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# The Dynamics of Public Health Ethics

## Covid-19 and Surveillance as *Justifiable* but *Abnormal*

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The issue that this paper is looking at is this—that what is permissible or even obligatory under public health emergencies ought to be treated as an exceptionalism. That is, while certain policies and practices might be permitted in response to the Covid-19 pandemic, we need to ensure not only that such policies are reversed once the Covid-19 emergency has receded but also that the social norms around particular practices and policies return to pre-Covid-19 states. The concern is that certain public health ethics principles that permit particular surveillance policies in emergency situations will become standardized social practices persisting after Covid-19. Underneath this claim is a recognition that public health ethics is not only pluralistic but dynamic. What is ethically justifiable changes given the context, and we need to recognize that this dynamic runs in two ways—not only do public health emergencies justify exceptional practices, but on a dynamic view, public health emergencies also end, and as such, so too do the exceptional justifications that arise in such emergencies.

The Covid-19 emergency has potentially driven a broader acceptance of public health ethics, and this could produce benefits, such as an increase in solidarity and awareness of the importance of public health. However, certain principles of public health ethics have potential negative consequences if they become normalized for situations beyond this emergency. By that I mean that what is ethically permissible or even obligatory during the legitimate public health emergency of Covid-19 may not be permissible in non-emergencies. We need to be careful with what we permit during the emergency and ensure that there are reversals on the permissions granted during the emergency. Given this, I argue that the surveillance policies and technologies introduced during the Covid-19 pandemic ought to be considered as *justifiable but abnormal*. As I will show, this categorization is particularly important for less immediately invasive policies like technologically enabled surveillance than other extreme measures like forced quarantine, forced vaccination, and the like. The point is that once the emergency ceases, we should not only scale back surveillance but need to attend to restoring social norms that

existed before the emergency. While policy making during the emergency justifiably took its lead from public health and was informed by public health ethics, and this policy making needed to be rapid, the moral hazard is that the surveillance practises that were necessary during the emergency remain, and that such pervasive surveillance is normalized.

### **Covid-19 Driving New Surveillance Practices**

During the Covid-19 pandemic, the globe was faced with a legitimate public health emergency. Many millions of people's lives were at risk, and extraordinary measures were taken to limit its spread and prevent massive direct and indirect deaths. Large-scale national policies that were unthinkable prior to 2020 became the norm as the pandemic continued. Emergency situations require extraordinary responses.<sup>1</sup> In the early stages of the pandemic, many countries activated biosecurity and emergency laws that gave governments extraordinary powers over people and institutions (Vinjamuri 2020; Karp 2020; Al Jazeera News And Agencies 2020). In the context of a global health emergency, extraordinary ethical justifications shifted to meet the emerging reality of the situation (Chotiner 2020; Grunau 2020). As part of the response, a number of countries and regions introduced surveillance practices that would normally have been illegal, so socially contentious as to be impermissible or drawn out through a long-winded public consultation.

The start of the pandemic saw a raft of abnormal practices rapidly introduced to deal with the emergency. Israel, for instance activated a set of technologies that allowed for surveillance of individuals through their mobile phones (Mitnick 2020; Estrin 2020; Halbfinger, Kershner, and Bergman 2020). This technology was an adaptation of existing counter-terrorism technologies and policies. These technologies gave their domestic security agency the Shin Bet the capacity to monitor the location and movement of potentially infectious individuals through their mobile phones, and to use meta-data to engage in contact tracing, establishing an awareness of the networks of infection and transmission (Cahane 2020). Thus, on this, not only was the privacy of the potentially infectious individuals who have been overridden, but so too was the privacy of those individuals they might have had some contact with. In this example, the need for comprehensive pandemic surveillance was deemed to be justified in order to better understand transmission and identify potential risks.

South Korea was initially extremely effective in its control of the spread and impact of the outbreak, at least in the early stages of the global outbreak (Bicker

<sup>1</sup> For more on this notion of 'emergency ethics', see (Viens and Selgelid 2012).

2020; Heejin Kee, Sohee Kim, and Claire Che 2020). One of the measures that they introduced was an expansion of surveillance technologies such that not only did the state health and security officials have access to data on the location and movements of potentially infectious individuals, but they also made this information publicly accessible. On this, the public was given access to information about the location and movements of potentially infectious individuals (Hyung Eun Kim 2020; Min Joo Kim and Denyer 2020). While it is those who were described by this technology had their identity protected (Hyung Eun Kim 2020) as privacy advocates have argued, with comprehensive surveillance technologies, anonymity is relatively easily reversed through the aggregation of multiple data sets (Henschke 2017; Solove 2008, 2004).<sup>2</sup> The rights of individuals to maintain the privacy of health relevant information and prevent that information from going public were deemed to be overridden by the public health emergency.

Spain was hit very hard by Covid-19 in its early stages (Sullivan et al. 2020). As the scale of the crisis expanded, Spain instituted a range of significant policies to enforce local lockdowns and physical distancing (BBC 2020). Drone technologies were used in Madrid to identify if there were groups of people in public in contravention of the orders for public shutdowns (Doffman 2020). Interestingly, these drones were also used to broadcast to these people that they were in contravention of the relevant lockdowns and, should people persist in ignoring the lockdowns, they would be individually identified by the police and either fined or imprisoned (Doffman 2020). Similarly, in the United Arab Emirates, drones were used to spray down public areas in an effort to decontaminate public areas (Belleza 2020).

