

The Snowden Disclosures: An Inquiry Into The Virtue Of Whistleblowing From An Austrian Economics Perspective

Abstract:

This essay attempts to judge Snowden's revelations about the extent of the surveillance activities of the NSA in the light of the Austrian School of economics. The methodological framework of this school is used to gather new insights about the legitimacy of his deed and to supplement the discussion with economic arguments, even though the questions "Edward J. Snowden – Hero or Villain?" is essentially a normative one. The structure will be threefold: In the first part, we will try to give the concept of a hero a precise "Austrian" meaning. Secondly, we apply this definition to the concrete case of Snowden. To do so, it turns out to be necessary to discuss the legitimacy of the NSA's surveillance activities, the impact the leaked material had and still has, and examine whether or not disclosing classified documents is courageous. In a last step, a number of popular objections to Snowden's proceeding are discussed.

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In 1971, the same year the then German Chancellor Willy Brandt was awarded the Nobel Peace Prize for his reconciliatory work between Western powers and Eastern bloc countries, the American public was deeply divided over the very same issue. The proxy war in Vietnam with its numerous atrocities, which was but one instantiation of the conflict, was nowhere near to being ended, proclamations during the presidential race of 1968 notwithstanding. In this atmosphere, the disclosure of a 7,000-page collection of classified documents - later to be known as the Pentagon papers - by military analyst Daniel Ellsberg, confirming that the Johnson administration had secretly enlarged the scope of the war, came like a bombshell.

Ellsberg surely wasn't the first whistleblower in history, but is arguable one of the most prominent among them. Whereas his action are nowadays remember as truly patriotic deeds and praised by government officials and journalists alike, one must not forget that the commentaries in the immediate aftermath are largely comparable to the reactions the contemporary prime example of a whistleblower, Edward J. Snowden, has been facing [1]. The Nixon government brought twelve felony counts against Ellsberg and his collaborator, wiretapped the conversation with his attorney and burglarized the office of his psychiatrist to obtain sensitive information that could be used against him in court [2]. The indictment was ultimately dismissed, but may serve as a clear indication of the danger whistleblowers are facing when leaking information.

It is Snowden, and not Ellsberg, who is designed to be the pivotal figure of this essay. In judging whether the 32-year old former government contractor deserves to be called a hero or a villain, however, the historical parallel will prove to be very helpful. In light of the announcements by Secretary of State John Kerry, denouncing Snowden as a "coward" and "traitor" [3], and calls by ex-CIA director James Woolsey for him "to be hanged by his neck until he is dead" [4], such a juxtaposition should help to create a more sober debate.

As the title indicates, I intend to analyze this question from an economic - or more precisely, and Austrian economic - point of view. Now, the very issue of this essay is a normative one, and will therefore rest on personal value judgements at least to some extent. So why invoke economics at all, given that it is - and should be - a *wertfreie* science? What additional insights could one possible gain by such a procedure?

The answer to these questions is twofold: First of all, economics fundamentally deals with the means people employ to satisfy a set of ends they pursue. Whether or not these ends are self-serving or purely altruistic, it is in many cases possible to judge if the means chosen lead to the desired ends and thus characterize actions as "rational" or "irrational". That is, even when

engaging in the most philanthropic and selfless activities, we cannot avoid making economic considerations about the likely effect these actions will have. Everything else would amount to a giant waste of scarce resources.

Second, economists of all affiliations have time and again stressed the role incentives play for everyday interactions, from global political decisions to mundane encounters in a supermarket. The lesson to be learned from this is pervasive: it is not enough to determine what a person, a collective or an organization *should* do to act ethically. The incentive structure matters enormously and will lead people off the “right path” frequently unless both - incentives and normative prescriptions – are aligned. Acting contrary to this structure might prove to be one criterion for heroism.

The paper is organized as follows: I will begin by attempting to give the term “hero” a clear meaning, making use of the concepts of the above-mentioned Austrian School. After these preliminaries, I shall closely examine Snowden's case subject to three questions:

- a) Do the spying activities of the NSA indeed constitute a mischief, and if so, why?
- b) Did he act “rational” in the narrow economic sense of the word, i.e. did he choose suitable means to attain his ends?
- c) Can his actions be considered courageous with regard to the incentive structure he was facing?

Finally, a number of common objections, including the charges of breach of contract and of needlessly putting (American) lives at risk, will be discussed to get the full picture.

What constitutes a hero

As it is common with many popular concepts, a hero might be easy to identify when we see one in front of us, but the characteristics of heroism are hard to delineate. It is tempting, especially in times of social media, to break the concept down to a one-liner, such as “the willingness to make a personal sacrifice for the benefit of others” [6], but such a definition, with all its ambiguities and vagueness, will not do. Should Snowden indeed qualify as a hero, we need to be more precisely.

