

How the US has exploited 'states of emergency' to facilitate discriminatory policy

*Successive US presidents have used declarations of national emergency to facilitate damaging and discriminatory policies. **Carly A Krakow (LSE)** looks at the impact these have had on minority communities, and argues that the current crisis must not delay genuine and sustainable reform.*

Indigenous communities and people of colour in the United States have suffered alarmingly disproportionate numbers of COVID-19 deaths. Black people in the US are 2.1 times more likely than white people to have died from COVID-19, according to [data from the APM Research Lab](#). Indigenous people in the US are 2.2 times more likely to have died. For Indigenous tribes, the pandemic's shocking death rate is also a [cultural crisis](#). As Native American elders have been killed by COVID, the devastating loss of their lives is also bringing the irrevocable loss of language and traditions. The overall death toll in the United States stands at [more than 500,000](#), and climbing. In December 2020, the death rate increased most for Native Americans—[958 recorded deaths](#), a 35% increase.

For more than a year, the COVID-19 pandemic has been understood in global discourse as an international emergency. Officially, there are currently more than 30 active declarations of national emergency in the US, some of which are decades old. But these official states of emergency often do not meaningfully translate to crisis relief for the communities most in need of it. On the contrary, the Trump administration used pandemic emergency conditions as an opportunity to implement [environmental deregulation](#) and rollbacks on pollution restrictions. These moves most harm the same minority communities that are being disproportionately impacted by the pandemic. The structural racism that has created inequities in access to healthcare, and excessive exposure to pollution and environmental harms for minority communities, have left these same communities highly vulnerable during the pandemic.



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Concerns about the risks to human and civil rights posed by national emergency conditions, however, predate the pandemic and the Trump administration. It is overdue for policymakers in the US to reconsider the use, and weaponisation, of official declarations of states of emergency. Who do these declarations serve, and who do they exclude?

The rule and not the exception

In an LSE Public Lecture Programme event in October 2020, [The “State of Emergency” as the Rule and Not the Exception: crisis conditions and exploitative lawmaking during COVID-19 and beyond](#), I, along with scholars Sinan Antoon, Vasuki Nesiah, and Gerry Simpson, considered how government responses to the COVID-19 pandemic have sparked concerns about the weaponisation of authentic crisis conditions for nefarious purposes. Central to the discussion was the work of philosopher Walter Benjamin, who, in the context of resistance to 20th century fascism, wrote, “The tradition of the oppressed teaches us that the ‘state of emergency’ in which we live is not the exception but the rule”. I focused on how the history of environmental racism in the US is directly linked to the disproportionate impacts of COVID that are currently devastating minority communities—how the long-term emergencies of environmental racism, and healthcare access inequities, are “the rule” and not “the exception” for far too many Americans.

In May and June 2020, Trump issued [two executive orders](#). One broadly sought to suspend environmental regulations, aiming to enable polluters to disregard fundamental clean air and water protections under the guise of supporting the economy in the context of the COVID national emergency. Then came another executive order to [waive mandatory environmental reviews of infrastructure projects](#).

Although the current state of national emergency due to the pandemic was cited as justification for these measures, the Trump administration gave no indication of future plans to reinstate the targeted environmental protections, which in reality fit in with the administration’s long-term deregulatory policy vision.

Since coming into office in January 2021, Joe Biden’s administration has already implemented significant policy reforms to reverse some of the decisions made by the Trump administration regarding environmental concerns, such as [revoking the permit for the Keystone XL pipeline](#). Some decisions made by the Trump administration, however, such as those regarding air pollution, are believed to have already set into motion [risks to human health](#) that will manifest in the coming years.

If the declaration of a national emergency due to COVID enabled these high-risk policy reforms, what does that mean for how policymakers must reassess the benefits, and damage, of national emergency declarations?

