

Snowden and the Future: Part II; Oh, Freedom

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Good afternoon.

Since we were last here the press of the world has been full of information concerning the practices of the US listeners, and statements from Presidents, Premiers, Chancellors, and Senators on the subject.

Our purpose this time being to consider the political meaning of Mr. Snowden and the future he has brought us, we must begin by discarding for immediate purposes pretty much everything said by the Presidents, the Premiers, the Chancellors, and the Senators. It has been a remarkable display of misdirection and misleading, and outright lying. We'll come back to it, but it will not serve us at the outset.

It is indeed really what doesn't matter—all this froth, that we've been reading since we were last together, from the respondents. We need to keep our eye on the thinking behind Mr. Snowden's activities—which he has done much more to explain since we were last together—and we need to understand the message he has sent us. And so, for that purpose, I come again before you.

What matters most—and what it has been the goal of the Presidents, the Chancellors, the Premiers, and the Senators not to say—is how deeply the whole of the human race has been ensnared in this process of pervasive surveillance that destroys freedom.

The fastening of the procedures of totalitarianism on the human race is the political subject about which Mr. Snowden has summoned us to an urgent inquiry. And it is that inquiry which it has been the goal of pretty much everybody responding on behalf of any Government or State not just to ignore but to obscure.

We begin therefore where they are determined not to end, with the question whether any form of democratic self-government, anywhere, is consistent with the kind of massive, pervasive, surveillance into which the United States government has led not only us but the world.

This should not actually be a complicated inquiry.

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For almost everyone who lived through the 20th century—at least its middle half—the idea that freedom was consistent with the procedures of totalitarianism was self-evidently false.

Those who fought against it, those who sacrificed their lives to it and had to begin again as displaced persons and refugees around the world, and those who suffered under the harrow of it were all perfectly clear that a society that listens to every telephone call, spies on every meetings, keeps track of everybody's movements is incompatible with a scheme of ordered liberty, as Justice Benjamin Cardozo defined American constitutional freedom.

But at the beginning of the 21st century, what seemed clear and absolutely unnecessary to inquire into in the 20th is now, apparently, a question.

So we had better address it directly.

Many millions of people in the United States have in their family tree, in their genetic material, in their understanding of the world, visceral awareness of a system that tracked their ancestors' movements, and for even the most trivial journey required they have a pass. A system that gave some people the right to scrutinize every communication of everybody else, that made almost every home subject to intrusion and disruption at the whim of illegitimate power. For those who have tasted the bitterness of slavery in their past, it should not be necessary to explain why powers—however velvet the glove in which they are contained may be, however invisible the system within which they are embedded—that keep track, that listen everywhere, whose intrusion knows no boundaries, are the powers of masters over slaves.

We should therefore not need to inquire, carrying as we do our own history closest, whether a system of power which listens everywhere, which can go everywhere, which keeps track of everybody's thoughts, feelings, and speech, is inconsistent with freedom. We know, because we have lived on both sides of such a system. And we know its evil.

But let us forget what we have learned by bitter experience, what we carry in our own breasts, let us forget it, let us put it aside, let us be law professors, shall we, and political scientists:

For analytical purposes let us take this word "privacy," that we are growing accustomed to using quite freely, and see what it really is.

Privacy—as we use the word in our conversations now all around the world, and particularly when we talk about the net— really means three things.

The first is secrecy, which our ability to keep messages "private," so that their content is known only to those who we intend to receive them.

The second is anonymity, which is our ability to keep our messages—even when their content is open—obscure as to who has published them and who is receiving them. It is very important that anonymity is an interest we can have in both our publishing and our reading.

The third is autonomy, which is our ability to make our life decisions free any force which has violated our secrecy or our anonymity.

These three are the principle components of the mixture that we call “privacy”. With respect to each, further consideration shows that it is a precondition to the order that we call “democracy”, “ordered liberty”, “self-government”, to the particular scheme that we call in the United States “constitutional freedom.”

Without secrecy, democratic self-government is impossible. Because people may not discuss public affairs with those they choose, excluding those with whom they do not wish to converse. If you have lived in a society where in every dorm room, every work place, every public transport vehicle, there was an agent, whose job it was to listen and inform, once you think about the consequences for political conversation in that neighborhood, you need go no further. If you are fortunate enough never to have had that experience, most of your comrades around the world can enlighten you.

