

William & Mary Law School

William & Mary Law School Scholarship Repository

Popular Media

Faculty and Deans

8-27-2020

Revisiting Individual Rights and Personal Responsibilities Amid COVID-19

Christie Warren

William & Mary Law School, cswarr@wm.edu

Follow this and additional works at: https://scholarship.law.wm.edu/popular_media



Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), and the [International Law Commons](#)

Repository Citation

Warren, Christie, "Revisiting Individual Rights and Personal Responsibilities Amid COVID-19" (2020). *Popular Media*. 499.

https://scholarship.law.wm.edu/popular_media/499

Copyright c 2020 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

https://scholarship.law.wm.edu/popular_media

GLOBAL HUMAN RIGHTS

REVISITING INDIVIDUAL RIGHTS AND PERSONAL RESPONSIBILITIES AMID COVID-19

BY CHRISTIE WARREN .





AUGUST 27, 2020

*COVID-19 raises important questions
about rights and responsibilities -
both individual and collective - in the
face of global emergencies.*



COVID-19 has sparked **discussions** about our rights and the extent to which the government can and should control our behavior. Compulsory masking, social distancing, and self-quarantines are new and uncomfortable restrictions for many in the United States, where we are accustomed to wearing what we want, spending time with whomever we choose, and wandering freely in our quest for life, liberty and the pursuit of happiness.

But what are our responsibilities, both individual and collective, in the face of global emergencies? So far, a significant part of the **public debate** has focused on constitutional rights and how they protect individual freedom to choose how to respond. Not all constitutions create the culture of entitlement that the U.S. Constitution does, though. Ours does not include a duty to engage in public service in times of public calamity, as Venezuela's does. Nor does it require us to cooperate to prevent and mitigate disaster, as Thailand's does, or to engage in humanitarian action when health and life are endangered, as is the case in Colombia. U.S. citizens are not constitutionally required to refrain from acting in ways that are detrimental to the welfare of others, as Ghana's constitution states.

International and regional laws, including the **International Covenant on Civil and Political Rights** (ICCPR), to which the United States became a party in 1992, are also worth looking at. Individual rights provided under the ICCPR and other regional and international frameworks, including the **European Convention on Human Rights**, the **African Charter on Human and People's Rights** and the **American Convention on Human Rights**, set forth an array of individual rights that may only be suspended in times of public emergency.

But political leaders can **declare public emergencies** to further political and populist agendas. Although principles of proportionality and necessity are supposed to guide the suspension of rights, government leaders are often given **deference** when determining public interest and their obligations to protect the population.

Since March 1, 2020, more than 80 countries, including the United States, have **declared** states of public emergency. International organizations have **expressed concern** about using COVID-19 as a

pretext for silencing political opponents and limiting the rights of vulnerable groups. In Africa, more than a dozen people have been **killed** during enforcement of COVID-related curfews.. In Hungary, Prime Minister Viktor Orban **asserted authority** to rule indefinitely by decree. In the Philippines, President Rodrigo Duterte **ordered** police to shoot anyone who resists lockdown. [In India, Singapore and Turkey, journalists have been **threatened with imprisonment** for disseminating information about COVID-19 that the government deems “fake news.” In El Salvador, hundreds of prison inmates have been stripped naked and packed into cells, and in Peru, **rights** and movement have been suspended. In the United States, **critics charge** that the pandemic has been used as an excuse for enacting legislation curtailing travel, immigration, asylum, visas and citizenship rights.

International and regional laws **permit derogation** of certain individual rights during national emergencies, but safeguards are required. Restrictions must be legally and scientifically based. They should also be strictly necessary, neither arbitrary nor discriminatory in application, of limited duration, and proportionate to the degree of emergency. Notice of intent to derogate must be **filed** with relevant oversight bodies. As of May 4, 2020, only ten countries **had filed notices** of their intent to derogate from provisions of the European Convention on Human Rights, **eleven countries** with the American Convention on Human Rights, and **sixteen countries** with the International Covenant on Civil and Political Rights. In the rest of the countries where states of emergency were being declared, formal notice and reporting requirements have not been followed. Some observers argue this is **in part because** the optics of derogation can send the politically unpopular message that governments intend to crack down on individual rights.

COVID-19 will not be our last global emergency. Can the response to mandates to adjust behavior change as long as we insist that constitutions do not impose individual duties of care towards others and international law continues to be able to be manipulated for political and populist gains?

We might do well to look internally for the answer to this question. Although other societies focus more on community, as opposed to individual, values and encourage self-examination in the face of conflict and emergency, the U.S. constitutional culture privileges rights and

entitlements. In the context of pandemics, this focus might be misplaced. Laws are not meant to substitute for social and moral responsibility.

COVID-19 gives us an opportunity to **revisit** our culture of individual rights and reconsider our shared human obligations to each other. The law is not necessarily dispositive in this calculus. Sometimes what we *have the right* to do is not what we *should* do.

*About **Christie Warren**:*

*Christie S. Warren is Professor of the
Practice of International and
Comparative Law and founding
Director of the Center for
Comparative Legal Studies and Post-
Conflict Peacebuilding at Williams &
Mary Law School.*

*The views presented in this article are the author's own and
do not necessarily represent the views of any other
organization.*