

Surveillance, Security, & Liberal Democracy in the Post-COVID World

Sheena Chestnut Greitens

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Will the outbreak of COVID-19 mark a sea change in countries' approach to surveillance, civil liberties, and policies at the intersection of public health and public security? If so, how will these changes affect governance in democratic and authoritarian political systems worldwide, and the international standards and norms that emerge from these patterns?

Less than a year into the pandemic, COVID-19 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. Its impact includes the United States: according to one survey, by April 2020 a majority of Americans viewed infectious disease as a greater threat to the United States than terrorism, nuclear weapons proliferation, or the rise of China,¹ sparking calls to treat health security as a more urgent priority alongside more conventional security threats. Indeed, this year has seen global debate over whether the pandemic will be an inflection point in world politics, or whether international relations will largely return to business as usual (Finnemore et al 2020). One important aspect of this debate is how much the pandemic is likely to change patterns of liberal and illiberal governance, and the global balance of democracy and dictatorship.

In the months following the outbreak in Wuhan, over 80 countries adopted emergency policies to address the coronavirus, with widely varying effects on citizen liberties and political participation.² Some countries instituted strict lockdowns, confining citizens to home or sharply limiting assembly and travel. Others adopted fewer of these restrictions, but employed intensive monitoring and "test and trace" approaches. Still others pursued combinations of the two approaches. And although democracies have, on average, been less likely to violate democratic standards and infringe citizen rights, their responses have been heterogeneous: some have expanded executive emergency powers while others have not, some have delayed elections while others did not, and some have employed intensive monitoring while others have not. Adding policy responses from hybrid regimes and non-democracies produces even wider variation. Cumulatively, this variation reinforces the need to examine how the pandemic might impact global liberalism and democracy.

Because the pandemic started in China -- the world's largest autocracy -- the People's Republic of China (PRC) has had a head start in crafting and promoting its model of pandemic response around

¹ CPI 2020; see also Elbe 2010.

² ICNPL 2020.

the world, meaning that the first-mover role is held by an autocracy. It is also a decidedly illiberal autocracy that was -- prior to the coronavirus outbreak -- already actively pursuing a techno-surveillance state of remarkable ambition at home, exporting those technologies around the world, and pursuing a position of nascent dominance in global standard-setting and regulation of emerging surveillance technologies.³ Pre-existing concern about these steps in the PRC, combined with the expanded use of surveillance as a global component of pandemic response and Beijing's willingness to advertise itself as a model of pandemic response for other countries, have raised concerns among policymakers and pundits about the future of civil liberties and democracy.⁴

This essay suggests that some of these concerns are warranted: China's position in the international system makes it more likely that illiberal approaches to governance will spread, and the pandemic has contributed to violations of democratic standards and human rights in a number of countries. Conversely, however, other factors in the international system -- such as the fact that many aspects of China's governance structure are not replicated much elsewhere -- will likely act to limit the transferability and diffusion of China's model. Moreover, it is important to note that surveillance is not synonymous with autocracy: where surveillance has been employed but subjected to rule of law and liberal institutions, its impact on democracy has been relatively limited. The pandemic's impact, therefore, is likely to be cross-cutting and multi-faceted, and patterns of change in liberal vs. illiberal politics may not be as cleanly aligned with changes to global democracy and autocracy as one might initially think.⁵

This article proceeds in five sections. It first traces the development of the “prevention and control” model that China has employed in response to COVID -19, showing that it relies heavily on an interweaving of public health with authoritarian tools of surveillance, policing, and securitization. Second, the article reviews what scholarship on international diffusion predicts for the spread of China’s model, showing that it identifies both prospective patterns and significant limits on any potential diffusion process. The third section examines the pandemic’s initial effect on democracy, showing that it has primarily accelerated existing trends; that threats to democratic erosion often come from mechanisms other than surveillance; and that consolidated democracies have experienced

³ Greitens 2019; Greitens 2020.

⁴ Wright 2020; Cordero and Fontaine 2020; Frederick 2020.

⁵ On this point, see Hyde and Saunders 2020.

relatively minimal levels of democratic violation, while risks are greater in autocracies and weakly democratic or hybrid regimes. The fourth section analyzes the use of surveillance in democracies. It shows that democratic societies have used heterogenous technological solutions, but where they have adhered to principles of proportionality, temporal and scope limitation, and democratic review, the effect has been democracy-protective: norms, institutions, and public opinion have all worked in tandem to insulate democracies from pandemic-related erosion. The essay concludes with reflections on policy and suggestions for future research.

China's Illiberal Model: Fusing Public Health, Surveillance, and Security

As the epicenter of the outbreak, China provided the first model of pandemic response for COVID-19, and one that was explicitly both illiberal and autocratic. Public health, surveillance, and state police power have been intertwined from the first days of the crisis.⁶ The Chinese term for the PRC's approach to the coronavirus is “prevention and control” (*fangkong*, 防控), a term that appears in the full name of the Chinese CDC, was used in previous infectious disease outbreaks,⁷ and has been used frequently by Xi Jinping and other senior leaders to describe China's approach from January through the late spring.⁸

As a concept, however, *fangkong* actually originated from the realm of policing and social stability maintenance. PRC Minister of Public Security Tao Siju, among others, used the term to refer to internal security in the mid-1990s, and it became increasingly common in the early 2000s, as the CCP leadership pursued “prevention and control systems” to manage fast-moving, networked threats in Chinese society. One 2020 article retroactively linked *fangkong* to Xi Jinping's experience with SARS in Zhejiang, describing Xi's how effective management of provincial prevention and control efforts prompted him to “think more deeply about non-traditional security.”⁹ Under Xi Jinping's leadership,

⁶ Parts of this section draw on Greitens and Gewirtz 2020.