Anonymity is necessary for the conduct of democratic politics. The United States Supreme Court took until 1995 to recognize it, but it did, and to Justice Stevens we owe clear statement of the importance of anonymous political conversation at the core of the First Amendment. The cases in which the Court has considered the anonymity right are precisely cases about political communication, central cases about the exercise of democracy. It is, as Justice Stevens noted in *McIntyre*, not terribly surprising that our greatest artifact of divine constitutional wisdom—a set of political pamphlets penned by three very slippery characters called Hamilton, Madison, and Jay that we refer to as *The Federalist Papers*—were of course published under a pseudonym.

That autonomy is vitiated by the wholesale invasion of secrecy and privacy, that free decision making is impossible in a society where every move is monitored, those of you who have friends in North Korea may enquire into directly, if you please. But equally, any conversation with those who lived through 20th century totalitarianisms or any contact with the realities of American slavery will surely clear it up for you.

In other words—though it shouldn’t be necessary to demonstrate, though we ought to have taken the bitter experience of American history in the 19th century and the history of the West in the 20th for sufficient demonstration—for those who really do like ignoring the facts and working it out abstractly, with chalk, privacy is a requirement of democratic self-government. The effort to fasten the procedures of pervasive surveillance on human society is the antithesis of liberty.

This is the conversation that all the “Don’t listen to my mobile phone!” has been not about for the last two weeks. If it were up to power, the conversation would remain at that phony level forever.

So we are, at the moment—thanks to Mr. Snowden, who has precipitated what even his adversaries now like to call a “necessary conversation”—we are now in a necessary conversation with parties on the other side who do not wish to explain exactly what they do. They have advanced, and will advance, no convincing argument that what

they do is compatible with the morality of freedom, with US constitutional law, or with the human rights of every person in the world. Indeed, they will not offer any argument. They will certainly not offer a defense. They will instead attempt, as much as possible, to change the subject, and, wherever they cannot change the subject, to blame the messenger.

But what you have seen around the world in the last two weeks is the evidence that this is extremely unlikely to work.

And so we need to consider the political environment created by what has happened, before we can begin to address the more or less empty rhetoric that has been assigned to the Presidents, the Chancellors, and the Premiers.

“Why are they all operating in this way,” you may ask nonetheless, “as though everybody were on the same side?”

Here the history is very clear and remarkably available. One does not need access to classified documents to see—including in records we will be making public as part of our effort in “Snowden and the Future” over the next two weeks—how the military and strategic thinkers in the United States adapted to the end of the Cold War by planning pervasive surveillance of the world’s societies.

In the early 1990’s, in documents that are in no way secret, the US strategic and military planners made clear in a range of fora—from the think tanks, the Pentagon, in research reports and conference proceedings—that they foresaw, as indeed we now observe, a world in which the United States had no significant state adversary, and would be instead engaged in a series of “asymmetric conflicts.” That was the phrase, meaning “guerrilla wars.”

In the course of that redefinition of the US threat assessments and strategic posture after the end of the cold war, the American military strategists and their intelligence community colleagues came to regard American rights in communications privacy as the equivalent of sanctuary for guerrillas.

The documents from 1992, 1993 are very clear in describing precisely that relationship. It was understood that in future asymmetric conflicts the adversaries—that means people, you understand, bad people committed to bad activity but small groups of individuals affiliated with and possessing the power of no state—would use communications facilities that benefited from American civil liberties as sanctuary, and that it would be necessary for the US military, the listeners, to go after the “sanctuaries.”

Of course, this was the position of military strategists and their listener colleagues. It was not national policy. But it was an important albeit relatively quiet part of the policy formation discussion. There were, however, political adults in the room. And while the United States government considered various efforts at improving its ability to listen to encrypted communications in the mid-90’s—the Clinton administration had the Clipper Chip initiative for example. There were also significant efforts to ensure that domestic law enforcement would not be disadvantaged by the movement to digital communications. These lead in 1995 to the CALEA statute mandating

the availability of “wiretapping” technical facilities in digital telephone systems that didn’t natively offer them—a compromise which split the young Electronic Frontier Foundation into two camps, one of which became CDT.

