

Surveillance, Security, & Democracy in a Post-COVID World

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How is the growing use of surveillance technologies around the world changing the nature of global democracy and dictatorship? Will the outbreak of COVID-19 mark a sea change in countries' approach to health surveillance, civil liberties, and policies at the intersection of public health and public security? If so, how will these changes affect the quality of governance in democratic and authoritarian political systems worldwide, and the international order that emerges from these patterns?

The COVID-19 pandemic has already reshaped many governments' approaches to health surveillance, the privacy of health data, and the use of technological monitoring tools to enforce policies aimed at the preservation and protection of public health, safety, and social stability. This includes the United States: according to one recent survey,¹ Americans now see infectious disease as a greater threat to the United States than terrorism, nuclear weapons proliferation, or the rise of China, sparking calls to treat health security as a more urgent priority alongside more conventional security threats.

As of today, over 80 countries have adopted emergency policies or regulations to address the coronavirus outbreak.² Their responses, however, have varied immensely: some countries have instituted strict lockdowns, confining citizens to home and limiting rights of assembly and travel; others have placed fewer restrictions on mobility and assembly, but adopted intensive monitoring and "test and trace" approaches. Still others have pursued a combination of the two. The legal tools employed to implement the surveillance and enforcement of pandemic response policies also differ, even within democracies: Hungary and the Philippines, for example, have adopted new emergency powers that place very few constraints on executive power, while Taiwan and South Korea have relied primarily on pre-existing legal frameworks, developed during earlier infectious disease outbreaks, that have already been subjected to democratic testing, including judicial review and legal ratification.

Adding the policy responses of hybrid regimes and non-democracies into the mix produces even wider variation in whether and how democratic process and legal constraints come into play, and raise troubling questions about the future relationship between surveillance, democracy, and global order. Because the pandemic started in China -- the world's largest autocracy -- China has had a head

¹ "Coronavirus May Upend US National Security Priorities," Center for Public Integrity, 13 April 2020, <https://publicintegrity.org/health/coronavirus-and-inequality/coronavirus-may-upend-u-s-national-security-priorities/>

² International Center for Non-Profit Law, "COVID-19 Civic Freedom Tracker," accessed 30 May 2020, <https://www.icnl.org/covid19tracker/>

start in crafting and promoting its vision globally. And China’s nascent dominance in the global standard-setting and regulation of surveillance technologies -- which pre-dated the coronavirus outbreak -- raises the risk that the pandemic will accelerate Chinese leadership in this area, leading to the development of global rules and norms that increasingly diverge from American values and interests. While there are democracies that provide a model for how to combine effective pandemic response with protection of democracy and civil liberties, including some of the United States’ closest allies and partners in the Indo-Pacific, it is far from clear that their approaches will become the global standard.

This essay proceeds in several sections. Below, I trace the development of the “prevention and control” approach that China has employed to the COVID -19 pandemic, showing that although it is a public health term, its deeper roots/parallel discursive ancestry is in the realm of public security and policing; this means that the model China offers of how to manage infectious disease relies heavily on tools of authoritarian governance. The essay then turns to global responses, tracing the ways in which policy solutions to the pandemic have posed risks for democratic backsliding or further autocratization, while also highlighting cases in which democracies have been able to mount an effective response while continuing to safeguard democracy, civil liberties, and freedom at home, and discussing how these diverse strands could come together to form new global norms related to surveillance and democracy (or lack thereof). The essay concludes with some reflections on policy and suggestions for future research (including, possibly, future iterations of this manuscript).

China’s First-Mover Model: Public Health & Public Security Entwined³

In China -- the epicenter of the outbreak -- public health, surveillance, and public security have been intertwined from the first days of the crisis. In the highly formalized language of Chinese politics, where key terms or formulations (□ □ , *tifa*) carry unusually weighty significance, the Chinese term for the favored approach to the coronavirus is “prevention and control” (*fangkong*, □ □). The term was used by Xi Jinping and other senior leaders to describe China’s approach to COVID-19 as early as

³ Parts of this section draw on a working paper with Julian Gewirtz, “*Fangkong*: Dual Usages in Public Health and Public Security,” 10 June 2020.

the CCP Politburo Standing Committee meeting on January 7, 2020.⁴ Xi Jinping and other officials have used it to describe the urgent need to strengthen China’s public health system, most recently in Xi’s formal remarks to the National People’s Congress this May,⁵ and it is now used frequently in public announcements about the virus in both English and Chinese.⁶

Use of the term *fangkong* in public health goes back to previous infectious disease outbreaks, starting with HIV/AIDS in 2001,⁷ when *People’s Daily* reported that “The work of prevention and control (*fangkong*) has a long way to go.” In the years after that, *fangkong* became standard doctrine for responding to public health emergencies—SARS in 2003, avian influenza in 2003, and swine flu in 2009, among others. One recent article retroactively linked *fangkong* to Xi Jinping’s experience with SARS in Zhejiang, describing Xi’s effective management of provincial “prevention and control” efforts and noting that it prompted him to “think more deeply about non-traditional security.”⁸

Indeed, *fangkong* has an earlier usage, and a parallel discursive lineage, in the realm of public security: the policing and political work aimed at maintaining China’s internal social stability. In fact, before its application to public health risks in 2001, *fangkong* was used mainly in reference to public security. Minister of Public Security Tao Siju and a few others used the term in the mid-1990s, and it became increasingly common later that decade and in the early 2000s, as the Chinese leadership pursued the development of “prevention and control systems” to manage fast-moving, networked threats, particularly those that could be addressed with technology and systems engineering. In March 2000, for example, the city of Dalian allocated a special fund of 450 million yuan over seven years for

⁴ Xi Jinping, “Zai zhongyang zhengzhi ju changwei hui huiyi yanjiu yingdui xinxing guanzhang bingdu feiyan yiqing gongzuo shi de jianghua [Speech at the meeting of the CCP Standing Committee of the Politburo, studying the response to the novel coronavirus],” 3 February 2020, reprinted in *Qiusbi*, 15 February 2020, http://www.qstheory.cn/dukan/qs/2020-02/15/c_1125572832.htm; see also *Xinhua*, “Shisan jie quanquo renda sanci huiyi zaijing bimu [Third Session of 13th National People’s Congress Closes in Beijing],” 28 May 2020, http://www.gov.cn/xinwen/2020-05/28/content_5515768.htm

⁵ “Xi Orders Fortifying Public Health Protection Network,” *Xinhua*, 25 May 2020, <http://en.people.cn/n3/2020/0525/c90000-9693925.html>

⁶ For just the most recent example of routine re-use of this phrase, see the 15 June 2020 announcement that the State Council press briefing has been cancelled due to “COVID-19 prevention and control.” <https://twitter.com/annafield/status/1272276952204730368?s=20>

⁷ Julian Gewirtz, “‘Loving Capitalism Disease’: Aids and Ideology in the People’s Republic of China,” *Past and Present*, March 2020.

