

Democracy and the politicization of personal health data: the Norwegian Smittestopp case

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Abstract. In early 2020, at the onset of the coronavirus pandemic, many countries developed and introduced contact-tracing apps. These apps use one or more of several cell phone capabilities to notify citizens when they should enter self-quarantine because of close contact with an infected individual. Norway released a contact tracing app called Smittestopp in April 2020 which, though initially widely used, was also met with criticism for the way it handled personal health data. Shortly after Amnesty International issued a press release calling the app a surveillance technology, it was rescinded, and a different solution developed. This paper discusses Smittestopp as an example of the politicization of personal data in the context of a state of exception, in this case the covid-19 pandemic. The combination of the politicization of personal data and a miscalculation of how long the pandemic might last contributed to the app's negative reception both domestically and internationally. The paper argues that while the case did present a short-term challenge to Norway's democratic institutions, the context of the state of emergency coupled with other actions the Norwegian government has taken to curb infection rates indicates that these challenges were temporary and not a serious threat.

Introduction

The COVID-19 pandemic threw a lot of things people had taken for granted into question. In the early months, much of this was related to how to keep the virus under control without overreacting to the point that individual freedoms were at a significant risk of being under attack. At the same time, however, the rate of viral

transmission, relative unpreparedness of the global community, and the number of people dying from the disease made it clear that the coronavirus pandemic deserved exceptional treatment.

While some countries imposed extremely strict lockdown measures, many democratic countries saw this move as both an unnecessary restriction on people's rights to movement and extremely difficult to do while maintaining citizens' trust in government. Similarly, in a rush to understand and track the virus spread, many governments turned their attention to developing contact tracing apps. While these apps do not limit a person's physical movements, their digital nature raises several privacy concerns. These concerns include questions around how to limit a government's right to collect and use health data in large quantities in exceptional circumstances, like the coronavirus pandemic. Unlike self-enforced stay-at-home orders or masking requirements, digital contact-tracing apps require the collection and storage of personal data, including health data. This opens digital contact-tracing apps up to a greater possibility for abuse on the part of the bodies administering them, usually governments, and thereby places them into a more dangerous category subject to more scrutiny than other pandemic-management tools.

This paper analyzes the case of the Norwegian contact tracing app called Smittestopp through this lens. The Norwegian case is particularly interesting because Norway has an extremely strong and developed democratic tradition, but the Smittestopp app was highly criticized and eventually rescinded due to concerns that data privacy rights were not sufficiently protected in relation to the severity of the COVID-19 outbreak in Norway. Ultimately, I argue that while concerns about government overreach and the breakdown of democratic institutions was legitimate, the way the case was handled may have strengthened Norwegian democracy.

Background

After a 13-fold increase over the course of two weeks in coronavirus cases outside of China, where it was first discovered, the World Health Organization, (WHO) declared a pandemic on March 11th, 2020. (Cucinotta & Vanelli, 2020). By the 27th of March, the Norwegian Institute for Public Health (NIPH) announced it was “developing an app for contact tracing” in order to “reduce the time used for contact tracing”(Folkehelseinstituttet, n.d.). Contact tracing in itself is nothing new, with traditional or so-called manual contact tracing being carried out by health care workers identifying and contacting known close contacts of an infected person (Klar & Lanzerath, 2020; Williams et al., 2020). However, early in the pandemic, some saw this traditional version of contact tracing as insufficient due to its speed and the level of labor involved, suggesting digital contact tracing may be the only feasible solution to control the pandemic (Ferretti et al., 2020). More recent analyses also point to techno-optimism which assumes digital solutions to be more effective than manual methods as a contributing factor to their rapid development and uptake (Luciano, 2020; Sandvik, 2020a).

Discussions around the ethics of these apps were numerous in the scientific community as governments around the world moved quickly to develop and implement digital contact tracing apps (Dubov & Shoptawb, 2020; Ferretti et al., 2020; Klar & Lanzerath, 2020; Klenk & Duijf, 2020; Luciano, 2020; Morley et al., 2020; Ponce, 2020). In particular, a focus on ensuring contact tracing apps did not significantly infringe on individual rights to privacy was discussed, with some authors, like Parker et al. (2020) acknowledging a potential “conflict between liberty and privacy”.