Although there were these steps taken to facilitate not only the work of the domestic law enforcement agencies but also the listeners within the United States—this we now know, as we see the evolution of the FISA statute in the FISA court, secret judicature we couldn’t see before—still and all there was a clear understanding. This idea of denying “sanctuary” by breaching American civil liberties in US-based communications was not part of the senior policy-making outlook—it was part of what one team constantly pushed for.

This they did after the first World Trade Center bombing, after the Africa embassy bombings, after the Cole. The whole pervasive surveillance system, not just the Patriot Act but all the pieces that we now understand surrounded it in the secret world’s understanding, were constantly advocated for at the end of the 20th century, and as constantly rebuffed.

And then, as we saw last time, at the opening of the 21st century a US Administration which will go down in history infamous for its tendency to think last and shoot first bought—hook, line, and sinker—the entire “denying sanctuary,” pervasive surveillance, “total information awareness” scheme. Within a very short time after January 2002, mostly in secret, they put it all together.

The consequences around the world were remarkably uncontroversial. By and large, states approved or accepted. Some of this happened because the United States government was even then using quite extraordinary muscle around the world—after September of 2001 you were either with us or you were against us. But it also happened because so many other governments had come to base their national security systems crucially on cooperation with American listening. And after the declaration of the new Global War on Terror, that became only more true.

By the time the present Administration had settled into office in the United States, as one senior official with relevant responsibility described it to me half-way through the first term, in our government to government relationships about the Net, “all of us—the Chinese, the Europeans, and Us,” that was ‘all of us’ at the table, “—we all agree about one thing, about exfiltration.” (This is the listeners’ word for spying; “exfiltration.” They “exfiltrate” data off *our* networks into *their* warehouses.) “We all agree,” this official said, “about exfiltration: everybody agrees that it can’t be stopped and it shouldn’t be limited. We disagree about what kinds of intervention,” that is, breaking things in the Net, “should be allowed.”

The important point for present purposes in this one conversation (which could be drawn just as well from many other unclassified sources) was that senior US policy makers thought there was general consensus around the world that everybody could listen to everybody’s societies; it could not be stopped it shouldn’t be limited. The Chinese agreed. The US agreed. The Europeans agreed, which really meant of course that they were dependent on US listening and hadn’t a lot of power to object.

Nobody told the people of the world.

What was common understanding among the policy-making elite—who governed among them still only about a third of the world’s population—was that global civil society was a free fire zone for everybody’s listeners, and there wasn’t anything to be said about it—particularly not to all those people, who were supposed to not know.

This is the condition upon which the whistles started to blow all over the field, as I said last time. Throughout the distressingly situational ethics of this, a few people—all of them in the English speaking world, all of the, people who came from societies with strong traditions of the rule of law, protection for whistle-blowers, some form of civilian political control over domestic security intelligence—courageous and indignant whistle-blowers began to speak up.

Mr. Snowden saw what happened to precedent whistle-blowers, and behaved accordingly.

What had opened by the end of the first decade of the 21st century was a gap between what the people of the world thought their rights were and what their governments had given away in return for intelligence useful only to the governments. This gap was so wide, so fundamental to the meaning of democracy, that those who operated the system began to disbelieve in its legitimacy. As they should have done.

Mr. Snowden’s political theory has been quite exact and quite consistent.

From his first statements in Hong Kong, through his interview with James Risen of the New York Times, to his statement over the weekend sent to our colleagues and comrades in Washington DC who were seeking to have them stop watching us (whoever “us” might be), Mr. Snowden has been very consistent: he says the existence of these programs, undisclosed to the American people is fundamental violation of American democratic values.

Surely there can be no argument with that.

Mr. Snowden’s position is that efforts so comprehensive, so overwhelmingly powerful, and so conducive to abuse, should not be undertaken save with democratic consent. Mr. Snowden has expressed recurrently his belief that the American people are entitled to give or withhold that *informed* consent. But Mr. Snowden has also identified the fastening of those programs on the global population as a problematic act, which deserves a form of moral and ethical analysis that goes behind mere *raison d’etat*.