While it is speculation, I suggest that as much as these efforts were sincere and evidence-based policies, the public displays were also an effort on behalf of governments to show their local populations that things were being done to stem the rates of infection. Moreover, they were motivated in part to show to people that their governments were actually able to do something (see Macnish in this volume). This goes to the idea of the theatre of security, where governments not only need to respond to particular threats, but citizens need to be assured that the government is still there and is doing something—‘Cybersecurity writer and practitioner Bruce Schneier coined the term “security theatre” to describe and criticize security countermeasures that ‘provide the feeling of security instead of

<sup>2</sup> I note here that others like Kevin Macnish offer a different analysis, that privacy is not synonymous with information control. On his view, ‘[s]eizing control of another’s information is therefore harmful, even though it may not entail a violation of privacy’ (Macnish 2018: 418). While I do not share this view, nothing in this paper stands or falls on how narrow or broad one’s definition of privacy is. As Macnish notes, having others control your information can still be ethically problematic.

the reality' (Persad 2016: 588). As Govind Persad noted, there is a logic in extending the notion of security theatre to 'health theatre' (Persad 2016). Note that I do not think that the theatre of security or health are inherently problematic. Especially in times of significant public anxiety like that of the Covid-19 pandemic, people do need to observe and know that their governments are functioning and doing things. Of course, there are still significant ethical concerns with the theatre of security, not the least of which being the use of fear and anxiety to make ethically problematic policies and decisions seem acceptable. My reason for bringing it up is what role public displays of contravention of standard norms play in shifting what is publicly acceptable policy.

The overall point of this section is to show that in extreme situations like those faced by the globe in the initial phases of the Covid-19 pandemic, what would normally be prohibited becomes normal, even obligatory. Widespread state surveillance of innocent individuals, the publicizing of people's health status, the use of drones as public control and assurance devices, these are all phenomena that were only permitted given the emergency being faced. And, what is relevant for this paper, is that not only were these measures (and many others) deemed justifiable, it seemed that many people in countries as diverse as Israel, South Korea, Spain, and the United Arab Emirates were happy to assent to such measures.

### **Public Health Ethics Normalizing New Surveillance**

This is all to say that during the Covid-19 pandemic, not only did public health become arguably the most pressing global issue, but also that 'public health ethics' became a significantly more mainstream frame for discussing how to structure and order societies. By public health ethics I mean the cluster of ethical concerns which not only focus on ethical issues of public health but also argue or imply that the ethics of public health are important and in situations of a public health emergency, such public considerations change our ethical calculus. This includes discussion of issues such as:

the measures required for the protection of public health may include surveillance; mandatory vaccination, testing or treatment; and/or social distancing measures such as isolation and quarantine. Though measures like these may sometimes promote the greater good of society in the way of public health or utility (i.e., aggregate well-being), they each conflict with widely acknowledged basic human rights and liberties. Surveillance conflicts with (the right to) privacy; mandatory vaccination, testing and treatment conflict with (the right to) informed consent to medical intervention; and coercive social distancing measures conflict with (the right to) freedom of movement. (Selgelid 2009: 196)

Part of the challenge of ethics and infectious diseases are that '[b]ecause (in most cases) infectious diseases are spread from person to person, innocent individuals can present a threat to other innocent individuals... Restrictions of liberty and incursions of privacy and confidentiality may be necessary to promote the public good' (Selgelid et al. 2009: 150). As Michael Selenide astutely observed in 2010, 'public health measures—such as contact tracing, the notification of third parties, and the reporting of the health status of individuals to authorities—can interfere with the right to privacy' (Selgelid 2010, 430). On Selgelid's analysis, '[i]f a disastrous epidemic would result from the maximal protection of individual rights and liberties, then individual rights and liberties must be compromised' (Selgelid 2010: 435). Importantly, Selgelid is not saying that just any public health situations warrant such abrogation of individual liberties, this can only be justified in situations of a disastrous epidemic. '[A]n extreme measure such as quarantine should not be imposed unless the consequences of failing to do so would be great. It would be wrong to think that rights violations and the imposition of harms on individuals are justified whenever this would lead to a net pay-off for society as a whole' (Selgelid 2010: 435). Such a forfeiture of individual rights is only that—they are forfeited for the short term and individuals still maintain other legal and moral rights. Moreover, as Selgelid argues, the conditions of quarantine must be minimally burdensome and the individuals subject to quarantine might be owed compensation as a result of their quarantine (Selgelid 2010: 436).

The point here is that in public health ethics, we find a basis for why significant interference with individual liberty can potentially be justified, but that other values must also be factored into our analysis and treatment of those individuals. On this public health ethics analysis, the situation with at the start of Covid-19 was one where an increasingly disastrous epidemic was facing the globe, and extreme measures were ethically justifiable. Thus, widespread use of surveillance technologies was considered to be ethically justifiable. In addition, the general application of public health ethics was also seen by many as appropriate.

As noted by Selgelid, in situations of public health emergencies, governments and societies more generally may need to take extreme measures to limit infections and the spread of the disease. During the Covid-19 pandemic, these measures included practices like forced quarantine, the closing of national even state or county borders, the shut-down of many businesses and public areas and increasingly aggressive laws to punish those who broke such directives. In China there were even reports of the doors of people's homes being welded shut in efforts to contain people inside (Guangcheng 2020). Such policies were obviously significant curtailments in the basic right or freedom to free movement or assembly, something that many nations and societies take for granted. Such laws contravene very basic rights of bodily autonomy. The start of the Covid-19 pandemic saw

instantiations of the trade-offs between public health and individual liberties, with public health often outweighing individual liberties.

