

# The State and Digital Surveillance in Times of the Covid-19 Pandemic

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Last February, as the COVID-19 epidemic was in full swing in China, the world watched in amazement Chinese public authorities enforce drastic measures to curb the spread of the epidemic. In parallel with the generalised containment measures implemented in Hubei province, the Chinese government set up an impressive techno-police apparatus. Designed in partnership with the country's major digital platforms such as Alibaba, Tencent and Baidu—and although its actual effectiveness is questionable—it was presented as a key cog in China's strategy to fight the virus.

In Europe, where the epidemic has been raging for months now, the ruling elite has often made a point of distinguishing itself from its Chinese counterparts. In early April for instance, European Commissioner Thierry Breton explained that the authoritarian response observed in China “was not in our culture.” The problem with such distinction strategies is twofold. Not only do they feed into a dangerous cultural relativism that ignores the forms of resistance against surveillance that do exist in China, but they also obscure the reality of crisis management in liberal regimes. Because in many European countries, the state's response has also largely lied in

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the accentuation of surveillance and social control, through the widespread use of drones by law enforcement agencies, the programmed normalisation of thermal cameras to detect people with fever, the unabated use of geolocation data from mobile phones to model population movements, or the promotion of so-called backtracking applications.

## Managing the Epidemic in an Era of Digital Surveillance

The current pandemic offers a new illustration of the close relationship that ties the medical rationality to surveillance practices rooted in the *raison d'État*. Of course, it echoes the paragraphs that Michel Foucault devoted to the seventeenth century plague epidemics, in *Discipline and Punish* (1975).<sup>1</sup> Looking at the “spatial partitioning” of the time, the way in which “each individual is constantly located, examined and distributed among the living beings, the sick and the dead”<sup>2</sup> the philosopher saw an ideal-typical version of the form disciplinary power that would take off in the nineteenth century, in connection with the development of industrial capitalism and large state bureaucracies.

At the heart of this nineteenth century, public health crises once again led to innovations in the government of mass societies, as their management moved towards a securitarian governmentality (in the sense that Foucault gave to the term “security” in his 1976-1977 lecture). While quarantines came to be seen as authoritarian and archaic practices, states moved towards a more fine-grained, individualising and seemingly gentler regulation of population flows. Historian Patrice Bourdelais explains:

Liberal England established a new protection regime, based on the medical examination of passengers arriving in ships, the hospitalisation of the sick in dedicated hospitals and the follow-up of passengers who appeared to be well for a few weeks. It was at this time that the individual responsibility of the patient who visited public places or public transport was engaged; it could lead to him having to pay a fine or to be imprisoned for a few days.”<sup>3</sup>

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<sup>1</sup>Foucault, Michel, *Discipline and Punish: The Birth of the Prison*, 2<sup>nd</sup> Vintage Books ed. New York: Vintage, 1995.

<sup>2</sup>Foucault, Michel, *Ibid*, pp. 195-197.

<sup>3</sup>Bourdelais, Patrice. “Le retour des dispositifs de protection anciens dans la gestion politique des épidémies.” *Extrême-Orient Extrême-Occident*, n°37 (September 2014): 241–46.

Compared to the episodes of past centuries, one of the specific features of the current health crisis consists in the proliferation of securitarian measures, the strong resurgence of disciplinary approaches, and above all their joint updating in the light of computing technologies and their use by the police. Various forms of digital surveillance, which were already endemic before the crisis, play a central role in the entire continuum of power practices deployed to manage the pandemic. They can be found in the disciplinary logic associated with confinement measures, for example when public authorities force the people who are quarantined and locked up in their homes to wear an electronic bracelet (in liberal regimes, Western Australia seems to be a pioneer in this area), or when the police require such persons to regularly send a selfie taken from their home with their smartphone (as is the case in Poland). Computers are also central to the security logic aimed at regulating flows: at the state borders or in cities, digital technologies are used to monitor the population on the move in order to automatically—and therefore more massively—detect deviations from the norm, whether it is a question of measuring body heat or spatial proximity between individuals.

The crisis has thus reinforced digital surveillance, reproducing and deepening certain trends typical of neo-liberalism. By allowing for a qualitative leap in automation, computers make it possible to multiply surveillance by “scaling up” the bureaucratic structures dedicated to these tasks—while keeping budgetary costs at an acceptable level. And since they are spread throughout the population, computer devices can be used to “augment” individuals, making them more “responsible” and “autonomous” in the face of health risks. Backtracking applications appear as a central tenet of many government’s deconfinement strategies and therefore of their economic recovery. They provide a good illustration of this dual trend: On the one hand, these apps automate the kind of contact-tracing that is traditionally carried out by health professionals or volunteers in order to identify chains of contamination—an approach that cannot be massified for financial reasons. On the other hand, promoters of backtracking applications try to leverage the growing acculturation to self-monitoring, calling for individual responsibility and boasting a “voluntary” approach that they hope will have the effect of standardising people’s conduct. By encouraging individuals to adopt the “right behaviours” through indirect but programmed suggestions in the interfaces, these methods of “contact follow-up” are fully in line with behaviourist theories of the “nudge” (a new “art of governing” which multinationals like Google are implementing through in the digital architectures

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they design).