⁸ <http://politics.people.com.cn/n1/2020/0615/c1024-31746189.html>

public security investments, with the stated goals of “improving the *fangkong* system,” and using technology to address threats from pornography and gambling to fugitives and Falun Gong.

Under Xi Jinping, *fangkong* has emerged as a central concept in the CCP’s approach to public security and social control. This usage marked an explicit shift away from the Hu-Wen era of “stability maintenance” (*weiven*), which leaders under Xi have hinted was too reactive and “treated symptoms rather than addressing underlying causes.” Today, Chinese leaders commonly describe a vision of a “three-dimensional, information-based system of prevention and control for public security,” a phrase that Xi Jinping used in several high-profile speeches in early 2019, with other senior leaders in China’s internal security apparatus (the “political-legal system”) following suit.⁹ Indeed, Xi Jinping’s call this May for “early warning” systems and “timely and accurate monitoring” is a direct parallel to previous calls for bolstering those capacities in China’s public security intelligence apparatus, which monitors society with the goal of preventing instability and social unrest.

With the outbreak of the novel coronavirus in Wuhan in late 2019, authorities intensified the mobilization of *fangkong* efforts to implement social controls in the name of protecting public health and limiting disease transmission— this time, using the enhanced domestic security apparatus that has been overhauled by Xi Jinping in almost every aspect since 2013.¹⁰ As a result, the order to *fangkong* this new disease immediately evoked both public health and public security responses—intensified technical and human surveillance,¹¹ strict controls on movement,¹² and harsh punishment and public shaming for those who violated the new rules. Over time, the initial physical lockdown of Wuhan was replaced by a tech-based surveillance regime: Chinese company Alibaba developed an app for Hangzhou that tracked citizens’ health and mobility, which was then scaled nationwide with assistance from Alibaba and Tencent.¹³

⁹ http://www.qstheory.cn/yaowen/2019-01/21/c_1124021825.htm

¹⁰ Sheena Chestnut Greitens, “Domestic Security in China under Xi Jinping,” *China Leadership Monitor* (March 2020), <https://www.prclleader.org/greitens>

¹¹ Cate Cadell, “China’s Coronavirus Campaign Offers Glimpse into Surveillance System,” *Reuters*, 26 May 2020, <https://www.reuters.com/article/us-health-coronavirus-china-surveillance/chinas-coronavirus-campaign-offers-glimpse-into-surveillance-system-idUSKBN2320LZ>

¹² Raymond Zhong and Paul Mozur, “To Tame Coronavirus, Mao-Style Social Controls Blanket China,” *New York Times*, 15 February 2020, <https://www.nytimes.com/2020/02/15/business/china-coronavirus-lockdown.html>

¹³ Even the models presented by Wuhan and Hangzhou involve different tradeoffs—in Wuhan, mobility was nonexistent but citizens had privacy in confinement; residents of Hangzhou were allowed some mobility but

This spring, China's Ministry of Public Security openly framed COVID-19 not only as a "test of China's governance system," but of the public security organs themselves, affirming their central role in implementing health surveillance and lockdown policies.¹⁴ Not surprisingly, their rhetoric presents the Ministry as having been successful and passing the test, paralleling the CCP's foreign policy pronouncements about China's success in managing the outbreak. Thus the initial model presented to the world of how to blend public health and public security was an autocratic one in which the state surveilled, restricted, and confined citizens.

China's close linking of public health and public security is dangerous for democracies who wish to avoid securitizing public health, and who see value in placing limits on surveillance to protect civil liberties. Indeed, to many observers, China's response to the outbreak of the novel coronavirus in late 2019 in Wuhan laid bare both the power of the Chinese party-state to exert control over society in a dynamic and evolving crisis, and the ability of classic features of China's system of authoritarian governance -- in particular, the lack of transparency within the Chinese political system itself -- to pose problems for the rest of the world. But China's own experience suggests additional reason for caution: alongside securitizing public health, the CCP has compared internal security threats to public health problems-- and it is the consequence of the metaphor's reversal that have had the most severe consequence for human rights and basic freedoms in China. This trend began around 2015, when internal security chief Meng Jianzhu explicitly used immunization as a metaphor for internal security, saying, "for harmful infectious diseases, we must strike early to preventively immunize and strengthen immunity."¹⁵

The metaphor was subsequently aggressively applied in Xinjiang, where officials compared extremism to both cancer and infectious disease, and the immunological concept of *fangkong* was operationalized to brutal effect.¹⁶ Work teams sent to identify targets for re-education describe finding

made significant compromises in terms of privacy. Yasheng Huang, "No, Autocracies Aren't Better for Public Health," *Boston Review*, 14 April 2020, <http://bostonreview.net/politics-global-justice/yasheng-huang-no-autocracies-arent-better-public-health>

¹⁴ Ministry of Public Security of the People's Republic of China, "Zhao Kezhi zhuchi zhaokai gong'anbu dangwei (kuoda) huiyi [Zhao Kezhi presides over meeting of the (expanded) party committee of the Ministry of Public Security]," 28 May 2020, <https://www.mps.gov.cn/n2255053/n5147059/c7212369/content.html>

¹⁵ www.court.gov.cn/fabu-xiangqing-13840.html

¹⁶ Ironically, for audiences within the CCP, the metaphor is used to imply that the state feels the caring, curative, and urgent intent of a doctor; detention and re-education have been portrayed as necessary

“tumors” that must be eradicated and explain detention as “free hospitalization for mentally ill people,” while party documents speak of eradicating “ideological viruses,” and the Xinjiang Communist Youth League explicitly noted the need to treat people who “have not committed any crimes [but] are already infected by the disease.”¹⁷ Chinese sources are more explicit than most English-language analyses have been to-date: the regime decides who could be “infected”; those alleged to be susceptible have no say in whether they wish to be rescued by the party-state; and security *depends* on targeting and “treating” citizens at a time when they have shown no symptoms of threatening behavior.

