The Ethics of Government Surveillance:
Is Edward J. Snowden a Hero or a Villain?

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Abstract

The recent disclosure of the National Security Agency's (NSA) “PRISM” program by Edward Snowden has sparked a debate concerning the trade-off between privacy and security. Proponents of government surveillance argue that security is more important than privacy, and that these programs enable the government to stop terrorism before it happens. For these individuals, Edward J. Snowden is a villain who committed treason against the USA. On the other hand, opponents claim that government surveillance infringes upon personal privacy; therefore, Snowden is a hero for bringing an abuse of power to the attention of the American public. The controversy surrounding Snowden arises from a fundamental disagreement on the meaning of morality. This paper attempts to establish an objective definition of morality by analyzing forms of consequentialism and deontology. Although act utilitarianism cannot produce objective laws of morality, natural law ethics can through the use of self-evident axioms and deductive reasoning. The author finds that act utilitarianism does not provide a unanimous conclusion on the morality of Edward J. Snowden actions; however, natural law philosophy supports the view that Snowden is a hero.
I. Introduction

The recent disclosure of the National Security Agency’s (NSA) “PRISM” program by Edward Snowden has sparked a debate concerning the trade-off between privacy and security. However, an analysis of the ethics of surveillance and whistleblowing has been largely absent from the debate. This paper contributes to the literature on the ethics of government surveillance by analyzing Snowden’s actions from different ethical approaches including consequentialism and deontology. The paper is divided into five sections. Following the introduction, the characteristics of a hero are presented. Sections three and four discuss the ethics of surveillance from different philosophical traditions. The essay is concluded with an overview of the morality of Snowden’s actions.

The actions taken by Edward Snowden in 2013 were made possible by a chain of events that began with the terrorist attacks on the World Trade Center on September 11, 2001. In response to these attacks, President Bush announced that “Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated (CNN 2001).” Since 2001, the War on Terror shipped American soldiers and government employees to several regions throughout the world including Afghanistan, the Philippines, the Horn of Africa, the Sahara Desert, Iraq, Syria, Pakistan, Yemen, Somalia, and Kashmir. The tragic events that took place on September 11, 2001, resulted in the deaths of approximately 3,000 Americans; however, the War on Terror has resulted in the deaths of over 10,000 Americans. In addition to American lives, the War on Terror has led to the deaths of over 1,385,000 people worldwide, and the displacement of over 7.8 million (Trotta 2011). In order to fight the War on Terror, the US government hired security analysts, and “cyberstrategists” like Mr. Snowden to track terrorist activity and provide counterintelligence to the NSA.

Government websites and official speeches do not reveal specifically how these programs
work, what types of data they collect, or what results have been achieved. The bulk of information available has surfaced thanks to whistleblowers such as Edward Snowden, Thomas Andrew Drake, and William Binney. On June 6, 2013, *The Guardian* reported on an NSA court order to a Verizon subsidiary to disclose the phone records of millions of domestic customers (*The Guardian* 2013). The next day, *The Guardian* and *The Washington Post* reported that the NSA accessed details of customer conversations from at least nine companies including Google, Yahoo, and Microsoft (*The Washington Post* 2013). Slides released by Edward Snowden show that the NSA collects data ranging from live communications to stored information such as emails, videos, photos, and Skype calls too. In the US, court cases such as *Jewel v. NSA* have accused the government of overseeing an "illegal and unconstitutional program of dragnet communications surveillance" (Jewel 2011). Although, the government has dismissed these claims, the US district court judge for the District of Columbia, Richard Leon, stated that bulk data collection probably does violate the fourth amendment (Klayman et al. 2013). The US government has not explained how spying on Americans is constitutionally legal or why it is the best method for preventing terrorism.

Although many Americans think that Snowden is a hero, Snowden is unquestionably guilty of breaking his employment contract with Booz Allen Hamilton (Bacon 2013). Snowden stated that his motivation for revealing the NSA’s bulk data collection program occurred after the Director of National Intelligence, James Clapper, lied to Congress under oath concerning the nature of the NSA’s civilian monitoring (Snowden 2013). Before he released government documents to news agencies, Snowden attempted to resolve the issue through “internal channels”; however, superiors instructed him to remain silent concerning the legality of the government surveillance program that he was in charge of administering (Cole 2014). Snowden left a $122,000 annual salary, a comfortable home in Hawaii, and his family in order to release government files that he believed the public had the right to know about.