Because the virus was initially discovered in China, by the time Western countries were discussing whether and how to implement contact tracing apps, China had already begun deploying its own digital contact tracing app through Alipay, a pre-existing and already popular wallet app (Mozur et al., 2020). This meant that as conversations around the ethics of contact tracing apps developed, they were often framed in terms of varying approaches in democratic versus non-democratic states. Hoffman (2020), in early April 2020, called tracing apps “an authoritarian regime’s instrument of choice” arguing that even though the WHO had praised the way China was handling tracking through extreme measures, “intact democracies have other resources at their disposal”, namely solidarity and cooperation from citizens. Western media generally agreed with this view, the New York Times publishing an article describing the Chinese contact tracing app, which dictates individuals’ movement and quarantines and sends personal data to police, as a “troubling precedent for automated social control” (Mozur et al., 2020).

The global nature of the virus, urgency with which governments were working to contain it, and a certain level of techno-optimism led to uncoordinated and varied approaches to the development and adoption of contact tracing apps. In early May 2020, MIT published information about various apps, including Norway’s, in a database which tracks whether each app is a) voluntary, b) limits how much data can be used, c) whether and when data will be destroyed, d) the amount of data collected, and e) whether data use is transparent (O’Neill et al., 2020). As of one year after the database was released, it contains information about apps for 49 countries and 29 U.S. states, each with different histories of use.

The Smittestopp Case

The first version of the Norwegian app, Smittestopp, was developed locally by the Norwegian Institute for Public Health in collaboration with a government-sponsored lab called Simula. On March 27th 2020, NIPH published a post presenting the app as one of many technological solutions that may be able to help curb the infection rate in Norway (*Utvikler app for smitteoppsporing*). The app was to use Bluetooth and GPS-based location data from users’ mobile phones to identify whether users had been in the vicinity of other users who later tested positive for covid-19. It specifically called out the need for close attention to data privacy and security, stating that NIPH had already begun working with the Norwegian Data Protection Authority to ensure these concerns would be addressed (*Utvikler app for smitteoppsporing*).

Almost simultaneously, however, Norwegian news media, along with the Data Protection Authority and a number of politicians, began criticizing the app's approach to data collection and handling (Fremstad & Løset, 2020; Sandvik, 2020b; Skille, 2020a, 2020b). Complaints ranged from the amount of data collected and the app's ability to track movements to the amount of time that data would be stored (30 days) to a lack of transparency about the intention to use data for research in addition to the app's initial purpose of contact tracing (Sandvik, 2020b). In addition, the developers planned to store data centrally, users were not given an option for their data to be used only for contact tracing while opting out of other research-driven motives for the app's development, and the code was not open-source. These characteristics left the app vulnerable to privacy issues such as, in some cases being able to identify individuals and their movements.

Nevertheless, on April 16th, 2020, the first version of Smittestopp was released, with the prime minister, Erna Solberg, publicly expressing her support for it, stating that "if we want to get our lives back, as many people as possible must download the app" (Løkkevik et al., 2020). By May 3rd, around one-fifth of the population had downloaded and begun sharing data through the app (Grut & Zondag, 2020). Criticism around data privacy continued, even as NIPH and Simula continued to defend the app, citing extenuating circumstances and importance of deploying a contact tracing app quickly to slow the virus' spread.

By mid-June, concerns had grown enough that the Data Protection Authority issued a warning to NIPH stating that Smittestopp collected large amounts of data, some of which is sensitive and which allows for surveillance of individuals' movements (Datatilsynet, 2020a). That same week, Amnesty International published a press release describing Bahrain, Kuwait, and Norway's contact tracing apps as "among the most dangerous for privacy" (Amnesty International, 2020b). The document, like the warning issued from the Data Protection Authority, states that the Norwegian app is a "surveillance tool" that goes "far beyond what is justified in efforts to tackle COVID-19". It also cites that the amount of surveillance is "unlikely to be necessary and proportionate in the context of a public health response", implying that such extensive data collection would not have been appropriate even if infection levels had been higher. Shortly after the release of these two documents, on June 15th, NIPH announced it would delete data collected from the app and stop collection of further data (Folkehelseintittuttet, 2020). On July 6th, the data protection authority temporarily banned the app, and by the end of September it was announced Norway would move to the solution developed by Apple and Google (Datatilsynet, 2020b).

