

# The Abuse of Emergency Powers and Lockdowns. Illegal Curfew in the Netherlands

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*On February 16th the [BBC](#) reported that a Dutch court ruled that the state must lift a recently imposed curfew because it was a violation of freedom of movement. A higher court promptly suspended the decision at the request of the government until an appeal can be heard. It was also reported that when the curfews were imposed in January riots broke out in several Dutch cities. The BBC writes the following about the 9PM-4:30AM curfew,*

*“The Dutch measure, which came into force on 23 January, was intended to reduce movement, particularly among young people, but triggered days of rioting in a number of towns and cities. The Netherlands had not seen a curfew since Nazi occupation in World War Two.”*

This is understandable because curfews are a severe restriction on movement and assembly that has little place in a free society except for the direst of circumstances. Furthermore, a curfew starting at 9 PM could have two apparent implications, one silly, and one insidious. The former being the foolish idea that somehow restricting public movement at certain times somehow protects people from the virus. The latter implication being that the Dutch government intends to kill nightlife, which places most of the burden on young people, who have been battered emotionally, socially, and professionally by the lockdowns. In fact, in the United States, [it was reported](#) that for young people, deaths of despair have claimed more lives than Covid-19.

Another important issue that was illustrated by this incident was the use of emergency powers and their justifications. The BBC writes,

*“In their ruling on Tuesday, the Dutch judges said the curfew had been imposed under an emergency law, even though the court said there was no emergency as in the case of a “dyke being breached.”*

State of emergency give governments tremendous powers to act in timely and decisive manners to address issues that may not be appropriately addressed by the democratic process. This is why there are often strict guidelines on how and when such powers can be

deployed. The BBC writes that the court believed that the deployment of the curfew was not justified because

“Fears of increased infection because of the UK variant were not valid as no curfew was imposed last year when pressure on Dutch hospitals was far greater, the judges said.

The curfew was therefore a violation of the right to freedom of movement and privacy, and limited the right to freedom of assembly.”

It does not follow that the state can deploy an emergency measure at a time when Covid seems to be less of a problem, especially when such powers were not considered before. Even more worrying, it seems that governments around the world have forgotten how extreme these policies are and how sparingly they must be used. Curfews and other emergency powers such as restrictions on travel are supposed to be used in times of tremendous peril. Deploying such policies like they were some sort of experiment to test out government power as if society is a sandbox should be seen as a direct assault against the very foundation of a free society.

### The Problematic Usage of Emergency Powers in the United States

The use of emergency powers is a contentious topic in the US that is subject to much debate. However, it is widely accepted on all sides that there must be a rigorous and defined process to govern their use. At the federal level, the president may declare a state of emergency which gives him tremendous powers. Legal expert Elizabeth Goitein writes in the [Atlantic](#),

“The moment the president declares a “national emergency”—a decision that is entirely within his discretion—more than 100 special provisions become available to him. While many of these tee up reasonable responses to genuine emergencies, some appear dangerously suited to a leader bent on amassing or retaining power. For instance, the president can, with the flick of his pen, activate laws allowing him to shut down many kinds of electronic communications inside the United States or freeze Americans’ bank accounts. Other powers are available even without a declaration of emergency, including laws that allow the president to deploy troops inside the country to subdue domestic unrest.”

The Brennan Center outlines the [123 statutory powers](#) available to the president which are all subject to a variety of restrictions. Some infamous exercises of power include the internment of Japanese-Americans during [World War II](#) and the suspension of [habeas corpus during the Civil War](#). During the ongoing Covid-19 pandemic, state governors were mostly responsible for declaring states of emergency that authorize the use of lockdowns. At the state level, the power to declare one actually rests with the legislature as the National Conference of State Legislatures [writes](#),

“In times of war, disease or other extraordinary conditions, each state authorizes its governor to declare a state of emergency. Once an emergency has been declared, executive powers expand until the emergency ends. These powers include authority normally reserved for legislatures, such as the ability to suspend existing statutes or effectively create new laws—albeit temporarily

and only as needed to respond to the emergency situation.”

In a [previous article](#) I cover how a number of state governors have abused their powers, either attempting to extend them without the consent of the legislature or exercising powers that are not permitted. A common theme that arises across the states that mirrors our Dutch counterparts across the Atlantic is the sheer inconsistency and hypocrisy that our leaders exhibit. Imposing seemingly random and ill-reasoned restrictions on our sacred liberties and at times showing blatant favoritism either to themselves or their preferred political causes. For a number of reasons we give the government the power to legally violate our rights but only if the policies are narrowly tailored to addressing a pressing issue. That is outlined in the [police power](#) and in [Jacobson v. Massachusetts](#), which applies to public health emergencies. If the government is going to violate your rights, it needs to have a good case that whatever they are going to do will greatly contribute to solving the problem. Closing outdoor dining after making countless statements that outdoor dining is safe is an example of a [violation of such guidelines](#).

Moving past the technical aspects regarding the use of emergency powers, it is important to realize two things. The first is that everything is subject to interpretation so we cannot rely on judges to consistently rule in favor of protecting liberty and limited government. The same can be said about legislatures and other bodies associated with administering emergency powers. This brings us to the most important problem regarding the use of emergency powers. The ambiguous definition of what qualifies as an emergency and the apparent degeneration of that threshold in recent years are evident especially now. What we have seen in the age of Covid-19 will have lasting consequences for the future of our liberal democracy.

Meryl Chertoff writes the following about former President Trump’s travel restrictions for [Georgetown Law](#).

“What may seem like a reasonable step in today’s emergency will create a hangover when invoked as precedent in less dire circumstances by rules guided by authoritarian impulses.”

This is a lesson as old as time. You give a mouse a cookie, it’s going to want a glass of milk. You start to unravel the restrictions on the government’s power, it’s going to want more and more. The power to declare emergencies and the problematic ease that seems to surround declaring one is a haunting specter over the heads of our freedom. Chertoff writes,

“As Justice Jackson wrote in [Korematsu v. United States](#) the case that upheld the detention of Japanese Americans during the Second World War an emergency power “lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” No single discipline can lead this campaign for much longer.”

It goes without saying that after the pandemic is over we should not only work to restore our liberties and limitations on government but look into reforming the process in which states of emergency can be used.

Key Takeaways

The court decision across the ocean in the Netherlands may be quickly forgotten in today's news cycle. In fact, given the number of similar issues all over the world regarding emergency powers during the age of Covid-19, it may go down as a minor disturbance at best. However, it demonstrates a much greater issue at hand, which is the omnipresent threat to our liberty that is the use of emergency powers and the expanding window of what constitutes an emergency.

Without significant efforts to push back and reclaim our liberties, lockdowns can and will leave a permanent mark on our system of limited government. What should keep every freedom-loving citizen up at night is not Covid-19 but the disease of authoritarianism that is slowly killing our liberal democracy. Pandemics come and go, but a free society is almost impossible to retrieve once it has been cast into the abyss of subjugation.

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