Who counts? Contact tracing and the perils of 'privacy'

Os Keyes

Exceptional times demand exceptional measures, and are correspondingly frequently enabling for policymakers, proposals, and organisations that chafe against the conventions and regulations of regular life (see the chapter by Cruz-Santiago). In the current COVID-19 outbreak, a prominent example is the advocacy of technological solutions to the issue of contact tracing: that is, tracking people who have associated with an infected person, and so may be infected in turn. Whereas contact tracing was historically undertaken through human labour—volunteers or public health workers contacting the (self-reported) associates of an infected person—this current crisis features a vast array of proposals to integrate automation and technological surveillance.

In the country-based case studies featured in this book, we see proposal after proposal for technological solutions to contact tracing—most commonly based around a smartphone app (see the chapters by Álvarez Ugarte and Musiani). Generally speaking, the proposal is for citizens to load an app onto their phone that regularly pings nearby devices using Bluetooth. As they pass through the world, a person generates a datalogical trace and map of all those people they have been proximate to—people who can be contacted *using* that data should the original user test positive.

Concerns about these proposals are frequently oriented around the potential for privacy violations; traces of a person's travels, friends, and associates are inherently sensitive, and their security depends heavily on the way in which they are collected and stored. As a result, it has been unsurprising to see academic scholarship, media work, and public opinion focus largely on the question of privacy in evaluating the design of these apps. These concerns are important, but their prioritisation has obscured more fundamental questions about an app-based approach. Who can use these technologies? How does that change whose lives and illnesses matter? And: is privacy always a good thing?

Although often treated as a universal—and universally accessible—moral good, privacy is actually neither of those things. Instead, it is frequently highly contextual, as is its desirability. Consider public services: if a person wishes to access income support or medical systems, the presentation of a state identity card, tax records, or pay slips is often a requirement. Now, requiring this data— and centrally logging it—is certainly inhibiting to the privacy of the person in question. But it would be ridiculous to argue that undocumented immigrants or homeless people, lacking access to this data, and thus lacking access to services many people need to live, are in fact *benefiting* because their privacy remains intact. A better view requires attending to what Gilman and Green refer to as 'the surveillance gap': the ways in which society's most vulnerable members'

'functional [invisibility]' to surveillance systems can cost them dearly when such systems govern access to resources.[1]

In the case of contact tracing, the focus on the privacy of data collected through smartphone apps obscures who is left out of data collection entirely, and what the consequences are of that. Rob Kitchin's summary of the situation in Ireland is one of the few pieces to note the high number of people (in Ireland's case, 28% of the population) who do not have a smartphone. From a contact tracing perspective, they have privacy—but that privacy heightens their vulnerability to becoming infected, through reducing their chances of being notified in the event they were exposed to an already-infected individual.

Further, those left out of these medical surveillance networks are not randomly selected: the absence of a smartphone often corresponds with age and income, with the poor and very old least likely to have the resources and inclination to possess one—while also being the most likely to suffer as a result of the pandemic. In nations without robust social security systems, it is the poorest among us who can least afford to take time off from work, and who have the least access to medical care. In highly racialised nations, as Whitney Laster Pirtle notes in her case study of the United States, this poverty and vulnerability is additionally racialised in its distribution.[2] Similar concerns are raised in the chapter by Julie E. Cohen with regards to other aspects of normative adaptations to the outbreak—in particular, the viability of self-isolation for people in environments where physical space is not a resource that can be taken for granted.

Talking about privacy in understanding these technologies is necessary. But giving privacy primacy risks giving the game away: implicitly accepting that a technological solution is the correct one, and arguing over data storage models as the site of concern. Instead, my point here is that any high-technology solution implicitly establishes preconditions for use—preconditions many people are unlikely to be able to meet. And when the state response to the crisis treats that solution as the only game in town, the consequence is not privacy but vulnerability.

Activist-scholars should absolutely be pushing back against centralised data collection and the use of the current crisis as an excuse to legitimise new modes of surveillance. But such work needs to foreground the existing inequality of the world and societies we are living in, and understand that just as access to healthcare, food, and housing is fundamentally uneven, so too are the consequences of surveillance. By extension, justice-oriented solutions to contact tracing need to not only protect privacy but—recognising the trade-offs inherent to any surveillance technology, however well-intentioned—also to ask who is left out of the current proposals altogether and how

[1] Gilman, M. & Green, R. (2018) The surveillance gap: The harms of extreme privacy and data marginalization. NYU Rev. L. & Soc. Change. 42: 253.

[2] Laster Pirtle, W. N. (2020) Racial capitalism: A fundamental cause of novel coronavirus (COVID-19) pandemic inequities in the United States. Health Education & Behavior: 1090198120922942.

to enable their access in the short term, while addressing the structural inequalities that caused this unwilling invisibility in the longer term.

Os Keyes is a PhD Candidate at the University of Washington in Seattle, United States. They are supported by a Microsoft Ada Lovelace Fellowship.