II. The Hero Criterion
The word “hero” is often used to describe a brave person who is admired for taking action. The distinguishing traits of a hero include bravery, integrity, and low time preference. Bravery is a fundamental quality of a hero because the individual actor is often in a subordinate position to his oppressor. Once the actor determines the moral course of action, he must have integrity or courage to implement his vision. Finally, all heroes possess the ability to self-sacrifice, which demonstrates low time preference described by the twentieth century economist, Ludwig von Mises (Mises 2010). A hero is willing to postpone present consumption in favor of future consumption for himself or for his community.

To determine if an individual is a hero, the individual’s deeds must be juxtaposed to the criterion of the definition. For example, is the individual in a position of weakness or are they in a position of power? If they are in the latter, then they are not a hero, but rather a leader. Did the individual have the integrity to act on their principles or did they compromise? If they compromised then they are a visionary but not a hero. For the classifier, the most difficult task is deciding if the individual was good or bad. Heroes sacrifice in order to achieve “greater good” but what does “greater good” mean and to whom? For example, the United States government is taking legal action against Edward Snowden because they do not consider him a hero. In comparison, several polls indicate that the majority of young Americans believe he is a hero (Pew Research 2014). Since each individual subjectively decides if an action or the result of an action is good or evil, the distinction between hero and villain will depend on each person’s ethical values.

People disagree on the morality of Snowden’s actions because philosophers have not been able to solve the “is-ought” problem. The Scottish philosopher, David Hume, articulated the is-ought problem in his *Treatise of Human Nature*. The is-ought problem distinguishes positive statements from normative statements, and states there is no clear method for transitioning between them. The former refers to statements about what is, and the latter refers to statements about what ought to be. However, we cannot say what ought to be without making assumptions about the subjective values of individuals. For example, ethical nihilism
espouses that normative facts do not exist (Landau 2010). Although, most people think that murder is wrong, ethical nihilists hold that murder is neither inherently moral nor immoral. The is-ought problem describes the difficulty in transitioning from the observation that “murder exists” to the normative statement that “murder is ought not to exist.”

To avoid this problem, philosophers use if-then statements to assert how the world ought to be. For example, in the tradition of Kant’s hypothetical imperative, Mises argued that if most people in society want to increase their standard of living then we should limit the scope of the government to the protection of private property rights (Mises 2010). In the context of government surveillance, we can say that if individuals value privacy then coercive forms of government spying ought not to exist. Therefore, any attempt to stop coercive forms of government intervention is heroic; however, this conclusion only applies to individuals who prioritize privacy over surveillance. This conclusion cannot be assumed to be the same for everyone because different individuals have different preferences.

A universal judgment on the morality of a state of affairs requires additional criterion. Although, we know that governments are collecting bulk data on citizens, we cannot judge the morality of this state of affairs without an ethical foundation. For purposes of this paper, moral and good will be used synonymously. Philosophers use good or moral to describe an action or a state of affairs that is satisfactory and worthy of pursuit (Gaus 2001). The most common strategies for determining if a course of action is moral or immoral are consequentialism and deontology. Consequentialism describes an action as moral if the benefits of the action outweigh the costs of the action. As the name denotes, consequentialism analyzes if the consequences justify the action. In contrast, deontology focuses on the ethical nature of the individual’s action. Deontology seeks to understand if a specific action is right or wrong regardless of the result of the action. Or another way of putting it is that consequentialism judges whether an action is moral after the action is taken, whereas deontology determines whether an action is just before the action is taken.
Different approaches to ethics provide different criterion for the classifications of a hero. Although certain philosophers subscribe to different ethical traditions, modern ethics is often a combination of both deontology and consequentialism. For example, the current “War on Terror” has sparked a debate concerning privacy versus security. President Obama has stated that surveillance of the population will keep the population safe (Office of the Press Secretary 2013). On one hand the government uses consequentialism to argue that the benefits of surveillance outweigh the costs of terrorism. On the other hand, the government uses deontology to claim that good actions are those that protect the property of Americans. Policies that violate private property in order to protect private property, which is an example of a performative contradiction, are the result of an amalgamation of these ethical approaches.

