HARVARD Kennedy School
CARR CENTER
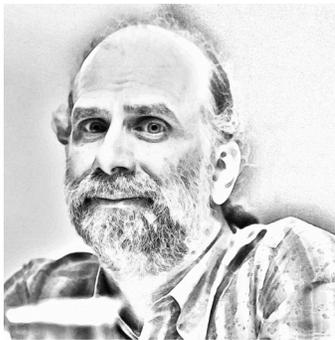for Human Rights Policy

Carr Center Covid-19 Discussion Series

The Ethics of Surveillance Technology during a Global Pandemic

Three experts on cyberlaw, security, and AI discuss how governments and businesses might ethically employ surveillance and AI technologies to address Covid-19.

Bruce Schneier

ADJUNCT LECTURER IN PUBLIC POLICY AT HKS, SECURITY TECHNOLOGIST

Vivek Krishnamurthy

CARR CENTER FELLOW

Mathias Risse

FACULTY DIRECTOR, CARR CENTER

What are the rights implications of increased state surveillance during a pandemic?

SCHNEIER – Broad societal surveillance always infringes on rights, but its effects are not uniformly distributed. Its effects vary, depending on race, ethnicity, income level, social class, and so on. This isn't new, or specific to a pandemic; it's universal. In a crisis—whether it was the immediate aftermath of the terrorist attacks of 9/11, or a pandemic like COVID-19—we're less likely to consider those disparate effects of surveillance. This means that it's more important than ever to ensure that any increased surveillance measures include both due process transparency provisions, as well as a way to undo the increased surveillance once the pandemic subsides.

KRISHNAMURTHY – We can think about the rights implications of the increase in state surveillance resulting from the coronavirus pandemic on two different time scales: while we are actively battling this awful new disease, and once it is finally brought to heel (which we all hope is as soon as possible). The international human rights framework recognizes the primacy of the right to life above all others, and

the enjoyment of many other rights (from privacy to free expression to free movement) can be limited to protect against threats to life—such as those originating from a deadly contagious disease. While the pandemic is still raging, the question I ask myself about the surveillance measures that are being implemented is whether they are *necessary* to fight the coronavirus, and if so, whether the measures are *proportionate* to the threat the virus poses to human life.

My longer-term concern is that measures that are enacted to fight a crisis tend to become the "new normal" after the crisis has passed. We saw this in the U.S. with the vast expansion in government surveillance powers enacted after September 11, pursuant to laws that remain on the books nearly twenty years later. If past is precedent, then I fear that many of the new surveillance tools that have been deployed to fight the coronavirus are going to be with us well after the virus is vanquished.

My longer-term concern is that measures that are enacted to fight a crisis tend to become the "new normal" after the crisis has passed.

RISSE – We are seeing some rather dramatic things around the world. For all we can tell, China has been seizing the opportunity to tighten its grip on its population and their health data and other information, which allows for inferences into their movements and activities. The sheer scale at which this is happening in a country of that physical and population size is breathtaking and truly frightening. Viktor Orbán had his own party—which already holds a super-majority in the Hungarian parliament—turn over emergency powers to Orbán indefinitely, ostensibly because it is the only way to fight the virus. Many other countries are more resilient against such intrusions, but every day news is coming in about governments absorbing new powers in response to the crisis. It is imperative that any constraints of rights during the pandemic be very narrowly tailored towards the specific purpose of defeating the pandemic and be lifted as soon as possible. But unfortunately public health crises are among the most likely events that create a perception for legitimacy for rights constraints. Vigilance at a global scale is needed.

Are there tradeoffs between securing the right to health and limiting rights to privacy during such times?

SCHNEIER – There are, but there shouldn't be. Writing in the *Financial Times*, Yuval Noah Harari wrote: "Asking people to choose between privacy and health is, in fact, the very root of the problem. Because this is a false choice. We can and should enjoy both privacy and health. We can choose to protect our health and stop the coronavirus epidemic not by instituting totalitarian surveillance regimes, but rather by empowering citizens." He's right. The efficacy of surveillance measures to reduce the COVID-19 transmission rate is unproven, and likely negligible. Cell phone surveillance doesn't reveal who is within a few feet of someone else. And the false positives will overwhelm the valid information. It's entirely reasonable that the trade-offs between privacy and other public goals change during a crisis such as a pandemic, but be careful before using this as an excuse to do everything. Efficacy is important, and implementing a variety of surveillance measures "just in case they work" diverts resources from interventions that actually work.