⁷ Gewirtz 2020.

⁸ See for example, Xi 2020; “Shisan jie quanquo renda sanci huiyi zaijing bimu [Third Session of 13th National People's Congress Closes in Beijing],” *Xinhua*, 28 May 2020, http://www.gov.cn/xinwen/2020-05/28/content_5515768.htm; “Xi Orders Fortifying Public Health Protection Network,” *Xinhua*, 25 May 2020, <http://en.people.cn/n3/2020/0525/c90000-9693925.html>; and the 15 June 2020 announcement that the State Council press briefing was cancelled due to “COVID-19 prevention and control.” <https://twitter.com/annafifield/status/1272276952204730368?s=20>

⁹ <http://politics.people.com.cn/n1/2020/0615/c1024-31746189.html>

fangkong has emerged as a central concept in the CCP's approach to social control and regime security, a shift away from the Hu-Wen discourse of “stability maintenance” (*weiwen*) that Xi-era leaders perceived as too reactive and “treating symptoms rather than addressing underlying causes.” Today, Chinese leaders describe a vision of a “three-dimensional, information-based system of prevention and control for public security.”¹⁰ Xi Jinping’s call in May 2020 for “early warning” systems and “timely and accurate monitoring” in public health directly parallels 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.

This discursive overlap signals the ways in which China’s illiberal authoritarian approach to governance was employed in pandemic response. With the outbreak of the novel coronavirus in Wuhan in late 2019, a surveillance and social control system that had been overhauled and strengthened by Xi Jinping since 2013 swung into action.¹¹ Public security officials worked with private technology companies like Alibaba and Tencent to develop a health code app that gathered data on individuals’ movements, contacts, and biometric data (such as body temperature).¹² That information was used to generate color codes that determined citizens’ access to public spaces and ability to move, but it was also shared with police and other local authorities, who merged it with existing databases and then mobilized thousands of personnel at the grassroots level to enforce local lockdowns.¹³ The Central National Security Commission, China’s top national security body, met in April -- only its third meeting since the body was established -- to discuss how best to monitor the pandemic’s impact on internal stability.¹⁴ By late spring 2020, the 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 (and in this rhetoric, successful) role in implementing prevention and control.¹⁵ Subnational jurisdictions of China have since proposed making tools used to combat

¹⁰ http://www.qstheory.cn/yaowen/2019-01/21/c_1124021825.htm

¹¹ Greitens 2019; Yanzhong Huang 2020.

¹² Tan 2020.

¹³ Cadell 2020; Zhong and Mozur 2020; Yasheng Huang 2020.

¹⁴ Ho et al 2020.

¹⁵ 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>

coronavirus, such as permanent health tracking via smartphone, permanent.¹⁶ Technological surveillance, therefore, has merged public health into China's existing architecture of social control: it has allowed citizens to regain mobility and resume daily activities, but at the cost of embedding them further into the CCP's intensive and open-ended surveillance regime.¹⁷

Other dynamics that emerged in China's response are also characteristics associated with illiberal governance (and to a lesser extent, the lack of competitive electoral processes in China's single-party regime). Local unwillingness to communicate information upwards in a transparent fashion slowed down China's response both domestically and in terms of its communication with the WHO and international community, as did the coercive silencing of whistleblowers.¹⁸ Although the CCP replaced some low and mid-level officials it said had mishandled the initial response (the most senior of whom were the party secretaries in the city of Wuhan and Hubei province), it has not publicly investigated or held accountable any of China's central leadership, and is unlikely to do so absent a system of checks-and-balances that often produce this high-level scrutiny in democracies.¹⁹ Finally, the melding of public health and public security does not just securitize public health, but also medicalizes public security, in ways that have been used in China to justify intensely intrusive and repressive policies -- most notably, likening collective detention and forced re-education camps in Xinjiang to “political immunization” against disloyalty.²⁰

The PRC has developed a model of pandemic response, therefore, which envisions a significant role for state surveillance and is deeply entwined with China's own illiberal governance. Many of the basic features of that model pre-dated the pandemic, but some of its key characteristics have been enhanced, and potentially legitimated, by China's coronavirus experience.

¹⁶ Lin 2020.

¹⁷ This tradeoff was apparent even within China during the early days of pandemic response: in Wuhan, mobility was nonexistent but citizens had privacy in confinement, while residents of Hangzhou were allowed some mobility but made significant compromises in terms of privacy.

¹⁸ Page and Wei 2020.

¹⁹ Wong 2020; Zheng 2020; see also http://www.xinhuanet.com/english/2020-02/05/c_138755872.htm.

²⁰ PRC internal security chief Meng Jianzhu, for example, likened disorder to a disease, saying, “for harmful infectious diseases, we must strike early to preventively immunize and strengthen immunity.” In Xinjiang, the Communist Youth League explicitly called for treating people “have not committed any crimes [but] are already infected by the disease.” Meng 2015; Millward 2019; Greitens et al 2020; Buckley 2019.