But isn’t this all purely a matter of Chinese domestic politics? That remains far from clear. Recent CCP rhetoric about viruses has extended beyond internal discourse, with mentions of “political virus” in Hong Kong and the U.S.¹⁸ This raises the possibility that the CCP -- aided by Xi Jinping’s “comprehensive security” concept, which sees external and internal security as related and encompassing a huge domain of issues beyond conventional military power¹⁹ -- will now approach Hong Kong, and broader foreign policy, with the same “prevention and control” doctrine applied inside China. Moreover, the CCP is actively promoting its approach to coronavirus management around the world, using tools ranging from government-to-government outreach to foreign aid to propaganda and disinformation intended to control the narrative, deflect blame, and promote positive images of China’s leadership role in addressing the pandemic.²⁰ The State Council’s recent White

interventions to pre-empt an impending affliction for patients at risk.

https://www.mitpressjournals.org/doi/full/10.1162/isec_a_00368?mobileUi=0

¹⁷ See <https://read01.com/BL28Bk.html#.Xua72sa1vOR>. See also Jim Millward, “Re-Educating Xinjiang’s Muslims,” *New York Review of Books*, <https://www.chinafile.com/library/nyrb-china-archive/reeducating-xinjiangs-muslims>; Chris Buckley, “China is Detaining Muslims in Vast Numbers. The Goal: Transformation,” *New York Times*, 8 September 2019, <https://www.nytimes.com/2018/09/08/world/asia/china-uighur-muslim-detention-camp.html>.

¹⁸ On Hong Kong, see Su Xinqi, “Like Anti-Virus Software: Security Law Needed,” *Hong Kong Free Press/AFP*, 8 June 2020, <https://hongkongfp.com/2020/06/08/like-anti-virus-software-security-law-needed-as-hong-kong-protesters-have-gone-too-far-says-beijing-official/>; on the U.S., see tweet by Foreign Ministry spokeswoman Hua Chunying (24 May 2020), <https://twitter.com/SpokespersonCHN/status/1264529010056400896?s=20>

¹⁹ “Book of Xi’s Discourses on National Security Published,” *Xinhua*, 15 April 2018, http://www.xinhuanet.com/english/2018-04/15/c_137112987.htm

²⁰ Amanda Lee, “China promises not to Restrict Exports of Medical Supplies,” *South China Morning Post*, 6 April 2020, <https://www.scmp.com/news/china/diplomacy/article/3078526/coronavirus-china-promises-not-restrict-exports-medical>; Steven Lee Myers and Alissa J. Rubin, “With Coronavirus Cases Dwindling, China Turns Focus Outward,” *New York Times*, 18 March 2020, <https://www.nytimes.com/2020/03/18/world/asia/coronavirus-china-aid.html>; Li Yuan, “With Coronavirus Coverage, China Builds a Culture of Hate,” *New York Times*, 22 April 2020,

Paper, for example, explicitly argues that China is “sharing its experience for the world to defeat the global pandemic.” The announcement particularly lauds the effectiveness of the “tight prevention and control system involving all sectors of society,” which it credits with enabling China to “win its all-out people’s war against the coronavirus.”²¹

This does not make it a foregone conclusion that other countries will emulate China’s approach, or that emulation will actually produce replication of China’s approach. Indeed, the approach documented above depends on relatively extraordinary grassroots organization combined with a pre-existing investment in domestic surveillance and social control systems that exist in very few, if any, other parts of the world, making *fangkong* unlikely to be fully replicated elsewhere. Moreover, while Chinese rhetoric may emphasize the successes of “prevention and control,” scholars of Chinese foreign policy have long documented that other factors -- from resource constraints to bureaucratic politics to elite discord to public opinion -- can affect how China’s foreign policy concepts and slogans are actually transformed into policy, both at home and abroad. Given the stakes, however, it is worth understanding in detail what model China has formulated to offer, before thinking about how it might or might not translate into changes to the global democratic order.

Global Responses: Democratic Backsliding vs. Democratic Insulation

The early months of the pandemic have raised concerns that state responses will undermine global democracy and civic freedoms and reinforce the powers of repressive governments worldwide.²² In non-democracies like China, Vietnam, and Jordan, tools of authoritarian governance have been repurposed to enforce lockdowns, strengthening the surveillance and coercive capacity of

<https://www.nytimes.com/2020/04/22/business/china-coronavirus-propaganda.html>; Kate Conger, “Twitter Removes Chinese Disinformation Campaign,” *New York Times*, 11 June 2020, <https://www.nytimes.com/2020/06/11/technology/twitter-chinese-misinformation.html>; Vanessa Molter, “China’s State Media Shapes Coronavirus Convo,” *Stanford Internet Observatory*, 8 June 2020, <https://cyber.fsi.stanford.edu/news/chinese-state-media-shapes-coronavirus-convo>

²¹ “China Publishes White Paper on COVID-19 Fight,” *Xinhua*, 7 June 2020, http://www.xinhuanet.com/english/2020-06/07/c_139121660.htm

