

POIB and the meaning of Edward Snowden



By [Anton Harber](#)

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As our president's pen hovers over the Protection of State Information Bill, awaiting only his signature before coming into law, the US is facing its biggest secrecy issue in years.

The revelation by whistleblower Edward Snowden of how the US security machinery has been systematically collecting - without warrants - information on every single phone call in that country, is worth a close look if we want to understand the meaning of our own move to greater secrecy.

Leaks cannot be stopped

The first lesson is how even the biggest and strongest country in the world cannot stop leaks. The nature of data now is that it is too easily copied and moved around the world to stop it coming out, particularly in anything resembling a democracy. Even more repressive countries like China have struggled to contain the flow of information in the age of WikiLeaks.

Since the main purpose of our own Bill is to contain leaks, this is a sobering thought. The culprit here was not a John le Carré character, trading in international information with dead letter boxes and secret ink and spy cameras. It was an ordinary citizen with a conscience and an internet connection. With the help of a journalist, of course.

It will survive

The second thing that emerges is that the leak has not seriously endangered American security. The US will survive this, just as it survived the WikiLeaks scandal and the Pentagon Papers back in the 1970s - both occasions when there were grave warnings from the security networks that the state would fall over if the information was published. Any half-baked terrorist would know that they have to assume their phone calls are being tracked, with or without a warrant. They don't need to read the Guardian to know that.

It is not the threat of terrorists that is worrying people in this case; it is the threat that their government can watch their every move, pry into their private lives, and do it without legal scrutiny.

The rise of Big Data

To understand the nature of what is happening here, one has to understand the rise of Big Data. Computer power now allows for the collection and analysis of masses of data on an unprecedented scale - such as the details of every call made over many years by every one of the US's 300 million citizens. That's a lot of bits and bytes.

But it is the analysis of it that makes the big difference, enabled by growing processor power. For one thing, this data allows for the tracking of the movement of individuals, through the geo-location of the cellphone towers to which they are linking.

Put that together with, say, all your credit card information and every time you are caught on a camera, and you can see that anyone who sweeps up this information can be very intrusive.

Fantastic, but scary

This data also allows for an analyst to seek out patterns to anticipate behaviour. In other words, it has predictive power, and to use that you have to try to control the future. You might have to take action against someone who might, on probability based on previous patterns, have a tendency towards behaving in a certain way.

This is fantastic stuff, but it is also scary. It might show us what kind of behaviour makes us more likely to get cancer, or enable us to react quicker to outbreaks of disease. But it also raises difficult issues. If data analysis shows, for example, that people who grew up at a certain time, in a certain way, are more likely to be paedophiles, do we need to take precautions against those who fit that pattern? Or can we know this, and ignore it?

That at least needs public debate and legal scrutiny to prevent the potential for abuse. If the US security forces have good cause to listen to someone's phone or gain access to their movements, then they can get a warrant to do so. They have been avoiding that route because they want to avoid the oversight and scrutiny of the courts.

Will they abuse the information? Almost certainly

To be comfortable with the Obama government's decision to gather and use this information without a warrant, is to trust that it will not be abused. And all the evidence, and all the history, suggests that governments without the oversight of courts and public scrutiny, will abuse such powers. Maybe not now, but at some point in the future - almost inevitably.

How quickly have the Americans forgotten how former FBI head, J Edgar Hoover, abused the capacity to listen in on the private lives of people like Martin Luther King.

It does not help that it seems that the Obama government has been deceitful about the matter. Or, as the New York Times put it, they have made "what now appear to have been misleading past statements".

James R Clapper jnr, the director of national intelligence, was asked at a congressional hearing in March if the National Security Agency collects "any type of data at all on millions of hundreds of millions of Americans"?

"No, sir, not wittingly," he said. It was not an error. He had been given 24 hours notice of the question and a chance to correct his answer, according to the NYT.

Obama gets it wrong

Obama explains his government's position on the grounds that it is his first duty to protect American citizens. As Foreign Policy magazine pointed out, this is wrong: his first duty, as captured in his oath of office, is to protect the US Constitution.

You cannot protect the people by damaging the document that is meant to protect them from the government and others. Undermine the constitution, and you are undermining peoples' rights, and taking down their protection.

All of which should give us pause for thought as our president ponders whether to sign our own "Secrecy" Bill into an Act. It won't stop leaks. It won't make us safer or government more effective. Powers that are not subject to proper scrutiny, such as the power to classify information, will most likely, at some point, be abused. And it will diminish our constitutional rights and protections.

ABOUT ANTON HARBER

Anton Harber, Wits University Caxton Professor of Journalism and chair of the Freedom of Expression Institute, was a Weekly Mail (now Mail & Guardian) founding editor and a Kagiso Media executive director. He wrote Diepsloot (Jonathan Ball, 2011), Recht Malan Prize winner, and co-edited the first two editions of The A-Z of South African Politics (Penguin, 1994/5), What is Left Unsaid: Reporting the South African HIV Epidemic (Jacana, 2010) and Troublemakers: The best of SA's investigative journalism (Jacana, 2010).

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