Will China's Model Diffuse Abroad? Lessons from IR Theory

The CCP has not just developed a model of pandemic response: it has been willing to spread that model, and in some cases has actively facilitated its adoption abroad. The regime has promoted its approach to coronavirus management using tools ranging from government-to-government outreach and export²¹ of Personal Protective Equipment (PPE) to foreign aid²² to propaganda and disinformation.²³ These tools serve a number of purposes: they help to control global narratives about spread and management of the virus; they deflect blame over its origins and early transmission; and promote positive images of China's leadership role in pandemic response. The State Council's June 2020 White 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."²⁴

But will China's model in fact spread and be adopted worldwide? If so, how and where? Much of the writing in the early months of the pandemic warned that coronavirus could usher in an expansion of digital surveillance.²⁵ Applying insights from what we already know about diffusion processes in global politics, however, suggests that diffusion is not a foregone conclusion, and that any diffusion that might occur will almost certainly not be uniform. Instead, it is likely to vary according to geographic proximity to China, regime type and sub-type, and levels of pre-existing

²¹ Lee 2020.

²² Myers and Rubin 2020.

²³ Li Yuan 2020; Conger 2020; Molter 2020.

²⁴ "China Publishes White Paper on COVID-19 Fight," *Xinhua*, 7 June 2020, http://www.xinhuanet.com/english/2020-06/07/c_139121660.htm.

It is also important to note, however, that slogans are not foreign policy: a myriad of other factors -- from resource constraints to bureaucratic politics to elite discord to public opinion -- commonly affect how China's foreign policy concepts and slogans are actually transformed into policy. The same is likely to be true over time of COVID.

²⁵ See for example, Wright 2020; Cordero and Fontaine 2020; Frederick 2020.

interaction or partnership with the PRC.²⁶ Countries that have close ties to China already, and share a similar regime type, are theoretically more likely to adopt features of Beijing's approach.

Some of what we have observed in global pandemic response is *clustering* rather than diffusion: countries that experience a common exogenous shock (pandemic onset) have adopted similar policy responses simply because they have similar resources to confront similar public health challenges. Typically, political scientists have separated clustering -- similarity of response across independent observations due to similar underlying conditions -- from diffusion, which involves interdependent observations and argues that the occurrence of some event or policy innovation in Country A (in this case a particular pandemic response in China) increases the probability of a similar outcome or policy innovation in Country B (or C, D, E, etc).²⁷ Arguing that China's model has diffused is a step beyond simply noticing clustering of similar pandemic responses; it requires observers to identify and demonstrate how developments in or actions taken by the PRC have raised the probability of similar steps being adopted in other countries.

In the contemporary international environment, we have observed some evidence of diffusion via *learning* mechanisms, particularly learning that is facilitated by global epistemic communities in medicine and public health.²⁸ Scientists around the world have looked to colleagues in other countries to identify best practices in virus response (from social distancing to mask-wearing) and assess how to adapt these practices to local contexts. At the inter-governmental level, learning has also occurred: the United States held weekly meetings in the early months of the pandemic with counterparts in (mostly) democratic countries in Asia (India, Japan, South Korea, Australia, New Zealand, and Vietnam), which shared information on the virus and discussed best practices in treatment as well as steps to address a “disinformation campaign that was being launched, in particular, from China.”²⁹ We also see some evidence of *emulation*, another diffusion mechanism, as successful democracies have served as models for others. Israel, for example, announced that it was modelling its approach to

²⁶ Zhukov and Stewart 2013.

²⁷ Elkins and Simmons 2005; Houle et al 2016.

²⁸ King 2005; Adler and Hass 1992.

²⁹ U.S. Department of State, “Deputy Secretary Biegun: Remarks at the US-India Strategic Partnership Forum,” 31 August 2020, <https://www.state.gov/deputy-secretary-biegun-remarks-at-the-u-s-india-strategic-partnership-forum/>

surveillance on that of Taiwan, and leaders of several countries called South Korean President Moon Jae-in to learn about South Korea's approach.³⁰

Thus far, however, the most obvious diffusion processes observed have not emanated specifically from China. Masks, for example, are widely used throughout East Asia, so the global adoption of mask-wearing cannot be credited to diffusion from China. As yet, the hallmarks of China's political response to the pandemic -- intensive tech surveillance coupled with mass mobilization at the grassroots/local level to ensure short periods of near-total lockdown -- are not the features of pandemic response policy that have diffused most widely.

Indeed, scholarship on global diffusion highlights not just the potential for a China' based diffusion process, but also its likely limits. Recent work, for example, demonstrates that political phenomena are more likely to diffuse to regimes that share similar institutional or other features,³¹ but the underlying institutions used in China's pandemic response are not especially common outside the PRC. As noted above, China had pursued intensive tech-based surveillance and securitization to an unusual degree prior to the coronavirus outbreak, and its approach to the pandemic relied not only on merging public health data into existing surveillance infrastructure, but on grassroots organization and mobilization of a kind that does not exist in many other regimes, even those with relatively permissive authoritarian conditions. Still other factors that are present to varying degrees around the world but are not features of the Chinese political system -- such as federalism, partisan polarization, and tolerance for individual non-compliance -- could further limit the transmissibility of China's approach.³² This suggests that even regimes that try to emulate the PRC's response are unlikely to be able to replicate it wholesale, limiting the extent and depth of global diffusion.

Although wholesale emulation seems theoretically unlikely, other elements of China's approach could spread through market mechanisms. China's tech companies already export surveillance technologies of various types to at least 80 countries, if not more, including consolidated democracies, hybrid regimes, and full autocracies.³³ These companies already had a first-mover advantage in experimenting with, testing, and fine-tuning specific health surveillance technologies.

³⁰ Aspinwall 2020.

³¹ Beissinger 2007; Goldring and Greitens 2019.

³² See Stasavage (2020), this volume.

³³ Greitens 2020.