III. Surveillance from a Utilitarian Approach to Ethics

The debate on the correct approach to ethics is still ongoing. The twentieth century ushered in utilitarian or welfare economics that attempted to maximize the utility of a society through government intervention in the market. Utilitarianism is a type of consequentialism. Consequentialism holds that the goodness or rightness of an act is determined by the consequences of the act; however, it does not provide criterion for distinguishing between good and bad consequences. There are several forms of utilitarianism, however, this paper will focus on act utilitarianism. Act utilitarianism expands on consequentialism by stating that good consequences are those that produce happiness. Therefore, an action is moral if it increases the well being of sentient entities regardless of the means used to achieve the end (Lyons 1965).

Utilitarianism can be traced back to the ancient Greek philosopher, Epicurus; however, the prominent proponents of this approach to ethics are Jeremy Bentham and John Stewart Mill (Scarre 1994). Bentham calculated utility as the aggregate happiness of the population minus the displeasure incurred by the action (Bentham 2009). Mill refined Bentham’s theory by adding measures of quality, such as the intensity of the pleasure and suffering (Mill
1998). However, critics such as John Rawls have pointed out that utilitarianism ignores justice and the subjective preferences of individuals (Rawls 2005). The latter limitation of act utilitarianism inhibits the classification of Snowden as a hero or a villain because it is impossible to precisely measure and aggregate the pleasure or pain incurred by each individual by Snowden’s actions.

Using the utilitarian framework, each individual can classify Edward Snowden as a hero or a villain by understanding the costs and benefits of government surveillance that he or she incurs. For example, some individuals could incur what Ludwig von Mises referred to as a “psychic profit” from surveillance (Mises 2010). A psychic profit (or loss) is a concept that describes an increase (or a decrease) in an individual’s utility or happiness. Snowden is a villain for the people that incurred a psychic loss because of his actions. In contrast, Snowden is a hero to all of the individuals that sustain a psychic loss from government surveillance.

Government surveillance has objective and subjective costs and benefits. For purposes of this paper, objectives costs and benefits refer to the financial expenditures and revenues accrued by government surveillance. Objective costs are factual expenditures that occurred in the past regardless of a person’s perception of the money doled out. Each government incurs objective costs for tracking their citizens such as hiring security analysts, storing data, building offices, investing in research on encryption technology, and investigating suspects. According to the “black budget” leaked by Edward Snowden, U.S. spy agencies received $52.6 billion in 2013 (Delong 2013). However, this document only pertains to one year, and it does not include expenditures by the military on surveillance.

In comparison, it is difficult to precisely measure objective benefits from surveillance because the subverted plots will not occur; any attempt to estimate the damage subverted would be hypothetical. If a surveillance program stopped a terrorist act from being implemented, analysts could estimate the number of lives saved and the monetary cost of the damage prevented. However, the Justice Department’s Inspector General, Michael E. Horowitz, ad-
mitted that FBI agents had not stopped any terrorist acts because of snooping powers granted by Section 215 of the Patriot Act (Office of Inspector General 2015). Since no known attacks have been prevented by bulk data collection on citizens, the objective benefits are negligible.

In contrast with objective costs and benefits of government spying, the subjective costs and benefits cannot be quantified. Subjective valuation refers to the idea that the value of a good or service is determined by each acting individual instead of how much labor went into the good’s production (Menger 1950). Since values do not exist independent of a person’s mind, it is impossible to precisely measure an increase or decrease in an individual’s utility (Mises 2010). Subsequently, it is impossible to compare changes in utility between individuals. An example of a nonmonetary and subjective benefit of surveillance is the sense of safety that these programs provide for each individual. Costs include the value that each individual places on their loss of privacy due to unwarranted data collection, domestic drones, and intrusive law enforcement agents.

