



The Case of Edward Snowden: Reason v. Rhetoric

For a conservative who seeks to conserve the tradition of constitutional liberty bequeathed to Americans by their Founders, the spectacle of self-sworn apostles of liberty in the so-called “conservative” media calling for Edward Snowden’s head on a platter is a painful one to behold. Yet neither is this sight particularly gratifying to those of us who prize sober thinking, for the logic underwriting these calls is as woeful as the rhetoric is irrational.

If, as Snowden (to say nothing of legions of other Americans) believes, the NSA has acted unconstitutionally, this means that it has acted illegally, for the Constitution is the fundamental law of the land. Those (including sympathizers such as Rand Paul) who think that Snowden should be punished for “violating” his contractual obligations as a government employee speak nonsense, for no employee, in any profession, is legally bound to perpetrate, either directly or obliquely, an illegality. It is exactly and only because Snowden believed that the NSA was acting illegally (unconstitutionally) that he blew the whistle in the first place.

To accuse him of being a traitor or criminal is to beg the question here.

To the objection that no federal court that has looked at the NSA’s methods have yet found them to be in circumvention of the Constitution, we need only note that the objection boils down to this: The federal government has declared that the federal government is acting constitutionally.

The objectors should take our reply for what it’s worth as they ponder that the federal courts have also declared the constitutional rights of slave masters to their slaves, women to abortion on demand, and state governments to force racial segregation.

This notion that Snowden is a “traitor” is also puzzling. Who did he betray, and how did he betray them? Millions upon millions of American citizens not only don’t feel betrayed by Snowden; they regard him as a hero for bringing to their attention something to which they would have otherwise remained oblivious. Yet let’s set this aside and assume that Snowden’s detractors mean to say that he betrayed his country by weakening the government’s ability to keep Americans safe. This notion is deeply problematic in its own right.

It’s not clear how Snowden could have compromised the government’s ability to protect Americans



Written by [Jack Kerwick, Ph.D.](#) on January 20, 2014

from terrorist attacks, for the very idea is inconsistent with Snowden's enemies' contention that the NSA is constitutionally sound. In other words, if, as they maintain, there is nothing in the least bit either morally or legally objectionable about the NSA, then the latter should be able to keep right on course.

If, pre-Snowden, the NSA was able to keep us safe from terrorist attacks by accessing countless millions of phone records, and if there is nothing unconstitutional about this, then, post-Snowden, it should be able to continue keeping us safe from terrorist attacks by accessing countless millions of phone records.

That scores of Americans and others from around the world now know what the NSA has been doing all along is, or at least should be, neither here nor there — if it was never doing anything wrong in the first place. For if it was never acting impermissibly to begin with, there is nothing that it needs to change — regardless of whether American citizens like it or not.

Snowden observed and reported what he thought was one of the greatest acts of theft in our country's history, a crime by which the federal government attempted to deprive this generation and their posterity of their birthright, the liberty for which their fathers sacrificed all and which they codified in the Constitution that they ratified.

But, the Snowden haters insist, there was no crime. Two things here should be borne in mind.

First, even if this is true, it certainly isn't obviously true. Or, rather, it is "obviously" true only to Republicans, for if it was so clear that Snowden was off base, then, presumably, the federal government wouldn't be launching investigations into its own activities and huge numbers of Americans — including office holders in the federal government itself — wouldn't agree with Snowden that a crime has been done.

Second, even if there is no crime here, that, as I just noted, it is not at all obvious that there isn't, should serve to relieve Snowden of much of the scorn that's being heaped upon him. Just because one can't be certain that it is a mugging that's occurring in the dark alleyway doesn't mean that one hasn't a responsibility to notify the authorities. Snowden acted responsibly.

But he didn't, his opponents maintain. He could've notified his superiors about his concerns. Instead, he chose to go public with them.

To think about this last objection for more than a few seconds is to realize that it is on a par with demanding of a witness to a crime that he first go and register his complaint with the alleged criminal.

Snowden deserves to be thanked for stirring up an especially spirited national conversation over the relationship between security and liberty. Yet maybe time will also prove us to be in his debt for stirring up a national conversation over the relationship between ideological rhetoric and sober thinking.

For the latter I won't hold my breath.



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