Countries that struggle to control the coronavirus, therefore, may find themselves turning to Chinese vendors both for lack of a competitive alternative, and because some of them already have supplier-client relationships with PRC-based surveillance technology companies that were established pre-pandemic, for other reasons. The Chinese party-state's foreign policy priorities could play a role in this kind of diffusion process, but firms' market incentives are likely to play a role as well, meaning that the effect would be a somewhat different global pattern and distribution of China-originating surveillance technologies. Which mechanism drives any global diffusion process, and to what extent, is a promising topic for future inquiry.

China's model will also be more likely to spread if international organizations (IOs) facilitate a global environment conducive to China's model -- for example, by disseminating standards that tilt the global marketplace and regulatory environment in favor of China or Chinese companies. China has already, arguably, moved from being a "norm-taker" to a "norm-maker" in this domain; it had, for some time prior to COVID, been actively shaping global norms and regulations governing the development and use of surveillance technologies.³⁴ On this issue, the PRC has pursued a highly strategic approach, organizing domestic actors to develop Chinese domestic standards and then actively promoting the proposed standards in international fora.³⁵ On the eve of the pandemic, China had already begun to outpace the U.S and other countries in setting global standards for emerging surveillance technologies: as of late 2019, Chinese tech companies had made the only submissions on facial recognition to the UN's International Telecommunications Union (ITU), half of which had been approved.³⁶ Active leadership at the ITU and other technology standard-setting bodies has helped the PRC quietly and quickly shape the global regulatory environment, and COVID has provided a further opportunity to use these bodies to highlight the effectiveness of China's approach.³⁷ Going forward, leadership in terms of global regulation could help maintain or increase Chinese companies' market access; this in turn is likely to facilitate bottom-up acceptance of Chinese standards in an increasing number of countries, and make it harder for the international community to sanction China for

³⁴ Ibid.

³⁵ Kania 2018.

³⁶ Gross and Murgia 2019.

³⁷ See ITU 2020.

development and export of technologies used to violate human rights.³⁸ In that sense, China’s IO engagement could facilitate development of a strand of global order that is decidedly illiberal, and market and political mechanisms of diffusion may ultimately reinforce each other in that process.³⁹

A final factor that will shape this discussion is the structure of the international system and the presence or absence of any potential democratic alternative that could compete with or offset diffusion originating from China. At present, though some democracies have experienced notable success in controlling the coronavirus and have shared these lessons with others, there is not a single “democratic model” spreading alongside Beijing’s attempts to publicize the Chinese approach, and especially not one whose country of origin has the major power status of the PRC.⁴⁰ Previous literature suggests that the autocratic or democratic identity of global hegemons and major powers can affect worldwide prevalence of democracy; the future structure of the international system may therefore also favor the spread of a Chinese model (with the caveats and constraints described above) unless another major power can offer an alternative.⁴¹

Beyond Diffusion: Democratic Erosion & Democratic Insulation

Even if China’s model of illiberal authoritarian response to COVID-19 does not diffuse, the pandemic could have negative effects on global patterns of democracy via other pathways. During the early months of 2020, media and policy analysis expressed concern that the pandemic would undermine global democracy and reinforce the powers of repressive governments worldwide.⁴² They highlighted cases like China’s where tools of authoritarian governance were being repurposed to

³⁸ 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,” and called for development of global standards and publicly-owned mechanisms to limit both the domestic use and international export of private surveillance technology. UN 2019.

³⁹ As Johnston (2019) notes, the concept of “international order” actually encompasses multiple, domain-specific, overlapping but distinguishable networks.

⁴⁰ ROK Foreign Minister Kang Kyung-hwa did present South Korea’s approach to the UN’s International Telecommunication Union as a positive case study in coronavirus management. *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>

⁴¹ Boix 2011.

⁴² Brown et al 2020; [Smith and Cheeseman 2020](#); Kleinfeld 2020.

enforce lockdowns, strengthening the regime's surveillance and coercive capacity in the process.⁴³ In democracies and semi-democratic countries, analysts highlighted events such as the cancellation of elections (Bolivia); application of curfews, censorship, and media constraints (Thailand, India); rapid expansion of surveillance (Israel); and passage of emergency decrees and expanded executive powers, some used to silence critics (Hungary, the Philippines,⁴⁴ and countries in eastern and southern Africa).⁴⁵ Domestic use of the military to enforce lockdowns (as in Central & South America) also raised the specter of civil-military dysfunction and military intervention in domestic or civilian political life.⁴⁶ Overlaying all this was the concern, based on evidence about the stickiness of emergency powers and security measures adopted under crisis in the past, that restrictions intended to be temporary would in practice be difficult to roll back or contain (a dynamic explored in more detail in David Stasavage's excellent contribution to this special issue).⁴⁷

Just as civil liberties are an important component of democracy, but not its only defining attribute,⁴⁸ health surveillance encroachment on civil liberties is not the only mechanism by which the pandemic could produce democratic erosion or autocratization. Other pathways include limits on media reporting and/or censorship of information; military intervention into civilian politics; repression and abuse by police or other security forces during lockdown enforcement; and discrimination against sick individuals or particular groups as a result of pandemic politics. The pandemic could also contribute to the rise, or consolidation of power by, populist leaders who use moments of health and economic crisis to strengthen personal rule through manipulation of standard

⁴³ Smith and Cheeseman 2020; Wright 2020; Nguyen 2020; “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>;

⁴⁴ Amnesty International 2020; “Major Philippines broadcaster regularly criticized by President Duterte forced off air,” CNN, 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/>;

⁴⁵ Gebrekidan 2020; Shenga 2020.