My interest, however, is on the widespread introduction of new permissions for surveillance policies and technologies. The reason is that the policies that resulted in the deprivation of free movement or bodily autonomy are not only extreme but easy to observe. Moreover, they were the first of the policies to be rescinded, in no small part because people rightfully resent having these rights curtailed and want things to return to normal—widespread and ongoing protests about lockdowns and vaccine mandates have continued and in some places picked up as the pandemic has dragged on. Almost two years after the pandemic began, Ottawa was besieged by protesters opposed to vaccine mandates (*BBC News* 2022). In contrast, many of the surveillance practices are largely invisible and/or seemingly ethically unproblematic or innocuous.<sup>3</sup> By habit, many of us carry our phones on us and likely saw no real difference if those phones were tracking us. Likewise, for many of us, we are increasingly becoming familiar with drones appearing in public places. They are no longer a shocking new technology but becoming part of the background of modern life. These surveillance practices and technologies were much more easily part of normal life under Covid-19 than the other more extreme policies.

The main points here are that, on a public health ethics analysis, new policies like increased surveillance were not only justified by a public health emergency, but also that surveillance practices were accepted as a necessary part of the need to respond to the pandemic. At the start of the Covid-19 pandemic, emergency measures were justified by a public health ethics that normalized new and more pervasive surveillance. I mean normalized here in two senses—one is in the ethical sense, and one is in the social sense. ‘Moral norms are *moral judgments*. Social norms are clusters of normative attitudes of some other kinds,—*social judgments* we might say’ (emphases original; Brennan et al. 2013: 58). The Covid-19 pandemic saw that the public health emergency justified new surveillance practices. As with many people, I think that the Covid-19 pandemic was a legitimate public health emergency that warranted extraordinary responses. Like quarantine and forced physical distancing, the surveillance was ethically justifiable.<sup>4</sup> I also mean ‘normalized’ in the broader sense of a social norm. Here I mean something more like ‘the purely *statistical* sense of “norm” as simply noting what is common or habitual’ (emphasis original; Brennan et al. 2013: 2). Here, what is

<sup>3</sup> I have written in detail elsewhere how the gathering and use of innocuous information can in fact be ethically problematic (Henschke 2017).

<sup>4</sup> One point here is that I do not want to say that every instance of increased surveillance or every policy around surveillance was ethically justified. There were likely many instances where such surveillance was ethically problematic. My point is more general, that on the public health ethics frame, given the global emergency, that such surveillance and other measures were potentially ethically justifiable (see Macnish, chapter 12 in this volume).

common becomes normalized, becomes the norm. In the Covid-19 pandemic, surveillance and other emergency measures became socially normalized. They became common. This was in part because people accepted them as a descriptive fact about their world at the time. And in part, because people accepted them, they became common. There is, I suggest a necessary logical connection between the ethical norms—we need to permit these new policies to limit the impact of the pandemic—with the social norms—because these policies are necessary, we simply need to let them become standardized.<sup>5</sup> Again, I suggest that this is definitely the case with many of the surveillance policies and technologies. Because people saw, and largely agreed with, the need for these policies and technologies, they allowed them to become common, the new surveillance policies and technologies became normal.

### Public Health Ethics as Dynamic

So far, the focus in the chapter has been on the initiating features of emergency measures. My point in this section is draw out a feature of public health ethics as being dynamic. By that I mean that not only must we consider different factors when considering what is justifiable in events like the Covid-19 pandemic than in normal conditions, but also that those considerations shift as the reality shifts. I start with an endorsement of the ethically pluralistic nature of public health emergencies. As Selgelid has argued at length (Selgelid 2008, 2009, 2010, 2012; Selgelid et al. 2009, Selgelid and Enemark 2008), when considering public health generally, and particularly when considering issues like pandemics, a singular or monistic ethics simply does not work. Our deliberations and policy development cannot just consider one value or ethical system like personal freedom, the overall utility of a given policy and we cannot overlook issues of equality and fairness.

The pluralism here draws from two related aspects. First, it seeks to recognize that ethics generally is an open question. '[N]o amount of philosophical argument can lead to a definitive victory of one account of value over the rest. Moral reflection is the effort to bring different dimensions of value to bear on specific occasions of judgment and to determine how they are best balanced or ordered, given the facts of the case' (Galston 2002: 6). This pluralism is a descriptive fact of life, at least in liberally minded societies, where we claim to hold 'the idea that there are many viable conceptions of the good life that neither represent different

<sup>5</sup> On the larger metaethical issue of the relations between ethics and society, I do not think much of that is relevant for this paper. By that I mean, is ethics the result of individual reason/rationality, or something more like the social intuitionist model advocated by Jonathan Haidt (Haidt 2012, 2001). Despite the importance of these debates, I do not think that what I say in this paper stands or falls on which position one takes.

versions of some single, homogenous good, nor fall into any discernible hierarchy' (Larmore 1987: 23). Expanding beyond a view that just looks at 'the good life', 'a complete account will need to appeal to several foundational theories, each one of which is able to explain the basis of *some* of the normative factors, but no one of which explains all of them' (Kagan 1998: 294–5; emphasis original). For instance, a utilitarian will likely differ from a libertarian in how a solution for moral disagreements ought to be decided.