Mr. Snowden said again to Mr. Risen in some detail what he had suggested in his statements in Hong Kong: we have dealt with terrorists and rogue states before. We do not need to do all of this in order to achieve control over those problems. Mr. Snowden has said, as you will recall: analysts are not bad people and they don’t want to think of themselves as bad people, but they have adopted a misleading metric; they think if a program produces anything it is justified.

Because of course the very essence of democracy is that it is for the people to judge what is justified with respect to invasions of their entrenched and fortified rights.

And I think that Mr. Snowden means—as certainly I and my comrades mean—that in the exercise of the democratic discretion to determine whether we wish to fasten these procedures of totalitarianism on other people in the world, that we should consider our values as extending beyond our borders.

We mean—and I think Mr Snowden means with us—that we should make those decisions not in the narrow, selfish self-interest that is *raison d'état*, but with some heightened moral sense of what it is appropriate for a beacon of liberty to humanity to do.

We will speak, of course, about American constitutional law and about the importance of American legal phenomena—rules, protections, rights, duties—with respect to all of this. But we should be clear that, when we talk about the American constitutional tradition with respect to freedom and slavery, we're talking about more than what is written in the law books.

We face now a global system in which the States have, almost without exception, agreed complicitiously to deliver over their people to a form of pervasive spying which we know is incompatible with our own liberty and with the liberty that we have frequently postured in the world as bringing to the human race as a whole. We *know* this. As individual citizens we are now aware. Mr. Snowden has made it impossible for us to ignore this fact unless we bury our heads so deep in the sand that we are likely to suffocate.

But we face two claims—you meet them everywhere you turn—which summarize the politics against which we are working. One argument says, "It's hopeless, privacy is gone, why struggle?" The other says, "I'm not doing anything wrong, why should I care?"

And these—neither one of them a brilliant argument from a political point of view—these are actually the most significant forms of opposition that we face in doing what we know we ought to do.

In the first place, the premise of my being here before you is that it is far from hopeless. Mr. Snowden has described to us, as I told you last time, what armor still works. Mr. Snowden's purpose was to explain to us how to distinguish between those forms of network communication that are hopelessly corrupted and no longer usable, those that are endangered by a continuing assault on the part of an agency gone rogue, and those which even with their vast power, all their wealth, and all their misplaced ambition, conscientious, and effort, they still cannot break.

Hopelessness is merely what you are supposed to get, not what you have to have.

And so far as the other argument is concerned, we owe it to ourselves to be quite clear in response. My own personal position I recommend to my comrades around the world: **If we are not doing anything wrong, then we have a right to resist.**

If we are not doing anything wrong, then we have a right to do everything we can to maintain the traditional balance between us and power that is listening. We have a right to be obscure. We have a right to mumble. We have a right to speak languages

they do not get. We have a right to meet when and where and how we please so as to evade the paddy rollers.

We have an American constitutional tradition against general warrants. It was formed in the 18th century for good reason. It puts the limit of the State's ability to search and seize at what you can convince a neutral magistrate, in a particular situation—about one place, one time, one thing—is a reasonable use of governmental power.

That principle was dear to the First Congress which put it in the Bill of Rights, because it was dear to British North Americans, because in the course of the 18th century they learned what executive government could do with general warrants to search everything, everywhere, for anything they didn't like, and force local officials to help them do it. That was a problem in Massachusetts in 1761 and it remained a problem until the end of British rule in North America. Even then, still it was a problem, because the Presidents, Premiers, Senators, and Chancellors back then were also unprincipled in their behavior. Thomas Jefferson talks a better game than he plays, but never mind.

This principle is clear enough. But there are only nine votes in the United States that count on that subject right now. And we must wait to see how many of them are prepared to face the simple unconstitutionality of something too big to fail. That's a challenge for a justice: a thing that headlines a lifetime in the history books, one way or the other. But those nine votes are the only votes that matter about that, and the rest of us must go about our business in other ways.

The First Amendment, too—as I have already pointed out—conveyed to every reader in the 20th century a message in favor of privacy as anonymity, protecting the ability to speak freely to whom one chooses without being forced by government to disclose. I remember *NAACP v. Alabama*, but the NSA was never really schooled in the idea that the social graph of the United States is nobody's damn business. When a senior government official said to me in March, 2012, "We've learned we need a robust social graph of the United States," I said, "Let's talk about the constitutionality of that for just a moment. You mean you're going to take us from being a free society to being a society in which the government keeps a list of everybody every American knows? You're proposing to do that with, say, a law?" He just laughed, because they did it by a document signed by the Attorney General and the Director of National Intelligence released on a rainy Wednesday night in March. No legislation at all was necessary, or at any rate they thought it wasn't.