⁴⁶ The irregularity and infrequency of coups makes it difficult to ascertain at the time of writing whether these fears will prove warranted. For examples, see Fassihi 2020; Parkinson and Bariyo 2020; Siddiqa 2020; Aquino et al 2020; Ayyub 2020.

⁴⁷ Stasavage 2020; see also Donohue 2008; Luhrmann and Rooney, forthcoming.

⁴⁸ Typical conceptions of democracy emphasize at least three conceptual components: participation, competition, and civil liberties. On this issue, see Karl and Schmitter 1991.

democratic constraints and electoral processes, or who use emergency degrees to aggrandize executive power that outlasts pandemic conditions.⁴⁹

The presence of multiple pathways that could produce democratic erosion is an important methodological challenge. Not only should these pathways be clearly identified where possible, in order to better understand the precise risks the pandemic poses to global democracy, but our analysis must also take into account the fact that a number of global trends toward autocratization pre-dated the outbreak.⁵⁰ Not all autocratization in 2020 (or after) will be attributable to the pandemic. Some of the countries and leaders highlighted for problematic responses thus far -- such as Orban in Hungary or Duterte in the Philippines -- were not impeccably democratic beforehand: they exhibited behavior that raised concerns or even prompted changes in the classification of democracy prior to the discovery and spread of coronavirus. Other concerns that have appeared contemporaneously with the pandemic are, upon closer scrutiny, unrelated to it (as appears to be the case with South Korea today).⁵¹

Yet the pandemic may also be a reinforcing or permissive factor. It can provide justification for expansion of surveillance in a full authoritarian regime, enhancing its repressive capacity. In a hybrid regime or weak democracy, the pandemic could provide pretext for weakening media laws or distortion of civil-military relations, paving the way toward incumbent takeover.⁵² These counterfactuals are tricky: knowing which trends would have existed without the pandemic, which have been exacerbated by it, and which would not have appeared otherwise and so are directly brought into being by the pandemic, will be an ongoing intellectual and methodological challenge. In assessing the virus' impact on democratic corrosion, analysts must think carefully about how pre-existing and parallel-but-separate political trends should be weighted against pandemic-specific policy responses.⁵³

Although the outbreak raised clear concerns about democratic erosion and autocratization, cited above, reality during the first months of pandemic response has been considerably more nuanced. Early data suggests that the pandemic's main effect has been to deepen existing political trends. The

⁴⁹ Levitsky and Ziblatt 2018; Bermeo 2018; Luhrmann and Rooney, forthcoming; on economic crisis and regime change see Geddes 1999; Haggard and Kaufman 2016.

⁵⁰ Luhrmann and Lindberg 2019; Hyde 2020; Waldner and Lust 2018.

⁵¹ Shin 2020.

⁵² Svolik 2015.

⁵³ On equifinality, see George and Bennett 2005.

Varieties of Democracy project (V-Dem) has created a Pandemic Democratic Violations Index and Pandemic Backsliding Index, which measure “the degree to which democratic standards for emergency measures are violated by government responses to Covid-19.”⁵⁴ The project examines six major types of violations of democratic standards, including 1) emergency measures without a time-limit; 2) discriminatory measures; 3) *de jure* violation of what the International Covenant on Civil and Political Rights (ICCPR) defines as “non-derogable” rights;⁵⁵ 4) restriction of media freedom; 5) disproportionate limits on legislative power; and 6) abusive enforcement. Although the project has identified places where weakly democratic governments appear to be using the pandemic to erode democratic institutions and civil liberties, it also finds that the most severe pandemic-related restrictions have been applied in places that are already fully autocratic; conversely, two-thirds of democracies have implemented emergency measures without significantly compromising or violating their democratic standards.⁵⁶

The region where geographically-based diffusion of a China model should be most pronounced is Asia,⁵⁷ but preliminary evidence from the region in fact suggests that geographically-driven diffusion of China’s approach has either not occurred, or not undermined democracy in significant ways. Across the region, there is strong correlation between measures of liberal democracy and of pandemic response, suggesting that violations have been more severe in the regime types already prone to violations of rights -- full or electoral autocracies.