We get closer to the heart of the matter by considering the attributes Philip Zimbardo, author of the infamous Stanford Prison experiment, provides. Heroism, according to the famous psychologist, consists in a service voluntarily performed to others in need, while being aware of the associated risks and sacrifices. Heroes do not anticipate external gains at the decision point and stand out of the crowd by virtue of their actions [7]. Although it is impossible to draw the line exactly, the last criterion is necessary lest our concept becomes too broad: in close

connection with cultural traditions, I would like to label “heroism” a phenomenon whose occurrence is the exception rather than the rule.

Now, my contention is that Austrian economics can help us to clarify these propositions. In particular, its insistence on the subjectivity of utility and costs, where people's desires and beliefs are recognized as the “ultimate givens” of any social science, as well as its methodological individualism [8], make the conceptual framework much more coherent. Terms like “service”, “risk” and “gain” can thereby be given a rigorous meaning.

Austrian economists, as opposed to the dominant neoclassical stream, vigorously oppose the concept of *homo oeconomicus*, the perfectly-informed, perfectly-aware, utility-maximizing model market participant so predominant in most textbooks. Instead, they uphold that everything – including, of course, material objects and money, but also intangibles like friendship or music – ultimately derives its value from individual desires and wishes. Their relative importance is, and can only be, revealed in actions, and to claim that someone truly wanted to act differently than he did, makes no sense [9].

For our analysis of heroism, this has two important consequences: To begin with, Austrians do not see a difference between egoism and altruism. Actions are conducted because the actor believes they will increase his own “psychic income” and are therefore quite independent of whether he himself or someone else superficially seems to be the main benefactor. In the same vein, it becomes a futile task to separate actions into rational and irrational ones: One man's heaven is another man's hell. Turning towards the definition given by Zimbardo, we can understand why this is important to stress: for instance, “voluntarily performing a service for another” is what happens several billions times a day in the marketplace; where each freely agreed-upon exchange is mutually advantageous. The same goes for costs, risks and gains: every action is costly in terms of the foregone alternatives, carries the risk of not leading to the desired end and promises some kind of personal gain - which is why the agent opted for it in the first place.

To get out of this dilemma, I propose to conceive of a heroic action not as “altruistic”, but as one that shows a significant degree of considerateness for others [11]. A hero is the rare and exceptional character who effectively and intendedly brings about a state of affairs, often starting from a dire or catastrophic situation, which is disproportionately beneficial to people other than him. We will hold Snowden's behavior to these high standards in order to arrive at a conclusion.

Were the NSA actions illegitimate?

A first and crucial point to examine for a judgement of Snowden's alleged heroism is whether the activities he made public are reproachable or not. I shall leave the question of their *legality* to lawyers and legal scholars and directly turn towards the intellectually more challenging task of determining their *legitimacy* when tested against universally acceptable rules of conduct.

In doing so, little to no attention will be paid to the NSA's attempts to spy on other countries and their representatives. Such intelligence work has a long and established history, and it is illusory to believe that any relevant country has not, from time to time, engaged in these activities. Using the terminology of victims and culprits here seems to be quite naive.

Matters are fundamentally different when it comes to the monitoring of citizens, who are hardly in a position to “spy back”. The evidence that the NSA has indeed erected a mass surveillance apparatus to track down sizeable portions of their citizenry's online activities, in utter disregard of the noble principle *actori incumbit probatio*, is now overwhelming. To get an idea of its extent, consider the three billion phone calls and e-mails through US networks, 221 billion calls and e-mails worldwide and a total of 15.8 billion pieces of data from India and Brazil alone that the NSA has collected in a single 30 day period [12]. Very likely, this is only the tip of the iceberg, and one can only speculate about the full scale of these surveillance practices.

A worthwhile starting point for the discussion would be to ask why the NSA pursue these activities at all. The popular self-attribution – national defense, protection from terrorists and the like – is probably as wrong as the equally popular assertion that they are collecting the data for the sake of collecting it, insinuating the government official take delight in being able trace our every moves. A look at the incentive structure is therefore crucial.

At that point, a small digression is necessary. Most people take it for granted that “collecting data” is the real problem or crime, and denounce efforts by private companies like Google and Facebook to compile user data similarly vociferously. The catchy slogan, “my data belongs to me” sums up this mentality rather well.

However, such an argument is problematic: data, especially if relinquished voluntarily (as it usually the case in social networks), cannot be said to be “owned” in the same way tangible object are owned. They are “ideal objects, which are distinguished from the material substrata in which they are instantiated” [13]. Most importantly, they do not qualify as scarce goods – a crucial prerequisite for property [14]. To put it plainly, while it is surely possible to steal your ID card, saying that someone stole your date and place of birth (or rather, the knowledge thereof) has no clear meaning.