A Threat to Privacy, a Threat to Democracy?

After the Smittestopp app was retracted, Amnesty International released a statement praising Norway for discontinuing it (Amnesty International, 2020a). In the weeks and months since then, questions have come up surrounding the ethics and effectiveness of contact tracing apps generally, and specifically the effect of the pandemic on the state of Norwegian democracy. In the case of Smittestopp,

this debate appears in the form of human-rights based language related to privacy. The positive correlation between democracy and privacy is often taken for granted, but as the pandemic has forced traditionally private personal health information into the public sphere, democracies have been forced to grapple with the extent to which individual privacy trumps matters of public health.

Norwegian Democracy and Privacy

As the pandemic began and governments imposed restrictions on citizens' movements, the academic community raised concerns around the state of democratic rule and the extent to which governments could impose restrictions without sliding towards autocracy. This begs the question of what exactly a move toward autocracy might look like and when such a move might indicate a threat.

Norway regularly ranks highly on democracy indices (Alizada et al., 2021; The Economist Intelligence Unit, 2021). According to The Economist Democracy Index, Norway's democracy rating decreased from 2019 to 2020 because of "the swift imposition of restrictions on freedom from movement owing to the COVID-19 pandemic", however Norway remains number one on the list of 165 states worldwide (The Economist Intelligence Unit, 2021).

The Norwegian constitution, written in 1814, did not explicitly refer to democracy until 2004, when Article 100 was amended to include the "promotion of democracy" as part of freedom of expression (Gammelgaard & Holmøyvik, 2015). As such, the exact definition of Norwegian democracy is part of a national cultural mythology which also strongly emphasizes human rights, representation across geographic difference, and civic discourse.

These other aspects, especially human rights discourse, are emphasized more heavily in conversations around privacy than are the traditionally democratic norms of high levels of trust in government, strong government transparency, and healthy political discourse in society (Alizada et al., 2021; Christensen & Læg Reid, 2020; Robinson, 2020). The Data Protection Authority, for example, must grant additional approval to any company that is planning to implement a project which has a "high risk for the data subjects' rights and freedoms", including "both the data subjects' rights under the Privacy Ordinance, and other fundamental rights such as the right to privacy, communication protection, freedom of expression, freedom of thought, freedom of movement, prohibition of discrimination, the right to freedom and freedom of conscience and religion" (*Datatilsynet*, 2018). The inclusion of the right to privacy with other human rights and democratic norms incorporates the privacy as part of Norwegian democracy, though the definition and limits of the right to privacy are not defined.

It is beyond the scope of this paper to thoroughly discuss the numerous ways privacy and democracy interact, but it is relevant to note that discussions around the right to privacy in democracies date far prior to the advent of information and communication technologies (ICT), and seen one way, fundamentally question

the importance of the individual right to “conceal” parts of themselves (Voice, 2016). Voice (2016) argues that to the extent that the right to privacy contributes to an individual’s autonomy in society, it is a key component of full, deliberative democracies such as Norway’s.

Following this logic, an extended breach of individuals’ rights, which include privacy, would indicate a slide away from democracy. As such, in normal times, Smittestopp’s privacy issues would have constituted a threat to the functioning of Norway’s democracy. However, as will be discussed below, the context of the global pandemic have changed what constitutes an acceptable breach on individual freedoms.

