed to monitor the entire population. In dozens of countries, big data is being used to monitor citizens' movements and verify that the containment measures are being followed. It should be noted, however, that in Europe, unlike the countries of east Asia, the data comes in anonymous and aggregated form.

Should we consider the use of these mass surveillance technologies problematic? In terms of the health emergency, their use has proven effective. However, the problem may arise after the period of exceptional circumstances has ended. Knowing how certain anti-terrorist measures have been instrumentalised for alternate purposes, is there reason to believe the measures deployed to combat COVID-19 will be any different? The lack of transparency about the content of negotiations between governments, suppliers and private companies (e.g. Google) is worrying. This is particularly true in democratic systems, where the principle of accountability should permit us to know precisely what data is used, for what purpose and until when. One Polish government app, which asks users to submit selfies to monitor their movements, plans to save the data gathered for six years.

A series of exceptional measures are needed to face the coronavirus pandemic, but we should avoid their possible normalisation in the future. The fight against terrorism shows that even in democratic systems the exception can become the norm. The great challenge, once the pandemic has passed, is to make sure that it is not the rule of law that remains in quarantine.