Moreover, there is not much that a private company can do with your data. They can, and do, use it to target people more specifically, thus increasing the success of their advertising campaigns,

but they cannot compel you to buy their products or pay for their services. Government, however, is an altogether different matter: By virtue of its monopoly on legitimate use of force, its employees could, for instance, search your private e-mail account for “suspicious content” to justify raiding your home or filing charges over technical matters against you. What sounds already terrifying in the hands of a democratic and relatively limited government becomes a nightmare in the hands of a totalitarian one.

There are obvious incentives at work, too – not necessarily for the individual public employee, but certainly for the top officials. *Ceteris paribus*, people prefer more money over less, and the more revenue government collects, the more it extend the scope of its operations. Now the taxpayer, suffering from the excessive burden of taxation, tries to evade them at many opportunities, whether via “legal loopholes” or in other ways. Under a global surveillance system, such behavior will hardly go undetected and might even make it impossible for value-adding, productive entrepreneurs to escape the revenue department by moving their company abroad. In more extreme cases, intimate details about high-profile government critics might even be used to publicly discredit or harass them.

A further complication arises when we investigate the way such programs are financed. The biggest obstacle is the absence of a price system for the decisions of how much to monitor and what to spend on it. Without prices, there is no way of knowing whether resources are used efficiently or not, thereby provoking misallocations and squandering [8]. Their absence also explains why the NSA is likely to engage in activities that go beyond counterintelligence matters: Monitoring law-abiding citizens, who are unlikely to encrypt their communication, is almost always less costly (and more materially rewarding) than carrying on espionage on foreign nations and attempting to put a stop to terrorism. The incentives thus point clearly in one direction: Exaggerating the danger that is posed by the latter before Congress while spending the bulk of the funds on surveilling the former.

Given the sheer extent of power a government in control of such amounts of metadata wields, combined with its tendency to continuously expand its monitoring activities to increase its revenue, there is every reason to vigorously oppose it and nip it in the bud. An individual who manages to prevent worse from happening fulfills at least one condition for heroism.

The impact of the disclosures

Let us now turn our attention towards the question over Snowden's choice of means. In a way, this is the hardest question of all, as one can never prove that the choice was indeed the best, or even among the best. Nor, however, is this required: A brave firefighter who saved a child from a

burning house at the peril of his life would surely not be criticized for accidentally tearing apart the child's shirt, even if it would have been possible to avoid it.

One thing, I believe, is indisputable: the media reactions Snowden's revelations aroused would have hardly been as encompassing as they were had he opted for a less spectacular way to leak the information. Some commentators, in calling Snowden narcissistic, seem to utterly miss this point. In fact, it is difficult to imagine how a global and ongoing discussion about the accountability of government agencies could have been possible without it. A case in point is the fate of whistleblowers like Thomas Drake or William Binney, whose names are merely familiar to a very limited circle today.

Of course, the mere existence of a debate without any tangible results does not provide for much. Yet arguably, the disclosures had more impact than this. For instance, before the Snowden coup, the legal situation concerning the accountability of the NSA was anywhere in between comical and thoroughly kafkaesque. A person suspecting the NSA of unconstitutionally spying on him had no chance to file a charge against them because he lacked "legal standing to sue". That is, before being given the chance to argue his case before court, he had to show he was indeed affected by the NSA's activities. This, however, amounted to an impossibility: the documents that might have shown it were classified as confidential, precluding anyone other than the officials themselves from their usage [15]. In the aftermath of Snowden's whistleblowing, the outright dismissal of such accusations was no longer viable, and consequently, a number of processes were brought upon the NSA [16].

On the other hand, there is evidence to the contrary: A recent report [17] compiled with the help of scholars from all over the world points out a number of developments (or rather, non-developments) that provide reasons for concern. Among the most important results, they found that outside the Anglo-Saxon sphere, the media response was surprisingly insignificant. Even now, more than two years afterwards, no real reforms are under way, and only a tiny minority of the population has begun to encrypt their communication as a consequence.

We are not pretending to have the last word here. But one more thing should be remarked, where the economic way of thinking once again offers a way out. To think like an economist is to always have the question in mind: "As opposed to which alternatives?" Thus, when we claim that his revelations did not induce "enough" change, we must be ready to answer "How could he have fared better?" A satisfying response to this is far from obvious, and has, to the best of my knowledge, not been given yet.

How courageous was Snowden's behavior?

Good deeds alone, in the sense explained above, do not yet make a hero. At least some form of courage that puts the actor above the rest would be required. We shall therefore apply the conceptual framework developed in earlier sections and see whether Snowden passes this test.