KRISHNAMURTHY – I don't think it's helpful to think of the appropriate balance between the right to health and the right to privacy in terms of a trade-off, whether in this time of crisis or under more normal circumstances. Less privacy doesn't always equal more health, nor does less health equate to more privacy. Rather, there may be particular limitations on the right to privacy that can promote the attainment of the right to health both in ordinary times and in times of crisis. For example, HIPAA—the federal health privacy law in the U.S.—provides a very high level of privacy protection for personal health information held by healthcare providers, but the law contains exceptions for reporting communicable diseases to the public health authorities in order to help combat an outbreak. This seems like a reasonable limitation on the right to privacy in the service of public health objectives, but other limitations on privacy might well be counter-productive. As always, the grundnorm of the international human rights framework of evaluating the necessity and proportionality of limitations on rights in view of a pressing societal objective helps us to evaluate whether particular measures are justified in a particular circumstance.

RISSE – There are of course such trade-offs. If the right to health—which would have to be understood as a right to protection against a certain range of threats and a right to care—is threatened through the sheer presence and mobility of other people, as is the case during a pandemic, then preserving the right to health will inevitably encroach upon other rights. Freedom of movement might have to be constrained temporarily, and possibly also the right to privacy. Suppose there were to be a mutant of the corona virus that killed younger and healthier life with much higher likelihood than it does now, so that knowing at least the whereabouts if not the actual identity of infected people would become crucial to minimize or even limit the threat. In such a case encroaching upon privacy would have to be acceptable. The key is always that such intrusions and encroachments be very narrowly tailored to the purpose, and that political oversight is exercised to make sure of that.

Disinformation during a pandemic can not only spread incorrect information, it can result in loss of lives. How can technology companies best combat disinformation spread through their platforms?

SCHNEIER – Researchers have been studying disinformation since the 2016 election, and there is no clear consensus on the answer to that question. Solutions will certainly be a mix of things: digital literacy, takedown of foreign disinformation campaigns, transparency of platform operations, and so on. Everything will help, and nothing will solve it on its own. Social media platforms have the fundamental business model of keeping their users under ubiquitous surveillance, and using the information learned against those users' interests. This is surveillance capitalism; this is personalized advertising. As long as that's true— as long as these companies use division and outrage as a way to keep users on those platforms longer— disinformation will have a home. We have a market economy, where corporations are expected to maximize their profits—even, as we've learned, at the expense of democracy. If we as a society don't like this outcome, then we need to use the power of government to regulate that business model.

KRISHNAMURTHY – Combating misinformation and disinformation is a tough challenge for technology companies at the best of times, and the coronavirus has made it harder in at least two ways. First, the stakes have never been higher, as misinformation and disinformation about the virus can quite literally kill. Second, human moderators have been idled by physical distancing measures, which means that companies are relying more than ever on automated systems to identify and combat "information disorders." Technology companies have long sought to avoid being arbiters of the truth of what is said on their platforms, but I see this starting to change in the current crisis. Both Twitter and Facebook have taken down posts by Brazilian President Jair Bolsonaro where he falsely claims that an anti-malarial drug is a cure for the coronavirus, despite their general hands-off approach to moderating statements made by political leaders. While technology companies are right to take strong action against prominent figures who are abusing their platforms, this is not a scalable strategy for combating misinformation and disinformation during the pandemic or more generally.

A more sustainable solution is for companies to change key aspects of the design of their platforms to combat the spread of false information. This has started to happen in response to the coronavirus. For example, search results on coronavirus-related terms now display prominent boxes containing information from reputable sources about the disease and how to combat its transmission. One could imagine other design tweaks that would help combat false information about the coronavirus, such as making high-quality information about the disease more prominent in news feeds and search results, while giving less prominence to information from less reputable sources—regardless of whether the information is true or false. Finally, technology companies could also perform a "judo move" of leveraging the very algorithms and techniques that have come under widespread criticism for their ability to manipulate public opinion toward malevolent ends to spread reliable and high-quality information about addressing the coronavirus crisis. Just as the merchants of disinformation have weaponized targeting advertising systems to spread falsehoods, now might well be the time to use these powerful tools to inform people about the coronavirus in ways that are most likely to be convincing to them.

RISSE – Perhaps the best way of proceeding here is for tech companies to open particular platforms for high-quality information for which they are willing to vouch in the sense that they provide expert supervision of the postings. In other words, postings to these platforms would be screened by public health experts with relevant expertise, and the companies would advertise for these platforms accordingly—as in, "if you want to read something reliable about the crisis, do make sure to visit such and such sites, for the following reason." Tech companies should seize the moment to remind the public of the importance of expertise for public and private decision making. For the moment, Dr. Anthony Fauci shows the country and the world what it is like to perform at an incredibly high level as an expert in the policy domain under rather adverse circumstances. But he can't be everywhere!

> **Tech companies should seize the moment to remind the public of the importance of expertise for public and private decision making.**