²² Frances Z. Brown, Saskia Brechenmacher, and Thomas Carothers, “How Will the Coronavirus Reshape Democracy and Governance Globally?” *Commentary*, 6 April 2020, <https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470>; see also Rachel Kleinfeld, <https://carnegieendowment.org/2020/03/31/do-authoritarian-or-democratic-countries-handle-pandemics-better-pub-81404>

the state.²³ In democracies and semi-democratic countries, concern has stemmed from events such as the cancellation of elections in Bolivia; use of curfews and censorship in Thailand; rapid expansion of surveillance in Israel; and passage of emergency decrees and expanded state powers -- some of them used to silence critics -- in Hungary, the Philippines,²⁴ and the UK, as well as throughout eastern and southern Africa.²⁵ In a number of countries, the military has been used domestically to enforce pandemic lockdowns, raising the specter of civil-military conflict or significant changes to the role of the military in domestic politics.²⁶

From this, it might be easy to assume that the expansion of health-related surveillance and police power to conduct “test and trace” and enforce lockdowns will be linked to backsliding in democracies and further autocratization in non-democracies. In the past, emergencies and security threats such as terrorism in Great Britain and northern Ireland and the 9/11 attacks in the United States have led to the passage of expansive security legislation that has restricted civil liberties in ways

²³ Yanzhong Huang, “China’s Public Health Response to the COVID-19 Crisis,” *China Leadership Monitor*, Vol. 64 (Spring 2020), <https://www.prcleader.org/huang>; Jeffrey Smith and Nic Cheeseman, “Authoritarians Are Exploiting the Coronavirus. Democracies Must Not Follow Suit,” *Foreign Policy*, 28 April 2020, <https://foreignpolicy.com/2020/04/28/authoritarians-exploiting-coronavirus-undermine-civil-liberties-democracies/>; “Vietnam introduces ‘fake news’ fines for coronavirus misinformation,” *Reuters*, 15 April 2020, <https://www.reuters.com/article/us-health-coronavirus-vietnam-security/vietnam-introduces-fake-news-fines-for-coronavirus-misinformation-idUSKCN21X0EB>; Anthony Nguyen, “Vietnam’s Government Is Using COVID-19 to Crack Down on Freedom of Expression,” *Slate*, 8 May 2020, <https://slate.com/technology/2020/05/vietnam-coronavirus-fake-news-law-social-media.html>

²⁴ CNN, “Major Philippines broadcaster regularly criticized by President Duterte forced off air,” 6 May 2020, <https://edition.cnn.com/2020/05/06/media/philippines-duterte-abs-cbn-closure-intl-hnk/index.html>; Republic of the Philippines, “Proclamation No. 922 s. 2020,” *Official Gazette*, 8 March 2020, <https://www.officialgazette.gov.ph/2020/03/08/proclamation-no-922-s-2020/>; Amnesty International, “President Duterte gives “shoot to kill” order amid pandemic response,” April 2, 2020, <https://www.amnesty.org/en/latest/news/2020/04/philippines-president-duterte-shoot-to-kill-order-pandemic/>

²⁵ Selam Gebrekidan, “For Autocrats and Others, Coronavirus is a Chance to Grab More Power,” *New York Times*, 30 March 2020, <https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html>; Carlos Shenga, “The Risk of COVID-19 Pandemic Measures to Democratic Standards in Eastern and Southern Africa,” *CPGD Policy Brief* No. 2 (May 2020), https://6054a91f-5b72-4519-970b-fdbe64e58c06.filesusr.com/ugd/96f884_676680a46f7041bfbd46aa12d5179507.pdf?fbclid=IwAR1_J2KelkyXMHdDjmCWSiBFepHox0YroRGncMYbFI3Jhl9OM9y6n6aJB3Y

²⁶ For examples, see <https://www.nytimes.com/2020/03/17/world/middleeast/coronavirus-iran-rouhani.html>; <https://www.wsj.com/articles/in-africa-fierce-enforcement-of-coronavirus-lockdowns-is-stirring-resentment-11585825403>; <https://www.reuters.com/article/us-health-coronavirus-israel/israel-to-use-military-to-help-enforce-coronavirus-lockdown-idUSKBN21E0WM>; <https://www.reuters.com/article/us-health-coronavirus-latam/military-roadblocks-curfews-latin-america-tightens-coronavirus-controls-idUSKBN2133BY>; <https://theprint.in/opinion/coronavirus-crisis-makes-it-clear-who-is-calling-the-shots-in-pakistan-military-of-course/389232/>

that subsequently proved difficult to roll back or contain.²⁷ The same dynamic exists in autocratic countries today; subnational jurisdictions of China have already proposed making the tools used to combat coronavirus permanent, such as permanent health tracking via smartphone.²⁸

Yet it is already clear that the story we are seeing is -- and certainly has the potential to be -- considerably more nuanced and democracy-protective in the longer-term. The Varieties of Democracy (V-Dem) project has identified 48 countries whose policy responses to the coronavirus place them at high risk of pandemic-related democratic backsliding, but also identified 47 countries that have instituted responses that evoke a low risk of compromising their democratic institutions.²⁹ The International Center for Non-Profit Law (ICPL) has identified issues and countries of concern, but has also profiled positive cases that can serve as examples to states seeking to craft augmented public health policies compatible with the protection of privacy, civil liberties, and democracy.³⁰

In these discussions, analysts need to take care to separate the impact of coronavirus-driven changes, such as the amplified use of health surveillance, from pre-existing trends in autocratization that were documented to be underway before the pandemic began (and which therefore cannot be attributed to the COVID-19 outbreak).³¹ The presence of multiple pathways that each produce democratic erosion is an important methodological challenge to note, as it applies both to pre-existing political conditions and to a range of policy responses to the pandemic.³² Some of the countries and leaders most highlighted for problematic responses -- Orban in Hungary, Duterte in the Philippines - - were not exactly classified as impeccably democratic prior to the coronavirus outbreak, with previous

²⁷ Laura K. Donohue, *The Costs of Counterterrorism: Power, Politics, and Liberty* (Cambridge University Press, 2008); Anna Luhrmann and Bryan Rooney, "Autocratization by Decree: States of Emergency and Democratic Decline," *Comparative Politics*, forthcoming.