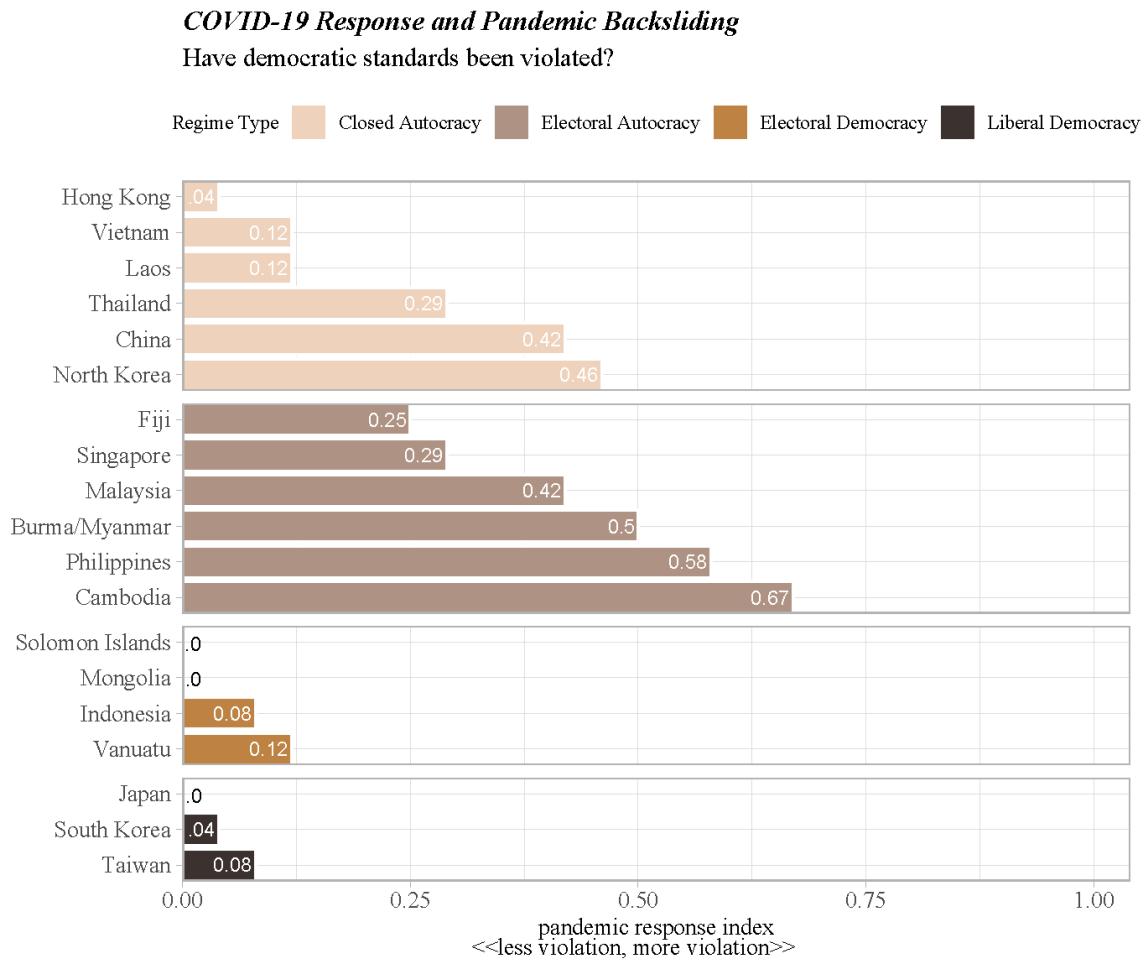
⁵⁴ The index originally examined nine measures: “expansion of executive power without sunset clause and oversight; discriminatory measures; derogation of non-derogable rights (ICCPR); restrictions of media freedom; punishments for violating these restrictions; limitations of electoral freedom and fairness; disproportionate limitations of the role of the legislature; disproportionate limitations of judicial oversight; and arbitrary and abusive enforcement.” See Wilson and Lindberg 2020.

⁵⁵ Non-derogable rights are rights (similar to inalienable rights) that cannot be taken away or compromised by the state even in cases of emergency. In customary international law, this includes the right to life, the right to be free from torture or inhumane treatment, the right to be free from slavery, and the right to be free from retroactive application of penal laws.

⁵⁶ Edgell et al 2020. Similarly, the International Center for Non-Profit Law (ICNPL) identified issues and countries of concern, but also profiled positive cases where states have augmented public health policies compatible with the protection of privacy, civil liberties, and democracy. ICNPL 2020.

⁵⁷ For a review of the conventional wisdom that geography is an important driver of democratic diffusion, and a theoretical and empirical challenge to that conventional wisdom, see Goldring and Greitens 2019.

Figure 1: COVID-19 Response and Pandemic Backsliding in Asia By Country⁵⁸



Sources: *Varieties of Democracy, Pandemic Backsliding, Ver. 2 (May 2020)* & *V-Dem, Ver. 10*

Similar trends appear to have played out globally in the pandemic's first nine months. As Aurel Croissant argues, the highest pandemic-induced risks appear to be either to citizens of autocracies or to those in "democracies with pre-existing conditions."⁵⁹ At the time of writing, consolidated democracies -- especially those with substantial pre-existing limits on executive power and robust civil societies -- had passed fewer coronavirus-related measures that threatened the quality of democratic institutions or compromised civil liberties.

⁵⁸ Figure reprinted with author's permission from Denney 2020.

⁵⁹ Croissant 2020.

Surveillance and Democracy: Understanding Democracy-Compatible Pandemic Response

How have consolidated democracies responded to the crisis conditions imposed by the pandemic without compromising the standards and quality of their democracies? The answer is *not* that democracies have eschewed surveillance , or avoided tradeoffs and compromises on personal and data privacy. Privacy is a topic of ongoing debate in many contemporary democracies, and faced with COVID-19, most democratic countries employed some tracking or surveillance regimen.⁶⁰ Taiwan’s response, for example, relied heavily on digital surveillance: data held by the National Health Insurance system was linked to data collected by Immigration/Customs and used to identify potential cases, conduct contact tracing, implement quarantine surveillance, and monitor citizens’ mobility patterns using government-issued cell phones.⁶¹ Health records were also mined retroactively to identify, test, and treat individuals who had reported non-flu respiratory illness in the weeks before the outbreak became public. In South Korea, similar quarantines were maintained by requiring users to install an app that tracked the user’s location, sometimes checking dozens of times a day, under post-2015 regulations that allowed warrantless remote access.⁶² Yet both countries score well in terms of having avoided any kind of pandemic-related democratic erosion. How?

Successful democratic responses have generally adhered to three criteria: 1) measures adopted have been necessary and proportional; 2) they have been temporally limited and limited in scope; and 3) they have been subject to democratic processes of review and accountability. Moreover, in some democracies, though not all, surveillance and monitoring are explicitly linked to positive citizen rights, such as the right to testing and treatment. Norms, institutions, and public opinion have jointly contributed to democracy-protective responses.