An exceptional state

As government lockdowns around the world were put into place and a number of organizations raised the alarm about the state of democracy, another conversation about the exceptional nature of the pandemic was also happening. Giorgio Agamben (2005) used the term “state of exception” for periods during which a state legalizes lawlessness, or suspends the normal rule of law, to address a real or perceived threat. Agamben and others have warned that states of exception are dangerous for democracy, as they often give the sovereign more power without an end date, effectively making exceptional powers permanent and contributing to the deterioration of a balance of powers (Agamben, 2005; de Wilde, 2010; Patton, 2011). However, according to some scholars, while this link between autocratization and states of emergency is well established in political situations, such as when a leader “triggers a state of emergency” through a power grabbing act or exploiting a real political threat like 9/11 to make long-term changes, the link is not well established in the case of natural disasters like earthquakes and hurricanes (Graver, 2020; Scheppele, 2020). Scheppele (2005) calls these natural disasters “small emergencies” because they are more difficult to take advantage of and, historically, they are solved or managed quickly.

The coronavirus pandemic lies somewhere between the threatening political emergency and non-threatening small emergencies. Governments have taken extreme actions, which most agree are merited in the case of a naturally- caused pandemic. As such, to the extent that the Norwegian government treats emergency measures for coronavirus as it would other natural emergencies, it is unlikely that democracy will deteriorate. However, restrictions also have real political implications which, in the case of contact tracing apps, interact with politically charged issues like data privacy and security.

The Data Protection Authority is clearly aware of the challenges the pandemic presents: as of writing (July 2021), it has devoted a sub-theme on its FAQ page to the coronavirus. Of the nine topics listed under that theme, four relate directly to the Smittestopp app (*Datatilsynet*, n.d.). The response to the question “how the

Data Protection Authority can say yes to an app like Smittestopp” says that “we never would have accepted such an app in a normal situation. But now there is a state of emergency and thus it is important to use technology to fight the pandemic” (*Datatilsynet*, n.d.). Further, it states that because Smittestopp was not involved in a pre-approval process (*forhåndsdrøfting*), the Data Protection Authority did not have the possibility to reject the app, or the way it handles data. There are clear contradictions in this response, as the Authority simultaneously denies responsibility for the app and states the app would not have been allowed under normal circumstances. It is through calling on the state of emergency that the Data Protection Authority is able to do this, and yet as the pandemic continues over 16 months later, the line between emergency caused by natural disaster and emergency exploited through politics begins to blur.

Politicization of Smittestopp

It follows that much of the concern surrounding the deterioration of democracy and contact tracing apps has to do with their potential use as political tools rather than as emergency management tools. The Smittestopp case is no exception to this; concerns around privacy and data handling related to digitized personal health data were the primary justifications for why the app should be retracted, while other emergency measures like stay-at-home orders and travel restrictions in Norway were not scrutinized in the same way.

The issue of data privacy is part of a larger conversation in Norway, where the national digital strategy states “it is a prerequisite that digital systems are secure and reliable, and that companies and individuals trust that systems and networks work properly” (Kommunal og-Moderniseringsdepartementet, 2016; Kommunal-og Moderniseringsdepartementet, 2019). At the same time, the Digitalization Strategy emphasizes the strategic importance of digitalization for Norway’s economic future. The development of Smittestopp through a government-funded research lab rather than through established big tech firms Google and Apple points toward a strategic political move. While part of the purpose of developing Smittestopp internally may have been to increase the population’s trust in the app and Norway’s digital competencies, Smittestopp’s failure to meet expectations meant that at best, this trust was not established and at worst, it diminished. This is not to say that other contact tracing apps like the Google/Apple solution are without issue, but rather that the approach to developing Smittestopp may have placed an over-reliance on political potential, thereby moving that particular aspect of Norway’s COVID-19 management strategy toward the category of a political state of emergency rather than a natural one.