²⁸ Liza Lin, "China's Plan to Make Permanent Health Tracking on Smartphones Stirs Concerns," *Wall Street Journal*, 25 May 2020, <https://www.wsj.com/articles/chinas-plan-to-make-permanent-health-tracking-on-smartphones-stirs-concern-11590422497>

²⁹ Anna Luhrmann, Amanda Edgell, and Seraphine Maerz, "Pandemic Backsliding: Does COVID-19 Put Democracy at Risk?" V-Dem Institute, *Policy Brief* No. 23 (2020), https://www.v-dem.net/media/filer_public/52/eb/52eb913a-b1ad-4e55-9b4b-3710ff70d1bf/pb_23.pdf

³⁰ International Center for Non-Profit Law, "Positive Government Responses to COVID-19," accessed 30 May 2020, <https://www.icnl.org/post/analysis/positive-government-responses-to-covid-19>

³¹ Anna Luhrmann and Steffan Lindberg, "A Third Wave of Autocratization," *Democratization*, Vol. 26, No. 7 (2019), pp. 105-1113.

³² On equifinality, see Alexander George and Andrew Bennett, *Case Studies and Theory Development in Social Sciences* (MIT, 2005).

behavior that raised concerns, or prompted changes in the classification of democracy in these countries that predated the pandemic. Multiple *additional* policy pathways, however, could link pandemic response itself to democratic erosion; the use of surveillance technology beyond what is necessary, proportional, and temporary is just one of these. Others include implementation of policies that discriminate against sick individuals or particular groups; limits on media freedom and freedom of expression; repression and abuse by military, police, or other security forces during lockdown enforcement; and the pandemic somehow contributing to the rise, or further consolidation of power by, populist leaders who use health crisis conditions to maneuver to strengthen their personal power through populist aggrandizement and emergency decree.

In fact, early data suggests that the main effect of the pandemic has been to accelerate existing political trends. In Asia, for example, V-Dem's pandemic response index measures "the degree to which democratic standards for emergency measures are violated by government responses to Covid-19," using a nine-part index.³³ Preliminary analysis of this index finds that Asian democracies have instituted fewer freedom-violating measures, and shows strong correlations between measures of liberal democracy and the pandemic response index, in Asia and worldwide (see Figures 1-3).³⁴

Figure 1: COVID-19 Response and Pandemic Backsliding in Asia By Country

³³ The nine measures include "expansion of executive power without sunset clause and oversight; discriminatory measures; derogation of non-derogable rights (ICCPR); restrictions of media freedom; punishments for violating these restrictions; limitations of electoral freedom and fairness; disproportionate limitations of the role of the legislature; disproportionate limitations of judicial oversight, and arbitrary and abusive enforcement." See Matthew Charles Wilson and Staffan Lindberg, "Democracy and Freedom during COVID-19 1.0," V-Dem Institute, 2020, <https://www.v-dem.net/en/our-work/research-projects/pandemic-backsliding/>.

³⁴ Tweet by Steven Denney, <https://twitter.com/StevenDenney86/status/1268324034996994049?s=20>

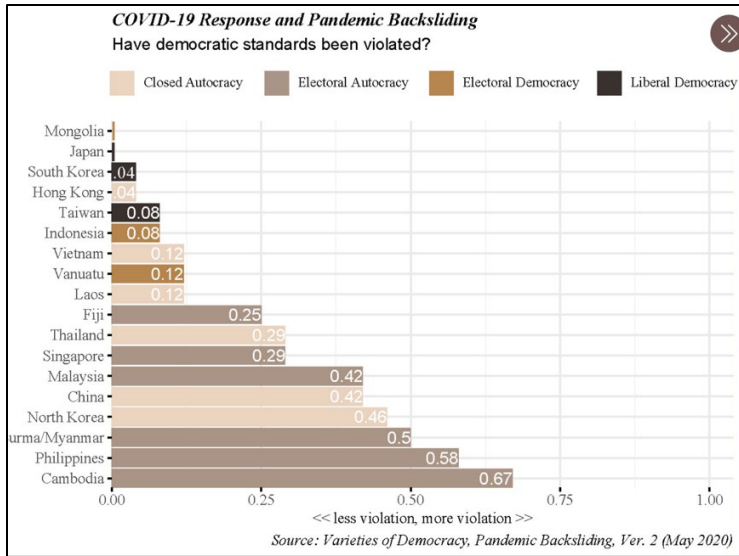


Figure 2: Association between Liberal Democracy & Pandemic Response in Asia

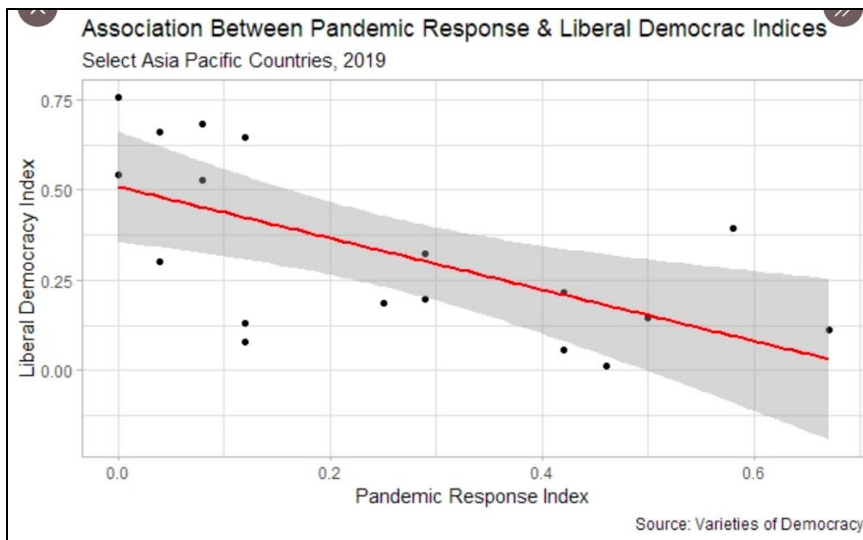
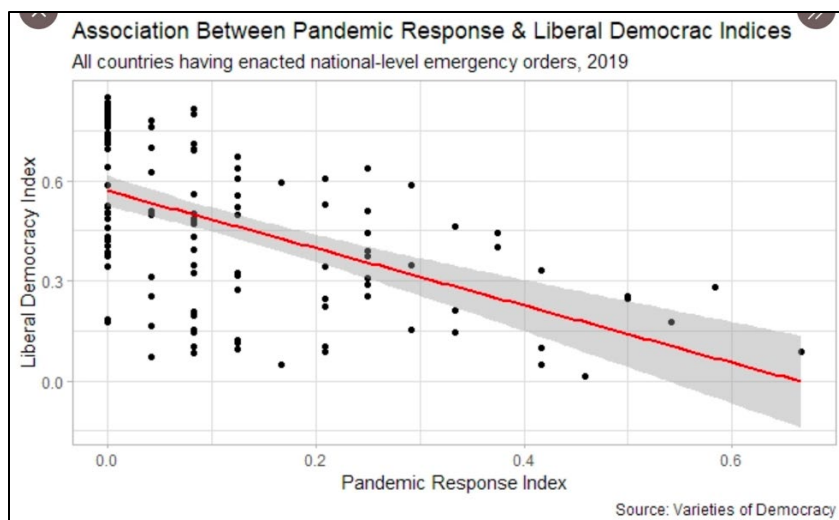