The problem with utilitarianism and libertarianism is that they each place extreme, and arguably implausible, weight on the values they emphasize. Utilitarianism holds that utility takes absolute priority—and that liberties must be compromised whenever liberty restriction is required to maximally promote utility overall (i.e., over the long run, all things considered). Libertarianism, on the other hand, calls for the opposite: (negative) liberty takes priority and must not be infringed for the sake of utility. (Selgelid 2009: 196)

Thus, there are a range of different answers that one look to tell us what we ought to do generally, and in public health emergencies.<sup>6</sup>

Second, following Selgelid again, *each* of these nominated values are important. On this form of pluralism, it is not simply that liberty, utility, and justice may offer different explanations and justifications for a given decision or policy, it is also that *all* of these must play a role in decision making and good policy formation. We cannot simply say that utility reigns supreme in pandemic situations, even if individuals are to lose some rights or liberties, they do not lose them all. Even if they are in lockdown, for instance, individuals retain the right for basic recognition respect.<sup>7</sup> Moreover, the procedural and resource aspects of justice must be taken into account—if people are to suffer the deprivation of their liberties, they are owed explanations and may be owed compensation for those deprivations (Selgelid 2010). I consider that such a pluralistic approach, where there may be differing views, can be founded in a narrow set of values like basic recognition, the duty to reduce suffering and a commitment to fairness, apply to surveillance policies too. As I have argued at length, when living in an age of surveillance, while certain policies and technologies might be ethically justified, such surveillance must be justified by reference to these values (Henschke 2017).

Having spelled out that I think pluralism obtains in situations like Covid-19, where multiple ethical values must be considered for decision making, the main

<sup>6</sup> I note here that on such a form of pluralism, it is deliberately distinct from an ethical relativism where 'anything goes'. Though it is an open question what ethical system is or are the correct one(s), there are a narrow range of values that count as authoritative to justify particular actions or decisions.

<sup>7</sup> I refer here to Stephen Darwall's work which suggests a distinction between recognition and appraisal respect (Darwall 1977). I talk in more detail about recognition respect and surveillance in *Ethics in an Age of Surveillance* (Henschke 2017: 208–15).



point I wish to make is that such considerations are not just pluralistic but *dynamic*. Many of the policies that shifted our ethical calculus were only justified given the extreme threat that the globe faced. Certain of these policies, for instance those that permitted widespread surveillance on collective public health grounds, would not be justifiable in normal circumstances. This, I think, is obvious and uncontroversial when considering policies like forced quarantine and the shutting down of public spaces. We may accept that in the extraordinary circumstances like a global pandemic, particular policies are both justifiable and become accepted, but these policies are *abnormal*. It is only because of the real and significant threat faced around the globe that such policies become permissible.

Further, while it may be obvious certain policies are short lived, it is important to highlight that the ethical permissions granted by the emergency are limited to the emergency—the policies and particular applications of the technologies only become permissible because of the threat. Under normal circumstances, the policies and technologies would not be justified or accepted. That is, certain of the public health ethics justifications only become operational due to the type and magnitude of the threat being faced. The point here is that not only do they become justifiable when the conditions of the threat arise, but that the justifications recede as the threat recedes. While we find justifications and acceptance for these policies and technologies, as soon as the threat is properly dealt with, these policies and technologies lose their justifications and need to be reversed. That is, this is a dynamic space.

What I would suggest here is that the policies and technologies permitted during the Covid-19 pandemic be classified as *justifiable but abnormal*. Such classifications are important as they signal that, while some policy or practice is justified, we need to see it as abnormal, and need to return to a pre-emergency norm once the threat ceases. A similar argument exists in relation to the potential justifiability of torture (Henschke 2016). In particular circumstances, such as a ticking time bomb where the security forces reliably know that torturing a specific terrorist would save thousands of lives, what is normally impermissible becomes potentially justifiable. However, such situations need to be seen as necessary *but still evil*. While the torture might be justified, given a significant number of caveats and constraints, in order to save thousands of lives, it is still an evil, something that is normally ethically impermissible. By describing such situations as necessary *but still evil*, rather than a lesser evil, we preserve the norm that torture is an ethically impermissible action. Likewise, in situations like that faced in global pandemics, we need to see particular policies as *justifiable but abnormal*.

The point of this classification, *justifiable but abnormal*, is to capture and reinforce the notion that certain of our policies are outside the social norm. While we might find that they could be ethically justified, we need to actively recognize that they are undesirable to maintain as social norms beyond the time that the policies lose their ethical justifiability. The driving concern is that norms

are sticky—their slowness to change—is of course a familiar feature of norms’ (Brennan et al. 2013: 108). Once a social norm is established, it takes effort to change that norm. Emergencies like the Covid-19 pandemic brought about a rapid change to social norms, and the concern is that the new social norms remain, ‘stick around’ after the emergency has passed. By drawing attention to the recognition that policies and technologies like pandemic surveillance are abnormal, we have a better chance of minimizing that stickiness.

This ties together two strands of the paper so far. First, the recognition of a difference between ethical norms and social norms. What is ethically justifiable ought to still be considered socially abnormal, something that is only justified in special circumstances. Second, it relies on the recognition that these public health ethics are dynamic. Not only do they only become activated in special circumstances, but we want things to return to the pre-emergency situation when they can. This is especially important for policies relating to, and technologies of, surveillance. While we can easily recognize that forced quarantine etc., are abnormal policies and that a return to normal is desirable, I suggest that it is easier to treat changes to surveillance policies and technologies as the new normal. They need to be considered *justifiable but abnormal*.