Policy responses have been *proportional* because surveillance technology has, generally speaking, been used by democracies to identify patients, separate the sick from the healthy, and determine risk levels stratified by subset of the population.⁶³ More extended periods of surveillance have been limited to a subset of individuals confirmed to pose a risk to others, with the boundaries of this subset

⁶⁰ Singer and Choe 2020; Yam 2020.

⁶¹ Martin 2020.

⁶² These regulations followed the deaths of 39 people in a MERS outbreak in 2015. Gallo 2020; see also <https://twitter.com/michaelvkim/status/1258987354934538248>;

⁶³ Rapp-Hooper and Sacks 2020.

specified in law, and implemented with the intent of limiting other rights violations that could be considered equally or more severe, such as violations of citizen rights to mobility, commerce, assembly, and welfare that accompany widespread illness and/or mandatory lockdown. The negative frame is also helpful here: democracies have generally *not* employed surveillance technologies to target, harass, or curtail the freedom of the executive's political opponents in particular.

Access to and use of the data collected by surveillance tech for coronavirus management in democracies has also been *temporally limited* and *limited in scope of access* -- in other words, both the time that data can be retained and who can access it are circumscribed. Taiwan, for example, requires personal data to be deleted after the 14-day quarantine period ends; the government has announced that it will erase the whole monitoring system after the pandemic has passed and conduct audits to confirm that no data has been inappropriately retained.⁶⁴ Digital Minister Audrey Tang has argued that this transparency is necessary in order to equalize the power dynamic between citizens and government: as surveillance makes citizens legible to the government, transparency makes government legible to citizens.⁶⁵ South Korea has placed similar temporal and bureaucratic scope-limits on digital data collection and retention. Only a few government officials can access the data integration platform, and their activities on the platform are monitored to avoid misuse. South Korean law also requires the government to delete all personal data collected once “relevant tasks have been completed” (once the pandemic has subsided).⁶⁶

Democratic pandemic responses have also been *subject to democratic oversight and accountability*. Taiwan’s approach, developed during the 2003 SARS outbreak and subsequently ratified by the Constitutional Court, provides for both judicial review and legislative ratification of policies adopted under emergency health conditions.⁶⁷ When pressed publicly about whether Taiwan needed to use emergency powers to cope with COVID-19, President Tsai Ing-wen stressed that Taiwan could and would try to work within the existing legal framework in order to protect democratic processes and

⁶⁴ [Chang 2020](#).

⁶⁵ “Biosurveillance in China and Taiwan,” National Bureau of Asian Research event, August 2020, <https://www.nbr.org/event/containing-covid-19-biosurveillance-in-china-and-taiwan/>

⁶⁶ “FM Kang Explains S. Korea’s Quarantine Efforts during UN-ITU Videoconference,” *Yonhap*, 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>

⁶⁷ Republic of China [Taiwan], Communicable Disease Control Act, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcodes=L0050001>. See also Wang et al 2020.

institutions. South Korea, too, learned from the MERS outbreak in 2015 to create what one analyst called a “bespoke legal regime tailored to meet the demands of an infectious disease outbreak.”⁶⁸ Although it empowers the government to use warrantless surveillance (as outlined above), the Infectious Disease Control and Prevention Act also places limits on government action and requires the health minister to disclose certain information to the public regularly for purposes of transparency and accountability.⁶⁹ Over the course of 2020, as critics expressed mounting concern that adherence to the law was leading to release of personally identifiable data, the National Human Rights Commission issued recommendations amending the scope/type of information made public, and the Korean CDC adopted those recommendations shortly thereafter.⁷⁰ These examples illustrate the role that both civil society and institutional checks-and-balances can play in constraining and tailoring pandemic responses by democracies.

In some cases, democracies have pursued not only bottom-up, citizen-based oversight, but pandemic response through participatory governance; some of these efforts have involved the private sector or public-private partnerships. In Norway, for example, over 1.4 million citizens (out of a total population of 5.5 million) downloaded a coronavirus tracking app developed by state-owned company Simula to their smartphones: essentially a form of opt-in, voluntary surveillance.⁷¹ After Amnesty International identified privacy issues with the app, however, the government suspended its use and deleted the data it had gathered -- an example of both voluntary participation and subsequent civil society oversight at work. In fact, voluntary participation and cooperation with private-sector solutions are characteristic of the approach taken to health monitoring in many democracies: European authorities, for example, have recommended voluntary programs due to privacy concerns, and opt-in citizen participation has therefore been essential to the functioning of the tools employed.⁷²

⁶⁸ B. Kim 2020.

⁶⁹ Republic of Korea, *Infectious Disease Control and Prevention Act*, Act No. 14316 (December 2016; effective June 2017),
<http://www.law.go.kr/LSW/lInfoP.do?lSeq=188080&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>

⁷⁰ Park et al 2020.

⁷¹ Nikel 2020.

⁷² LOC 2020.