Figure 3: Association between Liberal Democracy & Pandemic Response Globally



What the V-Dem data suggest is that consolidated democracies -- especially those with substantial pre-existing limits on executive power -- are likely to pass fewer coronavirus-related measures that threaten the quality of democratic institutions or compromise civil liberties. Thus far, the pandemic seems to be accelerating existing governance trends, rather than prompting countries to reverse or change course. As Aurel Croissant puts it, at least in Asia, the highest risks are to “democracies with pre-existing conditions,” (as well as to the citizens of electoral or full autocracies, whose rights are already severely restricted).³⁵ Risks to democracy, therefore, may be overstated.

Understanding Democracy-Compatible Responses

Alongside analyzing the risks to democracy posed by COVID-19, scholars and policymakers should also examine cases where consolidated democracies have succeeded in combining effective pandemic response with safeguarding of civil liberties and democratic institutions. In Asia, this includes three of the United States’ closest allies and security partners: Japan, Taiwan, and South Korea. It is important to note at the start that saying that these democracies have limited political risks does not mean that they have eschewed surveillance or emergency decree entirely: indeed, these countries have relied on both tools as components of their COVID-19 response, with real tradeoffs and

³⁵ Aurel Croissant, “Democracies with Pre-Existing Conditions and the Coronavirus in the Indo-Pacific,” Asan Institute, 6 June 2020, <http://www.theasanforum.org/democracies-with-preexisting-conditions-and-the-coronavirus-in-the-indo-pacific/>

compromises for personal and data privacy.³⁶ Taiwan, for example, avoided both lockdowns and mass mandatory testing by pursuing a strategy that relied heavily on digital surveillance tools: linking data help by the National Health Insurance and Immigration/Customs authorities to identify potential cases, conduct contact tracing, implement quarantine surveillance, and monitor citizens' mobility patterns using government-issued cell phones.³⁷ In South Korea, similar quarantines were maintained by requiring users to install a mandatory app that tracked the user's location, sometimes checking it dozens of times a day, with warrantless remote access permitted in new regulations that followed the deaths of 39 people in a MERS outbreak in 2015.³⁸

What, then, are the measures by which these democracies have protected democracy and civil liberties in managing their COVID-19 outbreaks? Generally, effective countries have followed three criteria: measures have been necessary and proportional, they have been temporally limited, and they have been subject to democratic processes of review, typically through either legislative or judicial oversight on executive action. Processes have been *proportional* because the technology has, generally speaking, been used to identify patients, separate the sick from the healthy, and determine risk levels stratified by subset of the population.³⁹ While these tools require surveillance, they are used to limit the application of greater restrictions on mobility, commerce, and human interaction to a narrower subset of individuals confirmed to pose a risk to others, thereby avoiding the civil liberties violations that occur during extended mass lockdown.

Use of the data collected by surveillance tech for coronavirus management has also been *temporally limited* and *limited in scope of access* -- both in terms of the time that data can be retained and the

³⁶ Natasha Singer and Choe Sang-Hun, "As Coronavirus Surveillance Escalates, Personal Privacy Plummet," *The New York Times*, 23 March 2020, <https://www.nytimes.com/2020/03/23/technology/coronavirus-surveillance-tracking-privacy.html>; <https://www.taiwannews.com.tw/en/news/3899718>; Shui-yin Sharon Yam, "Coronavirus and surveillance tech: how far will gov'ts go and will they stay when they get there?" *Hong Kong Free Press*, 24 March 2020, <https://hongkongfp.com/2020/03/24/coronavirus-surveillance-tech-far-will-govts-go-will-return-freedoms-people/>

³⁷ Nicholas Martin, "The Role of Digital Tools in Taiwan's Response to COVID-19," *Forum Privatheit*, 1 May 2020, <https://corona.forum-privatheit.de/the-role-of-digital-tools-in-taiwans-response-to-covid-19/>;

³⁸ William Gallo, "South Korea's Coronavirus Plan is Working. Can the World Copy It?" *Voice of America*, 23 March 2020, <https://www.voanews.com/science-health/coronavirus-outbreak/south-koreas-coronavirus-plan-working-can-world-copy-it>; see also <https://twitter.com/michaelvkim/status/1258987354934538248>;

³⁹ Mira Rapp Hooper and Samm Sacks, "Technology Can Help Solve the Coronavirus if Government Steps Up," *Foreign Affairs* (Spring 2020).

number of government actors who can access it. Taiwan, for example, requires personal data to be deleted after the 14-day quarantine period, and has said that it will erase the whole monitoring system after the pandemic has passed.⁴⁰ South Korea has also placed temporal and bureaucratic scope-limits on digital data collection and retention. It has stated that only a few government officials can access the data integration platform, that their activities on the platform are monitored closely to avoid misuse, and that the government will delete all personal data once the outbreak has subsided, as required by law.⁴¹ During the outbreak, when critics expressed concern that the government's transparency procedures were resulting in the disclosure of personally identifiable data, the National Human Rights Commission issued a recommendation on limiting the scope and type of information disclosed; the Korea Center for Disease Control amended its regulations five days later.⁴²

