Tracking or not tracking
That is the question ... or not?

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Few introductory words

• Thank you to Henri Berestycki, Jean-Pierre Nadal and to Patrice Bourdelais, a historian I have read for a long time, as a philosopher and the former director of the InSHS for which I work.

• An ethical approach
  • Work in progress, lack of long-run perspective
  • Mapping the debate if possible not exclusively from a French point of view
  • Formulating some issues that appear important to me at this stage of the reflection
What are we talking about?

• At a worldwide scale, the tracking options are very diverse
  
  • Various goals: to identify infected persons; to inform the persons that have been in contact with infected ones (CovidApp, Austria; Ireland); to warn someone about the trespassing of the social distance and give appropriate recommendations to a person that is tested positive (App SmitteStop, Denmark); to identify the chain of transmission of the virus and warn the citizens (South Korea); to track the movements of the population (Sweden, Telia phone company) vs to track the meetings (Finland; immunity certification in order to cross borders (Austria, Restart id); quarantine app. compulsory for any person entering the national territory.
  
  • Various types of data. Example South Korea: bank data, medical data and so on.
  
  • Data planned or not to be erased at some point of time (the end of the epidemic, the end of the state of urgency ...)
  
• Or even, not discussed – Spain, Luxembourg.

• Very few experimentations prior to a generalized use (San Francisco, Finland).

• Actors - Government led elaboration of the app.; mix public/private companies conception (Denmark); Google and Apple (Germany, Handy app); role of the recommendations of the European Commission in Europe.
The most often discussed issues

• **Efficiency**
  • Italy: The Immuni app. implies the use of a smartphone. Only 60% of Italian people have a smartphone.

• **Protection of personal data and of private life**
  • Discussions and controversies: present but not everywhere > in the Netherlands (protection of private data, fundamental rights, national security); in France (respect of private life and data vs situation of urgency and of exception)
Willingfullness and individual and state duties

• Autonomy: most often, the use of the app. is based on the individual willingfullness to do so. > A clearly defined duty both the for the state and for the individuals.

• The high risks for everyone in cases of pandemic highlights the fact that our right to health can be guaranteed only by our duty to health (as the IBC underlined in its report on the Principle of Individual Responsibility as related to Health (2019)), both on an individual and collective levels. As a priority, there is a need for our conceptual recognition and actual translation into action of our responsibilities. This includes responsibilities of the governments to ensure public safety and protect health, and raise awareness of the public and other actors on the methods required for this purpose; responsibilities of the public to abide by the rules that protect everyone not only as individuals but also, and above all, as a community; responsibilities of healthcare workers to treat and care for patients. As an example, the recognition of one’s responsibilities is that of coping with restrictions of freedom (e.g. ‘physical distancing’), which does not mean the ‘social isolation’ of an individual nor distancing from social relationship, but an expression of duty to maintain a proper physical distance in social activities in order to prevent the spread of a contagious disease.

• (COMEST/UNESCO declaration on Covid 19: CONSIDÉRATIONS ÉTHIQUES SELON UNE PERSPECTIVE MONDIALE, 6. 04 2020)
Willingfullness and individual and state duties

• « De manière générale, les mesures sanitaires visant à la protection de la population sont pour un Etat un devoir. De manière générale, les mesures sanitaires visant à la protection de la population sont pour un Etat un devoir. Si les principes du consentement et de l’anonymat peuvent être levés en situation épidémique, cette situation dérogatoire doit être limitée et proportionnée aux effets attendus, qui peuvent être ici considérables. Tout en pouvant techniquement se dispenser du consentement, les outils numériques permettent aussi de le recueillir à travers des usages volontaires. A défaut de consentement, un haut degré de transparence doit s’accompagner d’une information intelligible, y compris pour les personnes éloignées du numérique. » CARE 20 04 2020
What about ethical matters?

• A « health duty »: No justification to refuse to use the app.
  • Morally bad
  • Wrong citizen behaviour

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An ethically satisfying solution?

• CARE 20 04 2020: Necessity and possibility to combine this duty with other ethical requirements

• Apps. to be used solely for public health purposes
• distinction between the respect for confidentiality and the crypted use of personal data, legal and ethical frame
• Public communication on the technology & transparency
• Reversibility of the measures
• Protection against fraudulent uses and hacking activities
• Regulation by the State of the apps. and their uses
• Participatory approaches and evaluation ex-post
An ethically satisfying solution?

• With a more critical tone:

  • « Saving lives is the most important and urgent goal. Restrictions of rights and freedoms that are imposed in order to save lives in an emergency situation, however – including those implemented through technological surveillance through mobile devices through to drones and surveillance cameras – need to be removed, and data need to be destroyed, as soon as the emergency is over or infringements are no longer proportionate. The public health emergency must not be abused to usurp power, or to permanently suspend the protections of rights and liberties. » (EUROPEAN GROUP ON ETHICS IN SCIENCE AND NEW TECHNOLOGIES, april 2020)
Remaining issues

• The public health argument ushers any other argument out.

• This very point may be the main ethical issue: there is NO ROOM for ethical debate.
  • Risk of social stigmatization of non-users
  • The conditions for an « autonomous » choice are not guaranteed.
Why should we take this matter seriously?

• Individuals’ view points are probably very diverse (extracts from semi-directed interviews, ongoing SOLPAN investigation)

  • « It is Big Brother. I don’t care anyway, because I always forget my phone » (Michèle, 79)
  • « Private life must remain private » (Renaud, 50; Ulysse, 18)
  • « We are already watched over, so this is fine with me » (Djilali, 18)
  • « I am ok with a State use of my data, but I fear about hackers. How to be sure the system will protect us from them? » (Paul, 62)
  • « I don’t trust the governement to erase the data afterwards » (Martine, 70)
  • « I am skeptical and wait to know more about it » (Solveig, 40)

Why should we take this matter seriously?

  • The tempo - acceleration as the keyword. Here: contexte of « urgencey » and « crisis »
  • “slipping slopes” phenomena: “actors [in the late modern world] operate under conditions of permanent multidimensional change that make standing still by not acting or not deciding impossible” (SA, p.117).
  • The rhythms of education or *democratic polity* simply cannot keep pace with this tempo. The latter is not compatible with what R. Hartmut calls the promise of modernity: the reflexive autonomy
  • In the realm of new electronic/communication technologies, reinforced social inequality.
Why should we take this matter seriously?

• **From an app. to major political issues**

  • In addition to potential inefficiency, inequity (the « numerically » illiterate and under-equipped part of the population) – *an issue in terms of justice*

  • Lack of respect of the morally reflexive being and of the democratic debate (on the apps. themselves, on alternative measures) – *how to maintain the condition of reflexive autonomy in a time of urgency?*

  • Development of new social stigma (who is infected around me? Who does not want to use the app.?) and potential contribution to the spreading of politically dangerous passions and feelings (fear of other... vs solidarity and care) – *classical philosophy questioning about « passions » and their political scope*