Possibly, Snowden's actions weren't brave at all, given that he supposedly just did what the media's everyday job is: Reporting government misconduct. But again, incentives strike against this overly optimistic conception of the role of journalists [18]. Monitoring government activities, especially those that are conducted clandestinely, is a very costly process and much more difficult than just interviewing its representatives. Furthermore, knowing that government has arguably the most powerful status in society, distinct from all its other constituents, critical journalists risk at the very least to lose access to "inside information". They might even be subject to reprehensions, as Ellsberg's case in the introduction clearly shows. Snowden could reasonably fear the same might happen to him, and he was quite right with this anticipation.

Still, one could maintain that Snowden was merely a venturesome character, taking high risks in expectancy of even higher gains. Heyes and Kapur [19], for instance, remark that apart from motives such as "conscience cleansing" and "welfarist" considerations, a whistleblower could also be inspired by the desire to harm his employer for personal reasons. If this were the sole reason, it could tip the scales against the attribution of heroism. Although we cannot completely rule out this option, we have doubts about its accuracy. If Snowden's sole purpose had been to damage the NSA, he could have handed over the files secretly without giving up his life in the US. Instead, the odds were even more against him. Villena and Villena [20] correctly point out that whistleblowing is a good example of what Mancur Olson termed the logic of collective action [5]: whenever external costs are born privately, but (external) gains are socialized, individual actors are unlikely to perform them. In our case, the price Snowden paid for his revelations was enormous - not only in terms of the legal persecution he is now facing, but also because of the costs associated with monitoring, gathering and processing information about the surveillance program of the NSA.

Corruption tends to be self-enforcing, and breaking through this vicious circle requires a lot of stoutness. This does not turn Snowden's disclosures - in the spirit of our discussion of Austrian methodology - into self-denying acts, but allows us to reasonably interfere, from the available evidence, that he was most likely by ethical concerns.

Criticisms and rebuttals

Before we come to a conclusive assessment, we will at least briefly have to consider a number of objections frequently put forward. Here as well as before, we will use economic arguments wherever applicable.

One criticism that has been made again and again is that Snowden, in order to make the documents public, fled the imperfect, but essentially liberal democratic USA to install himself first in Hong Kong and later on in quasi-totalitarian Russia, even praising their respective leaders. But this is just another instance of what we could name “perfectism”: imagining a perfect state of affairs and criticizing somebody for falling short of reaching it when this option was never really available. Of course, it would have been preferable had Snowden found asylum in a country that holds freedom of speech higher than Putin’s Russia, but none of these countries accepted his requests. Under these circumstances, it was reasonable to assume that he would face extradition had he moved to a place in the “free world”.

Another popular argument holds that there was really no need to break the law like Snowden did, for the US has a powerful and reliable legal system to protect whistleblowers to guarantee a quick and thorough clearance [21]. If one takes a closer look at the incentives which are at work here, this assertion almost looks absurd. At the bottom, it puts the government in charge of shedding light onto its own misdeeds. While this has happened and is not *per se* unconceivable, it is also highly unlikely, and the history of past whistleblowers who tried to take the legal path provides us with ample evidence for such pessimism [22].

Especially from the ranks of government officials, it is routinely claimed that what makes Snowden a villain is his theft of government property, and that this would run counter to the accusation of the NSA pursuing illegal activities. However, even if we swiftly bypass the problematic classification of their data as property (see above), the fact that something is legitimately owned by somebody does not turn a crime conducted with it into a non-crime. If you stab your neighbor with a knife you bought from your own legally earned money, it is still murder, and will be persecuted as such. If, then, the same knife is seized to serve as a piece of evidence, hardly anyone would call it “theft”. The same applies for Snowden’s case [22].

The last objection I will bring up here is the issue of breach of contract. Indeed, it is true that when Snowden was employed at the government contractor Booz Allen Hamilton, he signed a document obligating him not to disclose any of the classified files he would have access to [23]. And yet, the argument is fallacious. Even from a narrowly legalistic point of view, no contract can be considered binding if this very contract contains illegal agreements. To get a clear idea of this, imagine hiring a serial killer and signing a contract with him that would oblige you to pay him a certain amount of

money if he succeeds in shooting your ex-wife. Obviously, if the serial killer instead went to the police to denounce you on the basis of this contract, it is you who would mostly like be send to prison, not the killer you tried to hire. In short: If the NSA's activities are illegitimate, then the contract Snowden signed with them and agreed to be clandestine about them is null and void [22].

Concluding remarks

In the preceding sections, I have tried to show that extending the economic way of thinking to a field where it has rarely been employed can often be helpful to state the problem clearer and avoid alleged solutions to it which are not feasible, or at least extremely utopian. As I see it, it is hard to dispute that Edward Snowden has indeed performed an enormous service to the citizens of all countries of the world and gave up a life in comfort and safety for it. Under the presumption that one is in favor of a free society, where people have the chance to pursue their respect lifestyles according to "live and let live", it is no exaggeration to call this man a hero. It is now up to us to turn his revelations into a lasting benefit.

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