Finally, these countries also meet the criteria that pandemic response measures should be *subject to democratic review*. Taiwan's approach, developed during the 2003 SARS outbreak and subsequently ratified by the Constitutional Court, has a significant role for both judicial review and legislative ratification of policies adopted under emergency health conditions.⁴³ The government has also announced that it will conduct audits to confirm that no information has been inappropriately retained. When pressed publicly about whether Taiwan needed new tools, President Tsai Ing-wen specifically mentioned a desire to work within the scope of existing powers, and the belief that these gave Taiwan the ability to combat the pandemic without new legal empowerment. South Korea, too, learned from the MERS outbreak in 2015 to create what one analyst called a "bespoke legal regime

⁴⁰ Wen-Chen Chang, "Taiwan's Fight Against COVID-19: Constitutionalism, Laws, and the Global Pandemic," *Verfassungsblog*, 21 March 2020, <https://verfassungsblog.de/taiwans-fight-against-covid-19-constitutionalism-laws-and-the-global-pandemic/>

⁴¹ *Yonhap*, "FM Kang Explains S. Korea's Quarantine Efforts during UN-ITU Videoconference," 14 May 2020, <https://en.yna.co.kr/view/AEN20200514001200325?section=news>; see also Twitter thread by Raphael Rashid, (17 April 2020), <https://twitter.com/koryodynasty/status/1251348652070592516>

⁴² Sangchul Park, Gina Jeehyun Choi, and Haksoo Ko, "Information Technology-Based Tracing Strategy in Response to COVID-19 in South Korea: Privacy Controversies," *Journal of the American Medical Association*, 23 April 2020, <https://jamanetwork.com/journals/jama/fullarticle/2765252>

⁴³ C. Jason Wang, Chung Ng, Robert Brook, "Response to COVID-19 in Taiwan," *Journal of the American Medical Association*, 3 March 2020, <https://jamanetwork.com/journals/jama/fullarticle/2762689>; Nicholas Martin, "The Role of Digital Tools in Taiwan's Response to COVID-19," *Forum Privatheit*, 1 May 2020, <https://corona.forum-privatheit.de/the-role-of-digital-tools-in-taiwans-response-to-covid-19/>; Wen-Chen Chang, "Taiwan's Fight Against COVID-19: Constitutionalism, Laws, and the Global Pandemic," *Verfassungsblog*, 21 March 2020, <https://verfassungsblog.de/taiwans-fight-against-covid-19-constitutionalism-laws-and-the-global-pandemic/>

tailored to meet the demands of an infectious disease outbreak.”⁴⁴ In addition to empowering the warrantless surveillance and policing powers outlined above, the Infectious Disease Control and Prevention Act places limits on government action and levies additional requirements for transparency. For example, in addition to the requirement to delete data once “relevant tasks have been completed,” it requires that the government notify persons when they are placed under surveillance; allows the government to require testing but also endows citizens with the right to diagnosis and treatment (and requires the government to pay); and requires the health minister to disclose certain information to the public for purposes of accountability.⁴⁵

Implications for Global Norms and Standards

What are the implications for global democratic order (or the U.S.-led liberal international order, as it is commonly referred to)? The first step in answering this question is to be precise about which facet of international order we mean; as Iain Johnston has pointed out, the concept of “international order” actually encompasses multiple, domain-specific, overlapping but distinguishable networks, meaning that any discussion of whether a phenomenon challenges international order should begin by specifying which order is salient.⁴⁶

The data above about the diversity of responses to COVID -19, and the fact that the degree to which responses threaten democratic institutions and civil liberties correlates strongly with pre-existing regime type, suggests that the danger to global democratic norms is somewhat bounded. That said, however, if the function of the pandemic is to accelerate existing trends, however, then its impact on global norms and order are more concerning. In this realm, China has already begun to play a critical role in shaping the norms and mechanisms that govern the use of technologies such as facial recognition, to the concern of international watchdogs interested in human rights and freedoms

⁴⁴ Brian Kim, “Lessons for America: How South Korean Authorities Used Law to Fight Coronavirus,” *Lawfare*, 16 March 2020, <https://www.lawfareblog.com/lessons-america-how-south-korean-authorities-used-law-fight-coronavirus>

⁴⁵ Republic of Korea, *Infectious Disease Control and Prevention Act*, Act No. 14316 (December 2016; effective June 2017), <http://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=188080&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>

⁴⁶ Alastair Iain Johnston, “China in a World of Orders: Rethinking Compliance and Challenge in Beijing’s International Relations,” *International Security*, Vol 44, No. 2 (Fall 2019), pp. 9–60.

worldwide.⁴⁷ For example, David Kaye, the UN’s Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, recently sounded an alarm on the unregulated use of “technology that is causing immediate and regular harm to individuals and organizations that are essential to democratic life.”⁴⁸ He called for the development of global standards and publicly-owned mechanisms to limit both the domestic use and international export of private surveillance technology.

To the extent that international standards have been set thus far, however, they are not ones especially conducive to democracy. The PRC has pursued a strategic approach to technological standard-setting, organizing domestic actors (including multiple ministries and major Chinese tech companies) to develop China’s proposals for domestic standards on issues like 5G and AI; it has then actively and strategically promoted its vision of standards in different international fora.⁴⁹ As a result, Chinese companies appear to be outpacing the United States, and other countries, in setting emerging global standards for the use of surveillance technologies. The *Financial Times*, for example, reported in late 2019 that Chinese tech companies had made the only submissions to the UN’s International Telecommunications Union (ITU) for international standards in surveillance technology since 2016; half of those proposals have since been approved.⁵⁰ China’s active engagement and leadership at the ITU, as well as in other international technology standard-setting bodies, has helped it to quietly and quickly shape the global regulatory environment in its favor. Indeed, materials on the ITU’s webpage have highlighted China’s use (and others’) of mobile phone contact tracing initiatives as an example of “an effective way of containing the spread of the disease.”⁵¹ This strategy likely to assist its companies in maintaining or increasing their access to markets worldwide; that, in turn, will lead to

⁴⁷ Parts of this paragraph and the two following are drawn from Sheena Chestnut Greitens, “Dealing With Global Demand for China’s Surveillance Exports,” Brookings Global China project, April 2020,

⁴⁸ “Moratorium call on surveillance technology to end ‘free-for-all’ abuses: UN Expert,” United Nations, June 25, 2019, <https://news.un.org/en/story/2019/06/1041231>.