As a final point in this section, I note that a number of the policies might feasibly remain justified after the threat recedes. For instance, on Selgelid’s account, one of the main things that public health ethics requires is a far greater investment into healthcare in low-income countries (Selgelid 2008, 2010; Selgelid and Enemark 2008) and in so called ‘tropical diseases’. Similarly, we saw many nations institute a range of healthcare and social welfare programmes to help protect low income and vulnerable members of their populations. On this, I would suggest that such policies ought to remain, but are justified differently to the ethical justifications that arose during the pandemic. That is, while those policies were brought in because of the pandemic, there are a range of more general ethical arguments as to why such policies ought to remain, that are not linked to the threat of Covid-19. See, for instance (Daniels 2008; Resnik 2004; Schuklenk and Ashcroft 2000; Scott 2008; Selgelid 2008, 2009; Selgelid and Enemark 2008; Pogge 2001, 2005, 2008). My point here is that the specific justifications that are active during the pandemic do fall away, but there may be more general ethical justifications that hold significant weight for particular policies. On the dynamic approach, these policies would lose the specific pandemic justifications, but this does not mean they are no longer justifiable.

### **Ensuring That Surveillance Remains Abnormal**

I have so far argued that Covid-19 brought in a raft of surveillance policies and technologies that would have been largely impermissible and unacceptable in

normal circumstances. I next argued that this is because, like a number of policies, in such a public health emergency, these policies and technologies were both justifiable and largely acceptable. I then suggested that we need to see public health ethics, and the policies and technologies of surveillance, as dynamic, that not only do certain of the public health ethics justifications only become operationalized in extreme circumstances, but also that they ought to be reversed. We need to ensure that certain of our social norms return to pre-pandemic normality. In this section I argue why we want to revert the social norms around surveillance to pre-pandemic standards and offer some suggestions about how we can check if this is happening.

In terms of the surveillance, one concern is function creep. Surveillance technologies originally used for one purpose can be used for other purposes. Consider the Amazon Ring, a camera mounted at the front door of people's homes that can be remotely accessed to see who is at the door. The Ring technology was subsequently used in the US by a number of different policing agencies to gather information on people on the public street (Harwell 2019). The point here is that, like mobile phones, the multipurposing of these surveillance technologies can allow for a range of new uses. Moreover, what is particularly relevant is that this function creep can occur invisibly, without the necessary knowledge of the device's primary user or owner. Here, a key element of function creep is the capacity to shift the device's use remotely. The changes in use and function can potentially occur by the decision and actions of people remote from the primary user and owner of the device.

Parallel with the function creep is what we might call 'user creep': Not only can the use change remotely, but the range of *users* can also change. One of the significant capacities of digital technologies is that the information they produce can be used and reused by individuals at a remove from the initial user or owner. First, '[I]nformation doesn't wear out. It [can] be endlessly recycled [and] repackaged' (Drahos and Braithwaite 2002: 58–9). Many different people can use this information. Second, with the interconnectedness of many of our devices, that information can be communicated and shared instantaneously. Third, this sharing of information happens in a way in which those who access and use the information are potentially hidden from the original sources of the information.<sup>8</sup> Put these three elements together and you have the potential for a whole range of new users to access and apply surveillance information in ways at a remove from the original purpose and the original user of that information. The Covid-19 pandemic was a driver of both function creep and user creep.

<sup>8</sup> In his 2004 book *The Digital Person*, Daniel Solove convincingly argued that we ought to see information technologies like surveillance technologies as 'Kafkaesque' in that the users of this information and their motives can easily be hidden from the sources and targets of such surveillance (Solove 2004: 27–55).

This leads us to ask why we should be worried about these new uses and users of surveillance technologies? I have argued elsewhere that we need global pandemic surveillance networks (Henschke 2017: 253). Such a capacity is needed in our globally connected world, as it is only a matter of time until the next pandemic outbreak, a point strongly made by Laurie Garret from the mid-1990s (Garrett 1996, 2001). On the other hand, what is so wrong or ethically problematic about such surveillance? We live our lives online, posting the most intimate details of our personal lives publicly. Privacy, it is often said, is dead, no longer a social norm (Henschke 2017: 28–55). So, on the one hand we have reasons to think that pandemic surveillance is a good thing, and on the other hand, we might be sceptical about privacy arguments against surveillance.

I do not have the space to detail arguments against widespread surveillance and in favour of privacy here. Daniel Solove (2004, 2008); Jeroen van den Hoven (van den Hoven 2007, 2008; van den Hoven and Vermaas 2007); Elliot Cohen (2010); Helen Nissenbaum (2009); and Adam Henschke (Robbins and Henschke 2017; Henschke 2017) have presented different forms of these arguments. Instead, I will simply stipulate that the two main reasons are first that privacy is a fundamentally and/or instrumentally valuable thing, necessary for personal development, intimate relationships, and social cohesion (Koops et al. 2016). Second, that privacy is often a useful protection against government overreach (Henschke 2020). As was documented during the Covid-19 pandemic, a number of governments with authoritarian tendencies used the Covid-19 pandemic as a way of extending their power and decreasing the power of their citizens (Gebrekidan 2020). Moreover, when considering government surveillance, we face the potential of ‘an “informational deficit”, where the state’s knowledge about its citizens substantially surpasses what the citizens know about the state. While there has always been some informational deficit between what a state does and what its citizens know, the worry here is that the new technologies provide so much more information about its people, without a corresponding increase in the citizens knowing about the state’ (Robbins and Henschke 2017: 583). Not only does widespread surveillance degrade privacy rights, and offer the potential for abuse and misuse of power by the state and other institutions, it can significantly impact state–citizen relations. In short, while certain surveillance policies and technologies might be justifiable, we need to be very careful about how such policies and technologies are used and applied.