A number of democracies have also linked the expansion of government surveillance and authority during the pandemic to corresponding citizen rights. In South Korea, citizens are given the right to certain information (as discussed above), and the government must also notify any persons placed under surveillance that they are being monitored. The government can mandate testing, but the same law also endows citizens with the right to diagnosis and treatment, and requires the government to pay the costs.⁷³ In Taiwan, individuals placed under quarantine are compensated, and Foreign Minister Joseph Wu has spoken publicly on the need for government service provision to quarantined individuals.⁷⁴ Other democracies have expanded citizens' rights to specific forms of health care, unemployment benefits, and other welfare assistance. Thus far, however, there has been more attention in public and policy discourse to how democracies can avoid rights violations, and less systematic attention to variations in the positive rights extended to citizens by democracies under pandemic conditions. This indicates reflects discussion in the comparative politics literature on the heterogeneous ways in which democracies conceptualize and implement citizen rights.⁷⁵

Within consolidated democracies, a number of factors appear to have combined to facilitate democracy-protective pandemic response. Some countries that have combined effective public health policy with democratic insulation -- such as Taiwan and South Korea -- have recent authoritarian history, which offers a heightened awareness of the costs of surveillance and recent experience with the mechanics of redesigning processes and institutions previously used for authoritarian surveillance to render them compatible with democracy. Moreover, experience with a major infectious disease outbreak allowed these democracies to debate, *prior to the onset of the crisis*, the tradeoffs involved in different policy options, and to decide which tradeoffs, safeguards, and checks-and-balances were most appropriate and important. Other democracies, such as those in the European Union, also had strong data privacy regulations in place before the pandemic, for different reasons. Worldwide,

⁷³ Republic of Korea, *Infectious Disease Control and Prevention Act*, Act No. 14316 (December 2016; effective June 2017),

<http://www.law.go.kr/LSW/lInfoP.do?lsiSeq=188080&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>

⁷⁴ Bardi and Bollyky 2020.

⁷⁵ Marshall (1964) separates rights into civil (right to be protected from arbitrary government); political (right to participate or have a say in one's government); and social (right to receive welfare); on extending this framework to autocracies, see for example Perry 2008.

democracy-compatible responses drew on institutional frameworks (existing laws that could cope with pandemic conditions, checks-and-balances on emergency response); normative commitments by elites (eschewing the use of emergency powers, relying on existing legislation, welcoming democratic oversight); and public accountability and participation (which can be seen either as an implied electoral constraint or as participatory democratic process). A final beneficial factor is that the measures adopted by many of these democracies produced positive results in the first several months: low case and fatality numbers meant less pressure on leaders to adopt draconian or undemocratic measures to deal with a mounting crisis. The initial success of some of these approaches, in other words, reinforced democracy-protective effects over time.

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? How might longer-term patterns of liberal democracy be affected by the pandemic? In China, the outbreak has strengthened a pre-existing techno-authoritarian project aimed at “prevention and control” of threats to both public health and public order. Certain features of the international system -- such as China’s major power status, its global economic role, and its leadership in international organizations -- suggest that China’s model of illiberal pandemic response could diffuse worldwide. Other factors, however, such as the incomparability of China’s political system to many other countries in the contemporary international system, suggest much more limited diffusion potential. To date, the pandemic has largely augmented existing trends, meaning that autocracies have been likely to respond in ways that infringe citizen rights, and weak democracies exhibit some risk of democratic erosion and pandemic-associated autocratization; surveillance, however, has played a limited role in these processes. Conversely, consolidated democracies have managed to navigate the initial stages of the crisis by and large without compromising democratic standards. When they have used surveillance, it has been fenced in by democratic institutions and rule of law, and norms, institutions, and public opinion have all worked together to facilitate pandemic responses that are (on balance) proportional, limited in time and scope, and subject to democratic oversight.

The initial impact of COVID-19 on privacy, civil liberties, and democracy worldwide suggests several fruitful areas of focus for policy and research. First, if the risks of democratic backsliding truly are concentrated in a handful of weak democracies, the United States and the international community

could focus their efforts on these countries. Foreign assistance and training could assist these countries in crafting legal and regulatory safeguards around pandemic response -- both the use of surveillance technology and broader policy responses -- so that their efforts prioritize and protect citizen rights and democratic institutions. The United States could also play a key role in more actively shaping global learning processes to share democracy-compatible “best practices” in coronavirus response, putting the weight of the international system’s most powerful actor behind democracy-compatible diffusion processes. This could take a number of forms, from using international organizations to facilitate transmission of these ideas to informally supporting global emulation of democratic, effective pandemic response models. Finally, recent evidence suggests that contemporary autocratization is incremental, but difficult to reverse⁷⁶ -- implying that the payoff will be greatest if the U.S. and international community can arrest democratic erosion before it happens, rather than trying to repair erosion after the fact.

As the world continues to assess the impact of the novel coronavirus on global democracy and liberal governance, several questions merit further investigation. What will the actual patterns of diffusion be as it relates to health surveillance technology, particularly the technologies used to combat COVID-19? How many liberal democracies worldwide already have legal frameworks to respond to infectious disease emergencies, related to surveillance or more broadly -- and how many are developing these frameworks now, in response to the challenges posed by the pandemic? What policies (pursued or proposed) are effective at protecting liberalism and democratic institutions, and which ones are ineffective over the medium-to-longer term? How might surveillance interact with other mechanisms of democratic erosion to generate varied scenarios for the distribution and trajectory of democracy worldwide -- and how do policy responses differ for each of these scenarios? What are the ideal international fora in which to regulate and develop standards for the use of health surveillance technology, and what foreign policy tools would ensure that liberal rather than illiberal approaches prevail? The answers to these and other questions will help scholars and policymakers alike assess and respond to the pandemic’s ongoing impact on civil liberties and democracy around the world.

⁷⁶ Luhrmann and Rooney forthcoming.

Author

Sheena Chestnut Greitens is Associate Professor at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. She can be reached at sheena.greitens@austin.utexas.edu

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