That was when they decided to take all the information about Americans about whom nothing is suspected and instead of ditching it after eighteen months keep it for five years, which is the equivalent of forever.

That was an administrative decision. No law at all.

So what we find ourselves living with we could simply find unconstitutional without more, if we had one of the only nine votes that count. But I would urge you to consider the possibility that there exists a second American constitutional tradition also relevant.

You see, the American constitutional tradition we admire in the books was made by people mostly who fled Europe and came to North America in order to be free. It is their activity, politically and intellectually, that we find deposited in the documents that made the Republic.

But there is a second constitutional tradition. It was made by people who were brought here against their will, or who were born into slavery, and who had to run away, here, in order to be free. This second constitutional tradition is slightly different in its nature from the first, though it conduces, eventually, to a similar result.

Running away from slavery is a group activity. Running away from slavery requires the assistance of those who believe that slavery is wrong. People in the United States have forgotten how much of our constitutional tradition was made in the contact between people who needed to run away in order to be free and people who knew that they needed to be helping, because slavery is wrong.

People in the United States have now forgotten that in the summer of 1854, when Anthony Burns—who had run away from slavery in Richmond, Virginia—was returned to slavery by a state judge acting as a federal commissioner under the Second Fugitive Slave Act, Boston itself had to be placed under martial law for three whole days. Federal troops lined the streets, as Anthony Burns was marched down to Boston Harbor and put aboard a ship to be sent back to slavery. If Boston had not been held down by force it would have risen.

When Fredrick Douglass ran away from slavery in 1838, he had the help of his beloved Anna Murray, who sent him part of her savings and the sailor's clothing that he wore. He had the help of a free black seaman who gave him identity papers. He had the help of many dedicated people who risked much to help him reach New York.

We fought slavery, as Fredrick Douglass pointed out, long before Abraham Lincoln wanted to. Though he may have hated it, as Douglass said at the great Lincoln memorial in 1876, though he may have hated it with his whole soul.

Our constitutional tradition is not merely contained in the negative rights to be so famously found in the Bill of Rights. It is also contained in the proposition that liberty must be given to everybody always. That it must be accorded people as a right. That slavery is wrong. That it cannot be tolerated. That it must be fought, and that the way to fight it is to help people be free.

And so the constitutional tradition we should be defending, now, as Americans, is a tradition which extends far beyond whatever boundary the Fourth Amendment has in space, place, or time. We should be defending not merely a right to be free from the oppressive attentions of the national government, not merely fighting for something embodied in the Due Process Clause of the 14th Amendment after 1961, because of a trunk of smut left behind by a departing lodger in Mrs. Mapp's boarding house in Ohio. We should be rather be fighting against the procedures of totalitarianism because slavery is wrong; because fastening it on the human race is wrong; because providing the energy, the money, the technology, the system for subduing

everybody's privacy around the world—for destroying sanctuary in American freedom of speech—is wrong.

And if we're going to exercise our democratic rights in the United States as Mr. Snowden wishes us to do—and has given us the most valuable thing that democratic self-governing people can have, namely information about what is going on—if we are to do all that, then we should have clear in our mind the political ideas upon which we ought to be acting. They are not parochial, or national, or found in the U.S. Reports alone.

A nation conceived in liberty, and dedicated to the proposition that all men are created equal, enslaved millions of people. It washed away that sin in a terrible war. We should learn from that, as we are called upon now to do.

The politics that we have as Americans are slightly more complicated, but they are fundamentally the same as the lines upon which our colleagues and comrades around the world must also move. Everywhere citizens must demand two things of their governments:

In the first place, you have a responsibility, a duty, to protect our rights by guarding us against the spying of outsiders. Every government has that responsibility. Every government has the responsibility to protect the rights of its citizens to be free from the intrusive spying of outsiders. No government can pretend to sovereignty and responsibility with respect to its citizens unless it makes every effort within its power and its means to ensure that outcome.