To close off, I offer some suggestions on how we ensure that the surveillance justified by public health ethics remains abnormal. The first step is to look closely at the ‘moral mechanics’ that justified the surveillance. We need to look closely at the ethical justifications offered in support of the new policies and technologies; what was justified, for how long, why, whose rights were violated, what were the costs and how were those costs distributed? In parallel, we need to see such public health ethics as a form of exceptionalism. On this, which four elements must be provided as part of the justification for the particular decision? An exceptionalism

should first ‘tell us what the exception is *to*. Second, it should tell us *what* is being excepted. Third, it should properly delimit the *scope* of the exceptions. Fourth, it should tell us *why* the exception is being made’ (Emphases Original Allhoff 2012: 40). These four elements seek to treat the situation as justifiable but abnormal; they take seriously the pre-pandemic social norms and seek to preserve them.

The second step is to recognize that public health officials have a responsibility to make sure that the policies themselves are in fact justified. That is, did the surveillance policies and technologies actually help with containing and reducing the pandemic? While it is obvious to see how widespread surveillance might help in a pandemic in theory, we need to see if these theories actually helped in practice. This is the important distinction between a policy or technology being ‘justifiable’ and it being ‘justified’. For instance, while surveillance of infected individuals might have been useful for tracking the spread of infections and contact tracing, is there any evidence to show that publicly communicating information about potentially infectious people was useful? Likewise, did the use of drones actually objectively help the situation or were they merely part of theatre of security? Sahar Latheef’s entry in this collection explores these questions to suggest that a number of surveillance technologies were in fact of limited use. As such, these surveillance tools ought to be removed and we can be concerned about their use in the future.

Third, there was a responsibility on policy makers, to both listen to public health experts in crafting the new laws, as well as to make sure that the policies are written such that they are not simply reversible but will be reversed by default. This draws from the recognition that public health ethics are dynamic. Policymakers and relevant experts in health and security law need to be able to revisit those laws and to review them in order to see that they are in fact reversed if no ongoing justification remains.

Fourth, ethicists have a responsibility to make sure that the moral mechanics are right. It is not enough to simply say that these policies and technologies are justifiable, we need to ask were they in fact *justified*? If they were not, why weren’t they justified, and what can be learnt from this so that we do not permit such repeats in the future? Further, like the responsibility on policy makers, ethicists need to review the laws and policies to make sure that those that have lost their justifications are in fact reversed. And where they have not been reversed, such policies need to be publicly criticized.

Finally, a range of public communicators have a responsibility to make sure that the abnormality of these policies is recognized and reinforced. As I have argued, we should not simply be concerned with the ethical norms that justified these policies and technologies, but we also need to attend to the social norms that shifted during the pandemic. Insofar as such social norms could be changed, we need to engage the public at large to see that these social norms are reversed.

To finish, this is why recognizing the dynamic nature of public health ethics generally, and describing these policies as *justifiable but abnormal* in particular,

becomes so practically important. Surveillance policies and technologies have a way of more easily becoming normalized than other public health measures enacted during the Covid-19 pandemic. We must consider not only that public health ethics may need to return to the pre-pandemic conditions but that social norms around surveillance policies and technologies may remain after the justifications recede. If this is the case, we need to actively pursue public actions that will return these norms from their abnormal state.

## References

- Al Jazeera News and Agencies. 2020. 'UK: Coronavirus Emergency Bill to Become Law in Days'. *Al Jazeera*, 26 March. Accessed 1 April. <https://www.aljazeera.com/news/2020/03/uk-coronavirus-emergency-bill-law-days-200325175754049.html>.
- Allhoff, Fritz. 2012. *Terrorism, Ticking Time-Bombs, and Torture*. Chicago: The University of Chicago Press.
- BBC. 2020. 'Coronavirus: Spain and France Announce Sweeping Restrictions'. *BBC*, 15 March. Accessed 1 April 2020. <https://www.bbc.com/news/world-europe-51892477>.
- BBC News*. 2022. 'Freedom Convoy: Ottawa Declares Emergency over Trucker Covid Rules Protests', 7 February 2022, sec. US & Canada. <https://www.bbc.com/news/world-us-canada-60281088>.
- Belleza, Irish Eden. 2020. 'Coronavirus Prevention: Dubai Uses Drones to Sterilise Streets'. *Gulf News*, 28 March.
- Bicker, Laura. 2020. 'Coronavirus in South Korea: How "Trace, Test and Treat" May Be Saving Lives'. *BBC*, 12 March. Accessed 1 April 2020. <https://www.bbc.com/news/world-asia-51836898>.
- Brennan, Geoffrey, Lina Eriksson, Robert E. Goodin, and Nicholas Southwood. 2013. *Explaining Norms*. Oxford: Oxford University Press.
- Cahane, Amir. 2020. 'The Israeli Emergency Regulations for Location Tracking Of Coronavirus Carriers'. *Lawfare*, 21 March. <https://www.lawfareblog.com/israeli-emergency-regulations-location-tracking-coronavirus-carriers>.
- Chotiner, Isaac. 2020. 'The Medical Ethics of the Coronavirus Crisis'. *The New Yorker*, 11 March.
- Cohen, Elliot D. 2010. *Mass Surveillance and State Control*: Palgrave Macmillan.
- Daniels, Norman. 2008. *Just Health: Meeting Health Needs Fairly*. 1st ed. Cambridge: Cambridge University Press.
- Darwall, Stephen L. 1977. 'Two Kinds of Respect'. *Ethics* 88 (1): 36–49.
- Doffman, Zak. 2020. 'Coronavirus Spy Drones Hit Europe: This Is How They're Now Used'. *Forbes*, 16 March. Accessed 1 April 2020. <https://www.forbes.com/sites/zakdoffman/2020/03/16/coronavirus-spy-drones-hit-europe-police-surveillance-enforces-new-covid-19-lockdowns/>.

