THE RIGHT TO PRIVACY VERSUS A HUMAN RIGHT TO HEALTH

ABSTRACT

In the context of the coronavirus pandemic, should data collection trump individual privacy rights or vice versa? I attempt to square the circle by arguing both for mandatory contact-tracing and for an improved legal basis for protecting privacy as much as possible under such a mandate. My goal is to motivate popular participation in mandatory contact tracing even as that participation temporarily infringes individual privacy rights. If a liberal democratic political community offered strong legal protection for persons who sacrificed some privacy rights for the sake of a more effective collective effort to contain the virus, and if citizens had good reason to trust both the state and the private sector with their private health information, then, from a consequentialist standpoint, a data-first strategy recommends itself over a privacy-first approach. I further argue that legally mandated contact-tracing is compatible with human rights, whereby an individual human right to privacy conflicts with a collective human right to health, a conflict resolvable, again, by consequentialist means. I develop this argument in six steps: (1) I describe the containment method in question: contact-tracing and (2) I propose contact-tracing without informed consent (because state mandated). I then address two ways to shore up a right to personal liberty that the individual has temporarily derogated: (3) forms of legal protection even in cases of temporary derogation of individual privacy by the state and (4) greater trust, on the part of affected persons, toward the state as well as in the private sector. (5) I then make a consequentialist argument for legally mandated contact-tracing, if legal protections were available and citizens had reason to trust the state and private sector. (6) I conclude by arguing that mandated contact-tracing is compatible with human rights, whereby an individual human right to privacy conflicts with a collective human right to health (a conflict I resolve in line with my consequentialist argument).

ABOUT THE SPEAKER

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Benjamin Gregg is Professor of Social and Political Theory at the University of Texas at Austin. He works in the fields of political science, sociology, philosophy, law, and bioethics. He has taught in Germany, Austria, Sweden, Japan, China, and Brazil. In addition to more than eighty articles, he is the author of *The Human Rights State; Human Rights as Social Construction; Thick Moralities, Thin Politics* (2003); and *Coping in Politics with Indeterminate Norms*. This October, Cambridge University will publish his newest book, *Constructing Human Nature: The Political Challenges of Genetic Engineering*. His work has been translated into German, Portuguese, Italian, Japanese, and Chinese. He was the 2021-2022 Fulbright Distinguished Chair in Public International.

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DEAN, FACULTY OF LAW AND NUS COLLEGE, VICE–PROVOST (EDUCATIONAL INNOVATION)
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