In the second place, every government around the world must subject its domestic listening to the rule of law.

Now this is the tragedy, where the overwhelming arrogance of the listeners has left the American government. The government of the United States could have held up its head until the day before yesterday and said that its listeners, unlike all the other listeners in the world, were subject to the rule of law. It would have been an accurate boast.

To be sure the rule of law even in the last generation was somewhat corrupted by secret judicature, and a court appointed by a single decision maker, and so on and so on. But the truth is that American listening was subject to the rule of law as no one else's was in the world or is now.

For nothing, history will record, they threw that away. For *nothing* they threw that away.

But it is true everywhere—whether we are here, or we are in China or we are in Germany, or we are in Spain, or wherever we are—those two basic principles of our politics are uniformly applicable: our government must defend us against pervasive spying by outsiders, and our government must subject listening to the rule of law at home.

To the citizens of the United States a greater responsibility is given because we must act to subject our government to control in the listening it is doing to hundreds of

millions and ultimately billions of people around the world. Ours is the government that is projecting immensities of power into the destruction in the world's societies and ours is the government which must be put under democratic control with respect to that listening. It is our principles *in favorem libertatis* which must be the dominant principles in that story.

Freedom has been hunted round the globe. Asia and Africa have long expelled her. Europe has been bullied into treating her like a stranger and England would arrest her at Heathrow if she arrived. The President of the United States has demanded that no-one shall receive the fugitive, and maybe only Dilma Rousseff wants to prepare in time an asylum for mankind.

You heard a lot of stuff from governments around the world in the last two weeks, but not one statement that consisted of "I regret subjecting my population to these procedures." The German Chancellor, though triumphantly reelected with not a cloud in her political sky, is in no position to say "I agreed with the Americans to allow 40 million telephone calls a day to be intercepted in Germany; I just want them to stop listening to my phone!"

The President of the United States is considering the possibility of not listening to thirty-five mobile phones around the world. The other several hundred million people we listen to are stone out of luck.

You understand what a charade this is, of course. The leaders of global societies do not conduct their classified business over their personal mobile phones. Our listening there is not gaining us important military intelligence. The President of the United States is publicly considering not listening to conversations that leaders of other countries have with their spouses, their siblings and their children. But the conversations nine hundred million other people are having with their spouses, their siblings, and their children remain fair game. Nobody is talking about that; you're not supposed to think about it.

The listeners are having a political crisis beyond their previous imaginations in the United States. Listeners do not like to appear in the spotlight. Listeners do not like to be visible at all. The NSA and our other listeners have always worked to keep at least one, if not more than one, agency or person between themselves and public scrutiny at all times. Now they have destroyed their credibility with the domestic security industry around the world, which has realized that they have broken their implicit promises about what they would not hack. The global financial industry is overwhelmed with fear at what they've done—at their recklessness in dealing with the crypto that holds the financial system together. The agencies of the United States government they usually count on are fleeing them.

First the National Institutes of Science and Technology comes out and says "Yes, yes, the NSA corrupted an important computer security standard we published. We're terribly sorry about that, and we're going to fix it," as though this is was the first time that had ever happened. And then, as you noticed, two days after we were last here together, the New York Times made itself the vehicle for a leak about how the CIA had almost caught Snowden in 2009 and how he was just a common spy after

all—until the following weekend when the CIA denied it. The Agency said “No, we had no such understanding. Mr. Snowden was attempting to report a security problem in some software.” Mr. Snowden clarified the entire story in his interview with Mr. Risen. For the first time in recorded history, the CIA publicly refused to carry water for the listeners.

That was an enormous event, equivalent in scale to the announcement that General Alexander and the chief civilian administrator of the NSA, Mr. Chris Inglis, would retire next March.

But the most terrible thing that has happened to them in the politics of all of this happened over the German Chancellor’s manufactured tantrum. When the White House itself wanted the NSA to appear between them and the truth. “Oh, no, we weren’t told our people were listening to the German Chancellor’s mobile phone.” And NSA said, through leaks that are called espionage unless they come from the top, “Yes, of course we told them!” Suddenly the National Security Agency was standing in the full glare of daylight, being asked to take a bullet by the White House and refusing.

