

Intelligence MEMOS



The C.D. Howe Institute's third Regent Debate recently addressed the question: Should Governments Regulate Big Tech to Protect the Public Interest? Former FBI director James Comey argued in favour of the proposition.

From: James Comey
To: Canadians Concerned about Big Tech
Date: August 8, 2019
Re: **THE REGENT DEBATE: FOR REGULATING BIG TECH**

Big technology promised to change our world and it delivered on that promise in extraordinary ways.

But in exchange for amazing convenience and undreamed-of connection, we have surrendered something to the big technology providers, mostly without knowing it or noticing it.

But governments have to notice, and because they notice they must act.

There are two reasons: The first is that technology companies now have power that actually strains the frameworks through which we govern. In many ways big technology, with its collection of information about us, has become as powerful—in some ways more powerful—than government.

We spend a lot of time trying to figure out, especially in Canada and the United States, how to make sure we have a government of limited powers. That we rope down the Leviathan, that we have due process, that we have oversight, that we have accountability because government has enormous power.

The government can know what we made an income last year, the government can know how much we gave to charity, and in many places it can know the health challenges that we face.

But the government cannot know that we are struggling with our sexuality, that we are considering a divorce, that we are depressed, that we are considering getting pregnant – the government can't know as much about our future as technology can. They can't know as much about our present as technology can. This reality requires that we focus on the power that we have unintentionally transferred to these tech platforms.

Now you're going to hear “if we regulate them we might kill the goose that laid the golden egg of innovation.” Don't buy it.

We regulate finance companies in Canada and the United States. We regulate insurance companies and we do that because those enterprises have tremendous information about us and the power to do harm. So we regulate them. Last time I checked, both finance and insurance are doing fine.

Technology has become more powerful than government in many ways and so we have to think about it in the way we think about restricting government power. Second, technology creates safe spaces for bad people. They recruit there, they threaten there, they harm there in ways that really are no different than the harm somebody might commit in a public square.

We regulate that public square. We make sure that bad things can't happen there. We must insist that the public squares that are the Facebooks of the world, that are the Googles of the world, are required to police their public spaces. That doesn't necessarily mean the government should monitor and prescribe content—in our two countries that would be a dicey proposition, given the rights that our people have and the limits placed on government—but there are things that can be done.

In the US, a landlord whose property is used for drug trafficking and knows about it, even if he's not involved in the drug trafficking, is criminally liable for the behaviour on his property, because we've judged he best knows how to monitor that space. The same kind of restrictions should be considered for the tech spaces: where providers know that on their platforms there are terrorists, there are pedophiles, there are bad people of all sorts seeking to do harm.

Another problem is that tech provides safe spaces through the ubiquitous use of strong encryption – which is a wonderful thing but also terrible thing because it makes it impossible for our judges to give meaning to due process and allow us to investigate that pedophile by getting the content of his communications.

Increasingly big tech has decided that's off-limits to us and have changed the way we govern ourselves. Tech ought not to decide how we govern ourselves –we ought to decide how we govern ourselves. Governments must act to regulate tech in the public interest.

James Comey is a former director of the US Federal Bureau of Investigation.

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