

THE OPPORTUNITY COST OF THE GLOBAL DRAGNET

Back in 2006-7, I wrote a series of posts in which I considered the opportunity cost of the Iraq War at a time when our hegemonic position was already clearly in decline. In the years leading up to the Iraq War, I believe Dick Cheney assessed the current energy regime on which our global power was based, and chose to reinvest in that already-crumbling basis of power: oil, reserve currency, global policeman by invading Iraq. What could have happened if we invested the trillion dollars we spent on losing a war in Iraq and instead invested in alternative energy? (An earlier, lost to history version of the post also considered fostering new leadership to deal with climate change.)

As the elites slowly realize we failed on a similarly catastrophic scale in our 5-year bailout of banks, we might expand the earlier question and ask what could have happened if we had invested those trillions, too, rather than propping up the banks that cement our global financial hegemony.

The debate over international privacy rights still ignores domestic privacy rights

It's from that perspective that I read with interest the debate between David Cole, Orin Kerr, Kenneth Roth, and Ben Wittes over whether we ought to extend the privacy protections Americans enjoy to the rest of the world (or, at least, to citizens of allied countries). (See Cole, Kerr, Cole, Kerr, Roth, Wittes)

As a threshold matter, I think all are missing a key point. I believe the dragnet surveillance we conduct overseas right now clearly violates the Constitution. The NSA is knowingly collecting vast amounts of US person data (that it refuses to count even the domestically acquired dragnet collection hints at how much it's collecting).

And once they collect that vast, uncounted quantity of US person data, the NSA and FBI do not even require RAS before accessing the content of Americans' communications.

In short, because the government didn't make the same adjustments for increasingly globalized technology internationally they made in 2008 for domestic collection (the FISA Amendments Act permitted foreign collection domestically, but didn't deal with the increasing amounts of domestic collection internationally it was doing), the NSA has basically eliminated all privacy protections for any of the significant amounts of US person communications that transit outside of the country.

So their debate should not just consider whether we ought to extend privacy protections to the French in France, but whether Americans retain their constitutional protections as their communications transit France.

The squandered opportunity of American Internet hegemony

But I also think the terms of debate International law (Cole and Roth) versus domestic sovereignty (Kerr) miss an equally important point. What obligations and best practices should the US have adopted as the world's Internet hegemon?

Kerr sums up the International/domestic split this way:

I suspect that our differences reflect our priors, which in turn are based on two different conceptions of government. I tend to see governments as having legitimacy because of the consent of the governed, which triggers rights and obligations to and from its citizens and those in its territorial borders. As I understand David, he has more of a global view of government, by which governments are accountable to all humans worldwide. I suspect that difference leads us to talk past each

other a bit. Consider David's question: "Would we be satisfied to give the French authority to pick up all of our communications simply on a showing that we were not French and not living in France?" Under my conception of government, the question doesn't make sense. Because we don't have any rights vis-a-vis the French government, we can't "give the French authority" to do anything or have any valid claim to satisfy.

While I'm sympathetic to both perspectives, to a point, I actually think they miss something. The US is not just any country. It has been, for the last 20 years, the world's sole hegemon. And being the hegemon – as opposed to the coercive world empire, which is a much more expensive proposition – requires a similar kind of consent as that of your garden variety nation-state.

This is the point laid out in Henry Farrell and Martha Finnemore's brilliant essay on American hypocrisy.

Of course, the United States is far from the only hypocrite in international politics. But the United States' hypocrisy matters more than that of other countries. That's because most of the world today lives within an order that the United States built, one that is both underwritten by U.S. power and legitimated by liberal ideas. American commitments to the rule of law, democracy, and free trade are embedded in the multilateral institutions that the country helped establish after World War II, including the World Bank, the International Monetary Fund, the United Nations, and later the World Trade Organization. Despite recent challenges to U.S. preeminence, from the Iraq war to the financial crisis, the international order remains an American one.

This system needs the lubricating oil of hypocrisy to keep its gears turning. To ensure that the world order continues to be seen as legitimate, U.S. officials must regularly promote and claim fealty to its core liberal principles; the United States cannot impose its hegemony through force alone. But as the recent leaks have shown, Washington is also unable to consistently abide by the values that it trumpets. This disconnect creates the risk that other states might decide that the U.S.-led order is fundamentally illegitimate.

While there may be no explicit legal basis for it (as there is for Kerr's model of consent) the world has tolerated us as global hegemon because it maintained the illusion that it had consensual legitimacy. But now that American hypocrisy has been exposed – in part, but only in part, with disclosures that we've been conducting mass spying around the world – countries are opportunistically using the moment to try to demand more from us in exchange for that position.

Farrell and Finnemore suggest the US faces a choice between embracing our true actions openly or actually living up to our promises.

The easiest course for the U.S. government to take would be to forgo hypocritical rhetoric altogether and acknowledge the narrowly self-interested goals of many of its actions. Leaks would be much less embarrassing – and less damaging – if they only confirmed what Washington had already stated its policies to be. Indeed, the United States could take a page out of China's and Russia's playbooks: instead of framing their behavior in terms of the common good, those countries decry anything that they see as infringing on their national sovereignty and assert their prerogative to pursue their

interests at will. Washington could do the same, while continuing to punish leakers with harsh prison sentences and threatening countries that might give them refuge.

The problem with this course, however, is that U.S. national interests are inextricably bound up with a global system of multilateral ties and relative openness. Washington has already undermined its commitment to liberalism by suggesting that it will retaliate economically against countries that offer safe haven to leakers. If the United States abandoned the rhetoric of mutual good, it would signal to the world that it was no longer committed to the order it leads. As other countries followed its example and retreated to the defense of naked self-interest, the bonds of trade and cooperation that Washington has spent decades building could unravel. The United States would not prosper in a world where everyone thought about international cooperation in the way that Putin does.

A better alternative would be for Washington to pivot in the opposite direction, acting in ways more compatible with its rhetoric. This approach would also be costly and imperfect, for in international politics, ideals and interests will often clash. But the U.S. government can certainly afford to roll back some of its hypocritical behavior without compromising national security.

I would suggest we don't actually have this choice.

US hegemony rests on a lot of things: the dollar exchange, our superlative military, our ideological lip service to democracy and human rights.

But for the moment, it also rests on the globalized communication system in which we have a huge competitive advantage. That is, one reason we are the world's hegemon is because the rest of the world communicates through us – literally, in terms of telecommunications infrastructure, linguistically, in English, and in terms of telecommunications governance.

Aggressively hacking the rest of the world endangers that, both because of what it does to our ideological claims, but just as importantly, because it provides rivals with the concrete incentive to dismantle that global infrastructure.

The liberal project has always been, for better and worse, about a managed claim to free exchange. In goods (though we wrote the rules to limit the terms of exchange, which until recently guaranteed that the US got the most benefit of it). And in information (again, we wrote the rules and laid the wires, protecting our advantage).

But we won't have any advantage if the vehicle of exchange, the Internet, gets balkanized in response to our abuse of our own power on it. And that's the risk we face now. That's the reality that is already happening. That's the price we may pay for hacking the rest of the world because we could.

US hegemonic control is likely irretrievable. And if we tried to retrieve it, the things we would have to do would hasten the melting of the earth. Given that reality, perhaps it's time to use our diminishing power to seed something better, both on the Internet and in real life.