Weaponising emergencies

To further understand the potential for misuse and abuse of national emergency declarations, it is useful to look at other recent declarations, such as [Trump’s executive order from June](#) drawing on the National Emergency Act to authorise asset freezes and entry bans for International Criminal Court (ICC) personnel and their families. This order followed repeated threats by the administration to take action against the Court’s focus on Afghanistan and Palestine.

The Trump administration’s move was widely criticised by advocacy organisations. Richard Dicker, international justice director at Human Rights Watch, condemned its “perverse use of sanctions in a bid to frustrate the work of the ICC”, calling the sanctions “an egregious affront to victims of the world’s worst crimes”.

Another example is the 2019 National Emergency Concerning the Southern Border of the United States, used to secure funding to [build a border wall](#). The declaration has since been [terminated](#) by the Biden administration. Just as the use of the COVID national emergency to facilitate environmental rollbacks raises questions about the potential for emergency declarations to cause harm to public health, the southern border emergency declaration raises alarm about the types of emergency conditions that are “the rule” and not “the exception”, to quote Walter Benjamin again. Pervasive, protracted emergency conditions include the [criminalisation of humanitarian aid work](#) under the Trump administration, and the widely condemned [family separation policy](#) at the US-Mexico border, which led to the separation of [at least 3,000 children](#), including infants, from their parents. Again it appears that official emergency declarations worsen existing long-term crises, and initiate new states of crisis, rather than protect rights during times of catastrophe and uncertainty.

Another key example, the [Declaration of National Emergency by Reason of Certain Terrorist Attacks](#), issued by the Bush administration on 14 September 2001 in direct response to the 9/11 attacks, gave Bush [unchecked powers](#) to mobilise armed forces without going through standard congressional channels, and enabled the Iraq war. It has been [renewed](#) by the Obama and Trump administrations and is in its 19th year.

The War on Terror “is a permanent war”, Sinan Antoon explained at the LSE State of Emergency event. What are the long-term effects of living in a society in which emergency conditions are, quite literally, “the rule”, and not “the exception”? In the context of the pandemic, it is clear that emergency conditions have been used to—at best—achieve aims that ignore the needs of minority communities. At worst, and far too frequently, emergency conditions have been exploited to achieve policy goals that directly marginalise already oppressed people.

Gerry Simpson, chair of the State of Emergency event, opened the discussion by raising a question about the process through which a crisis, or official emergency, becomes permanent. How does this permanence alter the meaning of “crisis”?

Vasuki Nesiah reflected on how emergencies “translate into instituting austerity measures” that “render some people dispensable and redundant”, and how emergencies are “profiteering codes” that “trample on” civil liberties and shut borders. For oppressed people, she noted, “catastrophe is like previous moments, and moments to come”.

Restructuring policy responses to crises

Does the pendulum have the potential to swing in the other direction? On 3 February 2021, Biden approved a [disaster declaration](#) for the Navajo Nation, ordering federal assistance for this Indigenous population as they cope with COVID. This assistance is urgently needed and is in stark contrast with conditions last year, when hundreds of thousands of [unusable masks](#) were sent to the Navajo Nation through a federal contract, and a Native American hospital in Seattle [received body bags](#) instead of COVID tests. The long-term solution, however, cannot stem from the problem itself. Minority and Indigenous communities in the US need serious commitments of long-term funding for programmes developed and driven by communities—not emergency declarations that serve as short-term solutions at best, and at worst perpetuate cycles of dependence on crisis as a catalyst for relief.

The tradition of the oppressed teaches us that the “state of emergency” is the rule. This tradition also must teach us that the acceleration and expansion of the “state of emergency” only begets further oppression. As minority communities in the US continue to struggle with COVID, policymakers and the public must assess emergency declarations with a fiercely critical outlook, ensuring that interim solutions are not deemed acceptable stand-ins for genuine, sustainable reform and support, and ensuring that crises are not exploited time and again to give way to interminable injustice.

This post represents the views of the author and not those of the COVID-19 blog, nor LSE.