- Drahos, Peter and John Braithwaite. 2002. *Information Feudalism: Who Owns the Knowledge Economy?* London: Earthscan.
- Estrin, Daniel. 2020. 'Israel Begins Tracking and Texting Those Possibly Exposed to the Coronavirus'. *NPR*, 19 March.
- Galston, William. 2002. *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*. Cambridge: Cambridge University Press.
- Garrett, Laurie. 1996. *The Coming Plague*: Penguin Books.
- Garrett, Laurie. 2001. *Betrayal of Trust*: Hyperion books.
- Gebrekidan, Selam. 2020. 'For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power'. *New York Times*, 30 March. Accessed 1 April 2020. <https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html>.
- Grunau, Andrea. 2020. 'Coronavirus and Ethics: "Act So That Most People Survive"'. *Deutsche Welle*, 24 March. Accessed 1 April 2020. <https://www.dw.com/en/coronavirus-and-ethics-act-so-that-most-people-survive/a-52895179>.
- Guangcheng, Chen. 2020. 'Warning: Chinese Authoritarianism Is Hazardous to Your Health'. *The Washington Post*, 7 February. Accessed 1 April 2020. <https://www.washingtonpost.com/opinions/2020/02/06/warning-chinese-authoritarianism-is-hazardous-your-health/>.
- Haidt, Jonathan. 2001. 'The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment'. *Psychological Review* 108 (4): 814–34.
- Haidt, Jonathan. 2012. *The Righteous Mind: Why Good People Are Divided by Politics And Religion*. London: Penguin.
- Halbfinger, David M., Isabel Kershner, and Ronen Bergman. 2020. 'To Track Coronavirus, Israel Moves to Tap Secret Trove of Cellphone Data'. *New York Times*, 16 March. Accessed 1 April 2020. <https://www.nytimes.com/2020/03/16/world/middleeast/israel-coronavirus-cellphone-tracking.html>.
- Harwell, Drew. 2019. 'Doorbell-Camera Firm Ring Has Partnered with 400 Police Forces, Extending Surveillance Concerns'. *Washington Post*, 29 August. Accessed 1 April, 2020. <https://www.washingtonpost.com/technology/2019/08/28/doorbell-camera-firm-ring-has-partnered-with-police-forces-extending-surveillance-reach/>.
- Heejin Kee, Sohee Kim, and Claire Che. 2020. 'Virus Testing Blitz Appears to Keep Korea Death Rate Low'. *Bloomberg Businessweek*, 5 March. Accessed 1 April 2020. <https://www.bloomberg.com/news/articles/2020-03-04/south-korea-tests-hundreds-of-thousands-to-fight-virus-outbreak>.
- Henschke, Adam. 2016. 'Sliding Off Torture's Halo of Prohibition: Lessons on the Morality of Torture Post 9/11'. *Asia-Pacific Journal on Human Rights and the Law* 17: 227–39.
- Henschke, Adam. 2017. *Ethics in an Age of Surveillance: Virtual Identities and Personal Information*. New York: Cambridge University Press.
- Henschke, Adam. 2020. 'Privacy, The Internet of Things and State Surveillance: Handling Personal Information within an Inhuman System'. *Moral Philosophy and Politics* 7 (1): 123.

