



Ron Deibert's Commentary

Ever since the first Edward Snowden leak hit the news on June 5th, 2013 American citizens, government officials, and company executives have been publicly exercised about the implications: Is the NSA violating the Fourth and Fifth Amendments of the US Constitution? Do they have confidence in the existing system of oversight? What did telcos and Internet companies know (or not) about PRISM and other programs like it, before they were revealed? How much should they disclose to their users about such programs?

During the Munk Debates on May 2nd, 2014, we all enjoyed a little slice of what that type of vigorous public debate is all about. Ex-director of the NSA, General Michael Hayden, argued that the leaked Snowden documents were being taken out of context and that citizens should trust the NSA was doing a good job within well defined limits. Harvard Prof. Alan Dershowitz backed him up with well-reasoned philosophical arguments about the need to trade off some liberty in exchange for security given the nature of today's distributed threats. Reddit founder Alex Ohanian took the industry view, explaining how the NSA's subversion of the Internet for mass surveillance is hurting innovation and the bottom line. The night's main attraction, journalist Glenn Greenwald, argued that the NSA could not be trusted, that its "collect it all" mentality and history of deceit made it dangerously out of control. To him went the night's zinger: how can we trust the NSA when it says it carefully restricts what analysts can do with all of the data it collects when it couldn't even prevent a sysadmin like Edward Snowden from scooping up millions of documents from right under its nose?

Missing from the debate, though, was the elephant in the room. The room being Roy Thomson Hall, located in downtown Toronto, Canada, that elephant would of course be Canada's own system of state surveillance. Although the name of our

own NSA, the Communications Security Establishment of Canada (CSEC), was briefly referenced once or twice, the details of its operations were left unexamined by the debaters. That's a shame, for the Canadian situation offers a remarkable contrast to that which exists in the United States. Whereas the NSA's operations are overseen by three branches of government, including being subject to regular congressional oversight committees and the scrutiny of eleven judges of the Federal Intelligence Services Court (FISC), Canada's CSEC does not report to parliament, is answerable only to the minister of defense, and is overseen by a single retired judge who issues an annual "review." In the US, the NSA revelations have brought about widespread calls for reforms, and prompted President Obama to set up a President's Review Group on Surveillance which made over 40 recommendations on everything from civil liberties to the FISC itself, some of which were referenced explicitly by President Obama in a major public address to the nation. Here in Canada, by contrast, government officials have hardly acknowledged the revelations at all, have proposed or undertaken no reforms whatsoever, and have responded to CSEC revelations with statements that simply reiterate official boilerplate policy. While in the United States, big Internet companies, telcos, and social media giants have begun issuing detailed transparency reports about government requests for user data, with some going so far as to take the government to court to reinforce their right to notify users when such requests are made, here in Canada the telecommunications industry has stuck to what can only be described as a shameful silence -- even in the face of alarming statistics that suggest companies routinely hand over user data to government agencies millions of times a year without a warrant.

In fact, the Munk Debaters missed a major opportunity to bring up Canada. In spite of their differences, it was clear that everyone on the stage believed that there are real threats that need to be dealt with, and that liberal democratic governments should deal with them under some system of oversight and accountability. The Canadian case could have served as a great example of the type of "flawed system" that everyone could agree should be avoided at all costs - a retrograde model from the Cold War era unsuited to the challenges of 21st century liberal democracy.

Then again, maybe it was appropriate that Canada was not brought up during the debate. A poll undertaken by the Canadian Journalists for Free Expression whose results were released just prior to the debate showed that at least sixty percent of Canadians do not seem concerned that the government is monitoring their

communications. If Canadians don't care about the issue in the first place, why should we expect our American visitors to bring it up?

It is common for Canadians to feel superior to Americans when it comes to public discourse, pointing to the trash-talking and polarizing cable news networks we eavesdrop on from north of the border. But the Munk Debates reminded us we have a lot to learn from our American cousins when it comes to maturely discussing an issue so fundamental to society as the appropriate balance to strike between security and privacy in a liberal democracy. Never mind debates, we have barely acknowledged the subject.

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