## Crisis Discourse and Illiberal Hypertrophy

Despite their extraordinary intensity, the surveillance practices that are central to the management of the COVID-19 pandemic are not so much a prefiguration of a new regime of power as an amplification of preexisting logics. As Sara Angeli Aguiton, Lydie Cabane and Lise Cornilleau have written in a recent article on “crisis settings,” we must be cautious of the now banal critique of the “state of exception” which tends to consider crises as “laboratories for brutal political reforms.” According to the authors,

While these approaches have the advantage of drawing attention to the instrumentation (and instrumentalisation) of crises in order to carry out reforms in a context of shock and exceptional measures, they tend to recycle the discourse of institutions that often claim this laboratory image to qualify their intervention.”<sup>4</sup>

Paradoxically, the rhetoric of exceptionality associated with the “war against the virus” actually produces a normalisation of routines that were already in the making. It contributes to instituting and trivialising an “already there” that often remained marginal and contentious. The health crisis is therefore not so much a laboratory for innovation as a revealer and a sounding board, where the actors involved amplify and recompose existing practices through various forms of “tinkering.”

In this respect, the current pandemic is reminiscent of other recent crises, particularly the anti-terrorist crisis that have occurred since 11 September 2001. At the “limits of the state,” such crisis strengthen the ties of public and private professionals from the security field and the high tech sectors, who are now more clearly joined by public health actors. In France, people developing the StopCovid backtracking application came from an heterogeneous consortium bringing together public agencies such as the National Agency for the Security of Information Systems (ANSSI) and the National Institute for Health and Medical Research (INSERM) with companies such as Capgemini, Thales, Dassault Systèmes, Orange and even smaller start-ups. In the UK, these public-private surveillance assemblages included companies such as Google, Apple or Palantir, who teamed up to help the National Health Service (NHS) visualize data and optimize resource allocation. The

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<sup>4</sup>Aguiton, Sara Angeli, Lydie Cabane, and Lise Cornilleau. “Politiques de la « mise en crise ».” *Critique internationale* Vol. 85, n°4 (December 2019): 9–21. My translation.

crisis is also leading to a shift in the discourses of legitimisation whereby the framing of new policing technologies moves toward a “health” register. A good illustration of this trend, artificial intelligence techniques dedicated to the automatic detection of “abnormal” events in video surveillance streams are now being promoted by their designers for their ability to enforce the rules of “social distancing” (see the promotional video of the French startup Two-I).

This new framing benefits directly from the differentiated visibility effects produced by the government elites through their crisis speeches. By focusing on certain topics, such as the non-compliance of a part of the population with lockdown measures, these elites fulfill a double objective: they contribute to the “social acceptability” of policing technologies that are the subject of numerous investments from both public and private actors but that remain controversial; and at the same time they try to make invisible other public problems that could be detrimental to the government (lack of tests, masks, etc.).

Unsurprisingly, like other crises, the “war on the virus” has accelerated the circumvention of the rule of law, either because new surveillance programs are rolled-out in the absence of any appropriate legal framework (this is notably the case of the use of police drones in France) or because “exceptional” norms are adopted under the guise of a “state of health emergency” (see in this respect the new surveillance powers granted to the domestic intelligence services in Israel ). From this point of view, the epidemic offers a new illustration of the shift Sidney Tarrow analysed in his book *War, States and Contention* (2015) and in which he traces the mechanics leading from the *rule of law* to the *rule by law* (by which he means the strengthening of the state through law).<sup>5</sup>

The crisis rhetoric does not necessarily undermine the formal prerogatives of the supervisory bodies that are supposed to oversee state surveillance—such as the courts or personal data protection authorities—, but it does aggravate their structural weakness vis-à-vis the executive branch. Legal safeguards do not disappear altogether, but the crisis gives way to lax interpretations of the law. The legal constraints weighing state intervention are thus pushed back, offering new room for maneuver to the hypertrophy of surveillance and social control practices. Here again, as Didier Bigo points out in a commentary on Giorgio Agamben’s theses, the crisis does not so much lead to a state of exception as it extends the contradictions inscribed

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<sup>5</sup>Tarrow, Sidney. *War, States, and Contention: A Comparative Historical Study*. 1<sup>st</sup> edition. Ithaca: Cornell University Press, 2015.

at the heart of the liberal state, and of routing practices stemming from a “logic that is internal to liberalism but controlled by liberalism, in short that is ‘contained’ by liberalism in the double sense of the word.”<sup>6</sup>

We can anticipate another classic consequence of “warlike” crises in the relations between states and citizenship: the muzzling of political oppositions. In this respect, a recent brief from the Research Centre of the National Gendarmerie Officers School (CREOGN) offers a signal that could prove to be a harbinger. This document provides an “analysis of the [terrorist] threat in the context of a pandemic.” Among other things, the author surveys activist publications critical of the techno-securitarian response of states to the health crisis. Writing that these build on “the fantasised spectre of a Big Brother state taking advantage of the crisis to ‘militarise the public space’,” the author does not hesitate to present such texts as a form of proto-terrorist propaganda. While collective action is still hampered by drastic restrictions on freedom of movement and assembly, while forced quarantines and other so called *cordon sanitaire* are making a comeback in liberal regimes, and as surveillance is spreading like wildfire, some states may soon be tempted to criminalise social movements opposed to such crisis management.

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<sup>6</sup>Bigo, Didier (2007), “Exception et ban : à propos de l’‘état d’exception’” Bigo, Didier. Erytheis, Revue électronique d’études en Sciences de l’Homme et de la Société, n°. 2 (November 2007): 115–45.