We will never have a similar moment of political disarray on the side that works against freedom. Not only have they made the issue around the world clear to everybody—not only have they created martyrs in our comrades at Fort Leavenworth, at the Ecuadorian Embassy in London, and at an undisclosed location in Moscow—not only have they lit this fire beyond the point where they can piss it out, but they have lost their armor. They stand before us in the fullness of who they really are. It is up to us to show that we recognize them.

They are, after all, just us—just good patriotic Americans like us.

Nothing is wrong with them that an election wouldn’t cure.

But it will have to be an election to remember—a Parliament of Wonders.

And it won’t have to be just here.

What they have done is to build a state of permanent war into the Net. Twelve years into a war that will never seem to end they are making the Net a war time place forever. We must re-imagine what a Net at peace would look like: cyberpeace. The young people around the world now working on the theory of cyberpeace are doing the most important political work of the later 21st century. Because we will now have to provide what democracies provide, which is the end of wars. We have to be willing to declare victory and go home. When we do, we have to leave behind a Net which is no longer in a state of war, a Net which no longer uses surveillance to destroy the privacy that founds democracy.

This is a matter of international public law. In the end this is about something like prohibiting chemical weapons, or land mines. A matter of disarmament treaties. A matter of peace enforcement.

Pervasive surveillance of other peoples' societies is wrong and we must not do it. Our politics, everywhere around the world, are going to have to be based in the restoration of the morality of freedom, which it is the job of democracy to do.

The difficulty is that we have not only our good and patriotic fellow citizens to deal with, for whom an election is a sufficient remedy, but we have also an immense structure of private surveillance that has come into existence. a structure which has every right to exist in a free market but which is now creating ecological disaster from which governments alone have benefited. From which people have been rendered far less well off than they think they are, and than they should have been.

You don't need today's Washington Post on the subject of the massive interception of information flowing in and out of Google and Yahoo—and soon it will be Facebook and Microsoft's cloud—as we begin to understand what government is doing with “the cloud.” You don't need any of that to understand that at the end of the day, we have to assess not only what the States have done, but also what unregulated enterprise has done, to the ecology of privacy

We have to consider not only, therefore, what our politics are with respect to the States but also with respect to the enterprises. This is the subject of our talk next time.

But for now we are left attending a puppet show in which the people who are the legitimate objects of international surveillance—namely politicians, heads of state, military officers, and diplomats—are yelling and screaming about how they should not be listened to. As though they were *us* and had a right to be left alone.

And that, of course, is what they want. They want to confuse us. They want us to think that they are *us*—that they're not the people who allowed this to happen, who cheered it on, who went into to business with it.

The literature of our time has not been deceptive about this. If one reads John le Carré's views about the security industry in Germany under the Global War on Terror (he, as you recall, had his actual experiences as an intelligence officer on behalf of the British government in Germany), if you look at what *A Most Wanted Man* says about the nature of the cooperation between the Germans and the Americans, and its effect on freedom, you will discover that after all everybody really did know—except you.

The purpose of secrecy was to keep you in the dark. The purpose of secrecy was not to prevent the States from knowing what they were doing: their left hands and their right hands knew perfectly well what they were up to.

We're going to have to cope with the problems their deceptions created. Because among the things that our listeners have destroyed is the Internet freedom policy of the United States government. They had a good game that they were playing both sides of. But now we have comrades and colleagues around the world—working for the freedom of the Net in dangerous societies—who have depended upon material support and assistance from the United States government, and who now have every reason to be worried and to be frightened.

What if the underground railroad had been constantly under efforts of penetration by the United States government on behalf of slavery?

What if every book for the last five hundred years had been reporting its readers at headquarters?

People talk about this as though it were a matter of the publicity of what we publish rather than the destruction of the anonymity of what we read. We will have to look next time very closely at what commercial surveillance really does and how it really does it in order to understand what our politics have to be. Because there, as here, deception, misdirection—waving the handkerchief over here so you do not see what the other hand is doing—is the whole secret to how it works.

The bad news for the people of the world is you were lied to thoroughly by everybody for nearly twenty years. The good news is that Mr. Snowden has told you the truth.

But if we really believe that the truth will set us free, we had better do it now.