Overall, the utilitarian approach does not provide a unanimous conclusion on the classification of Snowden as a hero because government surveillance programs benefit some people, especially government employees and beneficiaries of government contracts. Since the costs and benefits of surveillance are different for everyone, Snowden will be a hero for some and a villain for others.

IV. Surveillance from a Natural Law Approach to Ethics

Although utilitarianism does not provide a satisfactory verdict on the morality of Snowden’s actions, natural law philosophy provides evidence that he is a hero. In contrast with consequentialism, deontology holds that certain values are universal. In deontology, the ethics of an action are judged as good or bad by intrinsic characteristics of the action, rather than by the consequences of the action. Forms of natural law that are non-teleological and do not judge the morality of an action based on the consequences are considered deontological.
Natural law holds that the rules governing moral behavior come from nature, and that man can deduce which actions are moral with the use of reason (Strauss 1968).

The Greek philosopher Aristotle postulated that natural justice or rights are universal, even though legal laws or conventions may vary from place to place (Strauss 1968). Natural law theories are also present in the medieval works of Thomas Aquinas and the modern philosophical works of John Locke. Aquinas posited that the world is orderly and that certain natural laws are conducive to flourishing human life (Thomas 1948). According to Aquinas, good actions are those that pursue life, procreation, knowledge, society, and reasonable conduct (Thomas 1948). In contrast, Aquinas held that certain actions are absolutely forbidden such as murder and lying, amongst others. Four centuries later, Locke applied natural law theory to politics. In *Two Treatises of Government*, Locke argued that governments need the consent of the governed. Additionally, he held that it was moral for constituents to overthrow a government that failed to protect “inalienable rights” such as life, liberty, and property (Laslett 1965).

Modern natural law states that each entity has a particular nature: a man has a unique nature, a rock has a unique nature, a hydrogen molecule has a unique nature, and so on (Veatch 1971). As entities interact, each bounded cause will result in a bounded effect, and the amalgamation of these laws is termed natural law (Joseph 1916). Furthermore, natural law holds that moral actions are the objective effects that help each entity flourish (Veatch 1971). Entities that do not acknowledge the objective facts about reality will not flourish. For example, a man who walks off a cliff will fall to the ground below him because gravity is a feature of man’s existence. If a man values life he ought not to walk off cliffs. The peace and happiness of individuals depends on recognition of the objective moral order that governs mankind.

Although there are several natural law theories, this paper will focus on the natural law derived from John Locke’s self-ownership principle. Locke purported to prove self-ownership
in *Two Treatises of Government*, “every man has a property in his own person. This nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. WHATSOEVER then he removes out of the state that nature hath provided, and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property.” Post-Locke political scientist Hans-Herman Hoppe also found that individuals own themselves albeit by different logic (Hoppe 1998).

Combining the premises that moral actions are those that help man prosper and that each man owns himself, we can logically deduce that any action that violates man’s self-ownership will hinder man’s well-being. The right to privacy follows logically from the self-ownership principle. Starting from the self-evident axiom that individuals own themselves, we can deduce that individuals own the right to keep certain parts of their person kept private. Israeli theorist, Onn Yael, applies this reasoning to everything that an individual owns including their home and property, “The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose” (Yael 2005). Since privacy is a natural right, and since violating natural laws is harmful to humans, we can conclude that coercive government surveillance is immoral. Therefore, Snowden is a hero that exposed an immoral government program that violates natural rights.

V. Conclusion

Different approaches to ethics provide different answers to the question, “Is Edward J. Snowden a hero or a villain?” Utilitarianism cannot produce universal laws of morality because individuals have subjective preferences that cannot be measured or aggregated. In contrast, natural law philosophy can produce objective laws of morality through the use of self-evident axioms and deductive reasoning. Natural law supports the position that Edward J. Snowden is a hero because he tried to change an immoral state of affairs. The former NSA contractor showed bravery when he stood up against the largest organization that has existed
in the history of mankind: the US government. He exhibited integrity when he acted on his principles by exposing an immoral government program. Finally, he exhibited low time preference by postponing present job security and freedom in favor of informing the world about secret government surveillance programs that function without the consent of the governed. Although some consequentialists may disagree, Snowden is a champion of human rights and arguably one of the greatest heroes in history.

References


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