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The NSA and the weakness of American power

Mark Leonard

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The NSA scandal over phone tapping in Europe will soon blow over, conventional wisdom says. Jack Shafer has argued that, although allied leaders such as Angela Merkel are upset, they will (and have to) get over it.

Don't believe a word of it. The public outrage that the NSA has spawned could be more damaging to the transatlantic relationship than the Iraq war was a decade ago.

If it was all up to leaders, Shafer might be right. But governments - along with their intelligence services - are increasingly boxed in by public opinion. It's not the spying or the lying that European citizens find more hurtful. It is the perception that U.S. agencies are as oblivious to the rights of allies as they are scrupulous at upholding the rights of their own citizens.

Seen from Europe, the NSA saga is another episode in the long-running story about the asymmetry of power across the Atlantic. A decade ago, the fight was about Iraq. In an influential essay, author Robert Kagan saw Europe and America as archetypes for power and weakness. "Americans come from Mars and Europeans from Venus," he said. But President Bush's invasion of Iraq did not "shock and awe" the rest of the world into submission. It was, in fact, a graphic illustration of the limits of American power, accelerating the arrival of what Fareed Zakaria called a "Post-American World."

Kagan was honest enough to admit, after the Iraq war, that Europeans helped rein in American behavior by challenging its legitimacy. “If the United States is suffering a crisis of legitimacy,” Kagan wrote, “it is in large part because Europe wants to regain some measure of control over Washington’s behavior.”

The Franco-German response to the hegemony of the NSA has echoes of their response to the “Global War on Terror.” European citizens were not shocked that the NSA spies, but they were surprised by the power and reach of American intelligence.

When I interviewed Jose Ignacio Torreblanca, a Spanish foreign policy expert, he compared the NSA’s approach to data to the Library of Congress’ approach to books. When he asked a librarian about the library’s acquisitions policy, he learned that it didn’t have one. “We just buy everything,” the librarian told him. He compares this approach to the NSA probing the emails of all European citizens and justifying the purpose afterward.

One of the few unwritten laws in international politics is when a country reaches a level of power that is out of control, other countries will come together and balance it. Now two European institutions — the unelected European Commission and the unloved European Parliament - have the power and the incentive to try to take on the region’s closest ally.

The most obvious possibility for this is cooperation on counter-terrorism. Last week the European Parliament voted to suspend the SWIFT agreement, which governs the transfer of some bank data from the EU to anti-terror authorities in the United States. Although the U.S. does not always take Europe seriously as a military power, it does care about cooperation on data-sharing and the regulations that govern it — including bank data. This is one reason why the outgoing American ambassador to the EU, William Kennard, was the former chairman of the FCC.

As the latest revelations show, Europe’s intelligence agencies have often been willing co-conspirators with their counterparts across the Atlantic, but they will now be under much stronger public pressure not to comply.

There could be commercial implications to the NSA’s behavior. The European Commission is the most powerful regulatory body in the world, and it has the strength to impose its will on America’s corporate titans. In 2004, EU regulators hit Microsoft with a record fine of \$613 million for violating European Union antitrust laws. Five years later they used the same tactics to force Microsoft to unbundle its Internet Explorer from Windows.

Sebastian Dullien, a German economist, argues that some people might call on the European Commission to use these sorts of tactics against American tech companies. “If they really wanted to hurt the United States, they could pass a law which said that any company that gives personal information on European citizens to foreign intelligence agencies would have to pay a fine of one million dollars per instance,” says Dullien. “If that happened, it might force many of the tech giants to shutter their operations in Europe.”

The European Commission, together with the European Space Agency, successfully funded the \$5 billion Galileo project to develop a European answer to GPS. In the wake of the NSA scandal, there are calls for the EU to use similar tactics to develop safe cloud servers for Europe. Such a move could lead to a balkanisation - or at least a de-Americanisation - of the Internet.

Third, there will be consequences for the much vaunted Transatlantic Trade and Investment Partnership (TTIP), which some have argued would usher in a “New Atlantic Century.” Both sides have called for a “deep” and “comprehensive” agreement to create jobs and forge a “free, open and rules-based world.” But whatever deal that European and American negotiators agree on will have to be ratified by Congress and the European Parliament. The NSA scandal will probably not scupper a deal, but it will make it more difficult to agree a comprehensive one.

Fears about data privacy will make it more difficult to have mutual recognition of regulations on digital services. The same is true of government procurement. There will be resistance to give American companies access to European government programs if they leave the back door open for American intelligence agencies. Rather than become the economic foundation for a new Atlantic century, the deal that emerges could look more like a piece of Swiss cheese - so riddled with opt-outs and exemptions that it has little effect.

The real toxicity of the NSA revelations is that they replace a sense of shared values with deep public mistrust on both sides of the Atlantic. As Torreblanca argues: “Americans do not seem to realise that powers of surveillance that are used not just for counter-terrorism but also for commercial advantage could put them in the same category as China.”

The scars of the Iraq war live on long after the protagonists of that episode have moved on, as we saw in the debates about intervention in Syria. But the NSA scandals have the potential to leave an even deeper impression on an already weaker transatlantic alliance. The intelligence relationships that did so much to unite allies in the Cold War now threaten to blow up their relations during a time of peace.