- Hyung Eun Kim. 2020. 'Coronavirus Privacy: Are South Korea's Alerts Too Revealing?' *BBC*, 5 March. Accessed 1 April. <https://www.bbc.com/news/world-asia-51733145>.
- Kagan, Shelly. 1998. *Normative Ethics, Dimensions of Philosophy*. Boulder: Westview Press.
- Karp, Paul. 2020. 'Coronavirus: What Power Does the Australian Government Have Over You During Crisis?'. *The Guardian*, 3 March. Accessed 1 April 2020. <https://www.theguardian.com/world/2020/mar/03/coronavirus-what-legal-power-does-the-australian-government-have-to-respond-to-the-threat>.
- Koops, Bert-Jaap, Bryce Clayton Newell, Tjerk Timan, Ivan Skorvanek, Tomislav Chokrevski, and Masa Galic. 2016. 'A Typology of Privacy'. *University of Pennsylvania Journal of International Law* 38: 483.
- Larmore, Charles. 1987. *Patterns of Moral Complexity*. Cambridge: Cambridge University Press.
- Macnish, Kevin. 2018. 'Government Surveillance and Why Defining Privacy Matters in a Post-Snowden World'. *Journal of Applied Philosophy* 35 (2): 417–32.
- Min Joo Kim and Simon Denyer. 2020. 'A "Travel Log" of the Times in South Korea: Mapping the Movements of Coronavirus Carriers'. *The Washington Post*, 14 March. Accessed 1 April 2020. [https://www.washingtonpost.com/world/asia\\_pacific/coronavirus-south-korea-tracking-apps/2020/03/13/2bed568e-5fac-11ea-ac50-18701e14e06d\\_story.html](https://www.washingtonpost.com/world/asia_pacific/coronavirus-south-korea-tracking-apps/2020/03/13/2bed568e-5fac-11ea-ac50-18701e14e06d_story.html).
- Mitnick, Joshua. 2020. 'Better Health Through Mass Surveillance? Israeli Authorities Want to Spy on People with the Coronavirus'. *Foreign Policy*, 16 March.
- Nissenbaum, Helen. 2009. *Privacy in Context: Technology, Policy, and the Integrity of Social Life*. Stanford: Stanford Law Books.
- Persad, Govind. 2016. 'Health Theater'. *Loyola University of Chicago Law Journal* 48: 585.
- Pogge, Thomas. 2001. 'Priorities of Global Justice'. *Metaphilosophy* 32 (1&2): 6–24. doi: doi:10.1111/1467-9973.00172.
- Pogge, Thomas. 2005. 'Human Rights and Global Health: A Research Program'. *Metaphilosophy* 36 (1/2): 182–209.
- Pogge, Thomas. 2008. *World Poverty and Human Rights*. 2nd ed. Cambridge: Polity Press.
- Resnik, David B. 2004. 'The Distribution of Biomedical Research Resources and International Justice'. *Developing World Bioethics* 4 (1): 42–57. doi: doi:10.1111/j.1471-8731.2004.00066.x.
- Robbins, Scott and Adam Henschke. 2017. 'Designing for Democracy: Bulk Data and Authoritarianism'. *Surveillance And Society* 15 (3): 582–9.
- Schuklenk, Udo and Richard Ashcroft. 2000. 'International Research Ethics'. *Bioethics* 14: 158–72.



- Scott, Charity. 2008. 'Belief in a Just World: A Case Study in Public Health Ethics'. *Hastings Center Report* 38 (1): 16.
- Selgelid, Michael J. 2008. 'Improving Global Health: Counting Reasons Why'. *Developing World Bioethics* 8 (2): 115–25.
- Selgelid, Michael J. 2009. 'A Moderate Pluralist Approach to Public Health Policy and Ethics'. *Public Health Ethics* 2 (2): 195–205. doi: 10.1093/phe/php018.
- Selgelid, Michael. 2010. 'Infectious Diseases'. In *A Companion To Bioethics*, edited by Helga Kuhse and Peter Singer, 430–40. Malden: Wiley-Blackwell.
- Selgelid, Michael. 2012. 'The Value Of Security: A Moderate Pluralist Perspective'. In *Ethics and Security Aspects of Infectious Disease Control: Interdisciplinary Perspectives*, edited by Christian Enemark and Michael Selgelid. Farnham: Ashgate.
- Selgelid, Michael J. and Christian Enemark. 2008. 'Infectious Diseases, Security and Ethics: The Case of HIV/AIDS'. *Bioethics* 22 (9): 457–65.
- Selgelid, Michael J., Angela R. McLean, Nimalan Arinaminpathy, and Julian Savulescu. 2009. 'Infectious Disease Ethics: Limiting Liberty in Contexts of Contagion'. *Bioethical Inquiry* 6: 149–52. doi: 10.1007/s11673-009-9166-1.
- Solove, Daniel. 2004. *The Digital Person: Technology and Privacy in the Information Age*. New York: New York University Press.
- Solove, Daniel. 2008. *Understanding Privacy*. Harvard: Harvard University Press.
- Sullivan, Helen, Kevin Rawlinson, Alexandra Topping, and Damien Gayle. Accessed 1 April 2020. 'Spain Overtakes China as Second Worst-Hit Country by COVID-19—As It Happened'. *The Guardian*, 26 March. Accessed 1 April 2020. <https://www.theguardian.com/australia-news/live/2020/mar/25/coronavirus-live-news-india-lockdown-italy-cases-restrictions-uk-us-outbreak-australia-china-hubei-latest-updates>.
- van den Hoven, Jeroen. 2007. 'Privacy and the Varieties of Informational Wrongdoing'. In *Computer Ethics*, edited by John Weckert, 317–30. Aldershot: Ashgate Publishing.
- van den Hoven, Jeroen. 2008. 'Information Technology, Privacy and the Protection of Personal Data'. In *Information Technology And Moral Philosophy*, edited by Jeroen van den Hoven and John Weckert, 301–21. Cambridge: Cambridge University Press.
- van den Hoven, Jeroen, and Pieter Vermaas. 2007. 'Nano-Technology and Privacy: On Continuous Surveillance Outside the Panopticon'. *Journal of Medicine and Philosophy* 32 (3): 283–97.
- Viens, Adrian M. and Michael Selgelid, eds. 2012. *Emergency Ethics*. London: Palgrave.
- Vinjamuri, Lesli. 2020. 'America's Coronavirus Response Is Shaped by Its Federal Structure'. *Chatham House*, 16 March. Accessed 1 April, 2020. <https://www.chathamhouse.org/expert/comment/americas-coronavirus-response-shaped-its-federal-structure>.