

## **Munk Debate on State Surveillance Summary**

**By Alan Dershowitz**

No state has ever survived without some surveillance, and no state deserves to survive if it has too much surveillance, particularly of its own citizens. A balance must be struck, but that balance cannot eliminate the power of the government to obtain information necessary for the defense of our freedoms.

It is important to distinguish among different types of surveillance. There is a considerable difference, for example, between street cameras that can observe the external movements of people in public places, and hidden microphones that can hear every word spoken in the bedroom. There is also a considerable difference between surveilling our own private citizens and listening in on foreign leaders who are probably trying to listen in on our leaders. To fail to base our policies on these and other important differences is to fail in the responsibility of governance. Matters of degree matter. And differences in degree can differentiate pragmatic democracies from self-serving tyrannies.

Motives matter too, though they are often difficult to discern and are frequently mixed. Politics also matter, though we are loathing to base principled decisions on ideological considerations. But many who supported the surveillance conducted by the FBI against the Ku Klux Klan and other violent racist groups during the Civil Rights Movement opposed these same surveillance techniques when they were used against radical Black Panthers. Privacy for me, but not for thee is as common as it is cynically self-serving.

Our reason for increased concern over surveillance is the ever-increasing technological capacity to intrude. There is virtually nothing that is immune from the pervasive eyes, ears and even noses of the new generation of Big Brothers, Sisters, Uncles and Aunts. Satellites, drones, internet snooping and other techniques make us expect less privacy than did prior generations that had only the eavesdropper—literally the person hiding near the eaves of the home—to worry about. And because our constitutional rights under the 4<sup>th</sup> Amendment

depend on “reasonable expectations of privacy,” our rights are contracting as our expectations contract. It’s a dangerous cycle.

But the most dangerous approach to our liberties is the all-or-nothing one proposed by radical opponents of all governmental surveillance. Those who oppose all surveillance are as dangerous to our liberties as those who uncritically support all surveillance. We need to know what harms our enemies—external and internal—are planning in order to prevent them from carrying them out. But we also need to impose constraints on those who know no limits on our power to obtain preventive intelligence. That’s where process comes into play.

We need far more demanding processes and controls over the use of surveillance both by government and private agencies. A heavy burden must be placed on those who would intrude on our privacy, but that burden must be realistically designed to strike a proper balance between two equally legitimate but competing values: the need for our government to know what our enemies are planning; and the need to protect our privacy from those who place too high a value on security and too low a value on privacy. It is possible to strike such a balance and that is where our efforts should be directed.