⁴⁹ Elsa Kania, “China’s play for global 5G dominance—standards and the ‘Digital Silk Road,’” Australian Strategic Policy Institute, June 27, 2018, <https://www.aspistrategist.org.au/chinas-play-for-global-5g-dominance-standards-and-the-digital-silk-road/>.

⁵⁰ Anna Gross and Madhumita Murgia, “China Shows its Dominance in Surveillance Technology,” *Financial Times*, December 26, 2019, <https://www.ft.com/content/b34d8ff8-21b4-11ea-92da-f0c92e957a96>.

⁵¹ See “3 key areas innovative tech is helping during the COVID-19 pandemic,” International Telecommunications Union, April 17, 2020, <https://news.itu.int/3-ways-innovative-tech-is-helping-during-the-covid-19-pandemic/>.

domestically-based, bottom-up acceptance of Chinese standards in an increasing number of countries around the world.

It is in the interest of the United States to have global norms and standards on the use and export of surveillance technology, especially emerging technologies of health surveillance, that are compatible with democracy and limited government. To accomplish that, the U.S. urgently needs a comprehensive strategy for shaping global regulatory frameworks in ways that are compatible with American values and interests. American policymakers must decide which forums can and should set standards for which technologies, and then work collaboratively but aggressively to promote standards that are compatible with human rights, civil liberties, privacy, and democracy.⁵² This effort could be led by the State Department’s International Communications and Information Policy team, but -- given the nature of the policy issue and the current status of this dimension of international order -- would also benefit from effective interagency collaboration and high-level leadership.

Moreover, the more that the United States can collaborate in setting this strategy with like-minded democratic partners, the better its chances of success will be; for example, the European Union’s important role in regulatory norms and standard-setting make it a prime candidate for this kind of mutually beneficial partnership.⁵³ In the Indo-Pacific, key U.S. allies and partners in the region have distinguished themselves already in combining effective pandemic management with democratic processes: ROK Foreign Minister Kang Kyung-hwa recently presented South Korea’s approach to the UN’s International Telecommunication Union as a positive case study in coronavirus management.⁵⁴ The United States can amplify and promote this expertise in international fora, and should consider convening partners in Asia and Europe to develop a set of best practices that can be promoted worldwide. Given that the risks are particularly high for weak democracies (those with “pre-existing conditions”), the United States should also consider deploying, and asking its partners to deploy, foreign assistance programs and funding to work with emerging, weak, or backsliding

⁵² That the United States should think carefully, strategically, and creatively about available forums does not mean that it can unilaterally choose which forums to care about; given how far the discussion has evolved already, some forums — like the ITU — are not going to be discretionary. In that case, the United States needs a clear and active plan for robust multilateral engagement.

⁵³ For a discussion of the EU’s role, see Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford: Oxford University Press, 2020).

⁵⁴ *Yonhap*, “FM Kang Explains S. Korea’s Quarantine Efforts during UN-ITU Videoconference,” 14 May 2020, <https://en.yna.co.kr/view/AEN20200514001200325?section=news>

democracies. This assistance could be focused on crafting legal and regulatory safeguards around the use of health surveillance technologies with a priority on protecting citizen rights and democratic institutions.

Conclusions & Future Research

To what extent has the COVID-19 outbreak, and the augmented use of health surveillance technology that has resulted from it, altered global conceptions of civil liberties, privacy, and democracy? In China, the outbreak has strengthened and advanced a pre-existing authoritarian project that relied on emerging technologies and data to implement Xi Jinping's "prevention and control" doctrine with respect to Chinese society. But similar tools have been employed by democracies, including several that have become international models for their successful handling of the public health crisis introduced by the coronavirus. The two successful democracies examined here -- Taiwan and South Korea -- had political frameworks developed in advance for infectious disease outbreaks, giving these polities time to consider, before the coronavirus outbreak, what powers the government could assume and what information it could collect in a health emergency; what limits citizens would place on government collection and retention of their information; and how oversight and enforcement of these limits would be implemented. These limits have stayed in place as both countries have navigated the pandemic, with relatively high effectiveness.

Thus it is clear that a model exists in which democratic institutions and civil liberties can be reconciled with successful coronavirus management. Less clear, however, is that that model will become the global norm, or that the self-limiting practices of democracies will translate into either global governance or global order in the realm of surveillance technology. If the COVID-19 crisis amplifies existing trends in the international system, it is more likely to propagate Chinese norms about the use of health surveillance technology than the democratically-compatible practices of the U.S. allies neighboring China. If the United States wants to ensure that the international norms and standards around surveillance, privacy, and civil liberties remain compatible with American interests and American values, it urgently needs a comprehensive and multifaceted strategy to achieve that goal.

Development of that strategy would be further assisted by answers to some additional questions. Across the global community of democracies, how many have existing legal frameworks to accommodate responses to infectious disease emergencies -- and how many are developing them in response to the challenges posed by COVID-19 in 2020? What measures proposed in these discussions

place adequate temporal limits and scope conditions on the collection, use, and retention of citizens' data, to ensure that measures taken are necessary, proportionate, temporally limited, and subject to mechanisms of democratic oversight? What are the best international fora in which to regulate and develop standards for the use of health surveillance technology, and what tools would ensure that democratic approaches prevail within these fora? The answers to these and other questions will help us continue to assess the pandemic's impact on civil liberties and democracy around the world -- and, more importantly, to identify and assess the steps that can be taken to combat an urgent global health crisis while also defending privacy, civil liberties, and democratic freedoms.