This reliance on political goodwill was apparent in the way politicians talked about the app, with Bent Høie, the Norwegian Minister of Health, calling on the fact that Norway “is a society with high levels of trust and high digital

competency” as a reason for people to download it (Løkkevik et al., 2020; Regjeringen, 2020). This statement implies that Norwegian politicians expected residents to download the app *because* they trust their government to handle data responsibly, as it has in the past. This trust plays a key part in Norwegian conceptualizations of democracy. Thus, when it came out that Smittestopp did not sufficiently care for personal data, Norwegians’ trust the government competence could create a secure contact tracing app may have diminished more than it would have had Høie and others not emphasized the level of trust between citizens and government. Though public opinion surveys carried out by opinion.no indicated that overall trust in the government remained fairly constant from just before the release of the app (74% trusted the government) to just after it was rescinded (72% trusted the government), there was a 20% decrease in interest (from 60% of respondents to 40%) in the second version of the Smittestopp app from the first (“Fire av ti sier ja til ny smitteapp,” 2020; “Høy tillit til myndighetene tross åpne grenser,” 2020; “Stabil interesse for FHI-appen Smittestopp,” 2020; “Tillit til regjeringens første tre uker,” 2020). In other words, the politicization of the role trust played in people’s responsibility to download the app may have had the opposite effect the government was hoping to have: rather than increasing trust and confidence in Norway’s technical capabilities, Smittestopp may have increased skepticism and doubt.

Conclusion

This essay began by posing the question of whether the Smittestopp controversy posed a threat to Norwegian democracy. The subsequent analysis of what democracy means in the Norwegian context and how rules of democracy change in times of crisis does not provide a simple answer. The pandemic remains a major global health and security threat. In the early days, when many believed the threat would be eliminated within a matter of weeks or months, the political implications of government actions seemed less important than eliminating the virus. Perhaps it was for this reason that the Norwegian authorities released an app with privacy issues despite protests from the technology and data protection communities (Sandvik, 2020a). Prime Minister Solberg implied as much when she stated that “the fewer people participating [in the app], the more intrusive will be the interventions in other areas” (Sandvik, 2020a). An optimistic view of the case assumes that, had the government known how long the pandemic would last and how difficult it would be to encourage enough people to download the app, it would have prioritized attention to security and privacy issues. The more pessimistic view sees the app’s development first as a politically strategic, opportunistic, and ultimately failed experiment in collecting and using citizens’ private health data and only secondarily as a pandemic management tool. The reality likely lies somewhere between these two, as the pandemic state of

emergency in many ways does resemble a natural disaster, or “small emergency” rather than a politically opportunistic one. As time passes, however, the restrictions and the ways they are communicated have become more obviously strategic. Governments may be realizing their actions in this exceptional time have real and long-lasting political consequences.

While authoritarian actions like those imposed through China's Alipay app or quarantine rules requiring travelers to stay alone in one room for weeks may be effective at curbing infection rates, they also have implications for human welfare and negatively influence democratic ideals like privacy and freedom of movement. The biggest mistake Norwegian authorities may have made with Smittestopp, then, was a miscalculation of the type of emergency the country was facing and the amount of time it would last.

There are strong indications that whatever damage Smittestopp did cause was not intentional. First, the government retracted the app swiftly after privacy issues came to light. This is a sign the government was not intending to use the app as a political power grab and that the responsiveness of government, another key component of Norwegian democracy, was still intact. The months following the Smittestopp controversy have shown no additional indications that the missteps were intentional; the new version of Smittestopp uses the Google/Apple solution, and public discourse around data use and privacy remains strong.

This analysis indicates that in a different situation, the development of an app such as Smittestopp with surveillance-like capabilities may have posed a threat to Norwegian democracy. However, the response to criticisms shows that government responsiveness and concern for individual privacy and autonomy remain intact, thereby neutralizing concerns citizens may have had around government trust. As the pandemic continues, it is impossible to know whether and how the case will affect the development of e-government and e-health software in Norway, but this is an area to monitor. There is also space for research on whether and how pandemics and other long-term non-political events fit into discussions on states of exception. As the coronavirus pandemic subsides, it will be relevant to monitor whether and to what extent emergency restrictions are lifted and whether data collection and use from apps initially intended for contact tracing subsides. These will be indicators of whether contact tracing apps are a new kind of tool that can be used to set up permanent states of increased surveillance or whether such fears were mostly unfounded, especially in a country with as strong a democratic tradition as Norway.

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