Brief Thoughts on the NSA Scandal

By Reihan Salam – June 7, 2013

I've been neglecting the NSA story because, frankly, I'm having a hard time making heads or tails of it. Tim Lee has an excellent primer on the subject. Though I'm not particularly proud of it, and though Julian Sanchez of the Cato Institute and others have made strong arguments as to why we ought to be alarmed, I'm somewhat conflicted about the prospect of the NSA having access to, per Tim, "information like what numbers you called, what time you made the calls, and how long the calls were."

One potential problem is that a data collection effort of this kind might have a chilling effect on political activists. Imagine that you're working to coordinate a series of nationwide political protests, and you use a phone tree to plan and share information. The data gathered by the NSA could be used to determine the shape and structure of the political network behind the protests, and to undermine it. Assuming that the protests are peaceful and that the government is not entirely benign, this should give us pause. And Julian correctly observes that indiscriminate data collection efforts don't have a very good track record:

> "This collection is probably well enough intentioned. The problem is that these records are likely to be retained in databases indefinitely. Which means we don't just need to worry about whether the government's motives are pure when they collect the information. Even if they are, someone with access to that data, maybe in five or ten years, may be unable to resist the temptation to use that information for other purposes. That could mean investigating ordinary crimes: If you can data mine for suspicious terrorist activity patterns—which as Jim Harper and Jeff Jonas have pointed out is likely to be extremely difficult—you can plug in "suspicious patterns" that may identify drug dealers and tax cheats as well. Still more disturbing is the possibility that, the intelligence community has repeatedly done historically, those records could be exploited for illegitimate political purposes, or even simple greed. (Imagine probing communications for signs of an impending corporate merger, product launch, or lawsuit.)"

> "We are, predictably, being told that this program is essential to protecting us from terrorist attacks. But the track record of such claims is unimpressive: They were made about fusion centers, and the original NSA warrantless wiretap program, and in each case collapsed under scrutiny. No doubt some of these phone records have proven useful in some investigation, but it doesn't follow that the indiscriminate collection of such records is necessary for investigations, any more than general warrants to search homes are necessary just because sometimes searches of homes are useful to police."

Like many Americans, however, I have two clashing instincts: a skepticism of concentrated power (milder than most of my libertarian friends, but still there) and a post-9/11 sense that small networks of hyperempowered individuals can pose a real threat, and that it is appropriate

to use technological tools to mitigate such threats. The problem with the latter view, which has definitely been going out of style in the public if not in the national security bureaucracy, is that when the bad guys realize that mobile phones are not the best way to go (as the more formidable of them have long since realized), they will turn to some other, harder-to-detect means of communication. It is inevitable that the NSA will want as much information as it can possibly get, and I'm glad that they're getting some pushback.

But here is the problem: as this kind of information gets cheaper and cheaper to collect, the government will have to exercise more and more restraint not to collect it. Fortunately, a more affluent society has more people who can dedicate themselves to policing the abuse of power, so there's that. We're in the middle of a race, in which changing norms around privacy, technological innovation that reduces the costs of surveillance, technological innovation that reduces the cost of evading surveillance, and the ever-increasing complexity of government are all interacting in complicated ways, and the outcomes are highly unpredictable.

P.S. And for a pro-NSA argument, see Tim Worstall.