

Inquiring Minds topic – 22 May 2020

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Pandemic vs Privacy

The strategy of South Korea was to test people who might be infected and then use electronic devices to identify with whom they may have been in contact. This included using their phones GPS records to identify where they had been and the phone records to identify with whom they had been. These people and places could allow a follow-up to identify other people who might be infected. Of course this only works if there is a good testing technique. It is also intrusive on the privacy of the people whose contacts and travel were followed.

Would such a procedure be accepted in the US? Is there a balance between perceived danger and intrusion?

Privacy in part derives from the notion that a person should not be subject to unreasonable search which became a constitutional right. Privacy has been extended into the personal sphere such as the right of a woman to control her own body.

Constitutional “rights” have usually had limits imposed upon them. For instance freedom of speech does not include a false shouting of fire in a crowded theater. It also does not include pornography although there is no good definition for pornography.

Google got into difficulties when it was setting up google maps and captured

images of people outside buildings they photographed. These images disclosed some personal relationships people did not wish to have made public. The identification of covid-19 infected people by South Korea also caused similar embarrassing disclosures.

The great challenges in public policy occur when two or more right choices are in conflict. Protection of the health of people is a necessary function of government. Protection of the ability of people to earn a living is a necessary function of government. Protection of privacy rights of individuals is a necessary function of government in the United States and some other countries. Protection of the right of people to associate freely with each other is a necessary function of government in the United States and some other countries. This is not a complete list of the functions of government which may be in conflict.

State and municipal governments have ordered the closure of businesses and institutions such as schools and churches to attempt to limit the spread of the covid-19 virus. Violation of those orders could result in fines or jail time. Are these orders a taking of property without due process or compensation? Are they a denial of free association? Are they a restriction of the freedom of religious practice?

Can government require an individual to have a test to determine presence of a disease? Can such a test be the prerequisite to going into a meeting, business, religious ceremony, sporting event &c.? Can your phone's GPS records allow government to identify a person who may have been in contact with a carrier of a virus?

Without looking to the Constitution of the United States or the legal precedents can we determine the right way to make these decisions? How does one make the right decision?

To move the discussion, how would you reply to the request that the data in your mobile phone be used to notify you of your exposure to someone who has tested positive to covid-19? How would you respond to being told that it did not matter if you agreed because the data was being used and you have been exposed.

Would there be a different response to a request that your blood be drawn for an antibody test to covid-19? What would you say to an order that your blood be taken for the test?

Is it right for you to be able to refuse these procedures which could protect the health or lives of others? If so, when?

Apple and Google have just announced a jointly developed app which would record the bluetooth contacts of mobile phones (and related watches) providing time, place and identity of each contact. Thus wherever your phone or watch went all the other bluetooth devices identified would be reported to the interrogator. As announced the app would have to be downloaded and would have lots of security to avoid privacy abuse. Not being technologically sophisticated I do not understand why this could not be installed as a software update and I do not understand why once it is in place it could not be continued. Is this similar to the system the Chinese have put into the phones to keep track of their people?

In the United States these matters will likely result in court challenges. Would you like to be a judge ruling on these issues?