Civil disobedience for an age of total surveillance

The case of Edward Snowden

By charging Edward Snowden under the Espionage Act, the US government has failed in its constitutional duty to protect civil disobedience, argues political scientist William Scheuermann. The situation highlights the need for a global human rights framework that could protect legitimate whistleblowers.

Edward Snowden's June 2013 revelations about NSA surveillance have dominated global media news coverage like few events in recent years. A hero to some and traitor to yet others, his explosive disclosures about US spying have also unleashed, as he clearly hoped, a worldwide political debate about state surveillance in the context of technological advances whose implications most policy makers, let alone ordinary people, can barely fathom. Hardly a week has passed without headline-grabbing reports about the leaks, typically followed by predictable expressions of polarized elite and public reactions. Mainstream media outlets have painted a vivid portrait of Snowden's personal background and career, supplemented with the usual dose of expert commentary. They have also offered a ready forum for politicians and pundits eager to proffer sound bites deriding and even attacking Snowden, as well as possibilities for vociferous critical responses from those — oftentimes located abroad, and viewing themselves as victims rather than beneficiaries of NSA surveillance — more sympathetic to his cause.

Unfortunately, the media hoopla has obscured a less flashy yet more vital part of the story, namely the moral and political seriousness with which Snowden acted to make the hitherto covert scope and scale of NSA surveillance public knowledge. As we now know, and as Snowden apparently anticipated, his decision to do so has come at a huge personal cost, leaving him — after the Obama administration abruptly cancelled his passport, thereby rendering him effectively stateless — dependent on the discretion of a government more focused on flexing what remains of its weakening muscles as a global power than ending troublesome high-tech spying. Sadly, one of our most eloquent
critics of state surveillance now finds himself, partly because of the Obama's administration's draconian response, at the whim of a former KGB spymaster.\(^1\) Recently, in Brazil, Germany and elsewhere, a lively debate has erupted about the possibility that Snowden --- who only gained temporary asylum from the Russians --- might now be granted asylum there.

Even though media sources have reported extensively both on his quest for asylum and his travails in Putin's Russia, they have failed to impart a satisfactory sense of the weighty moral and political reflections which apparently induced the then 29-year Snowden to give up his six-figure salary and comfortable life in Hawaii. As I hope to show, Snowden's public declarations --- and especially an illuminating yet neglected statement he made at the Moscow Airport on 12 July 2013 when reluctantly accepting Russia's offer of asylum\(^2\) --- show that Snowden has thought long and hard about the fundamental question of when and how citizens of a liberal democratic state are morally and politically obliged to violate the law.

A nineteenth-century American critic of militarism and slavery, Henry David Thoreau, is widely, albeit somewhat misleadingly, credited with having coined the term "civil disobedience".\(^3\) At least since the middle of the last century, when Mahatma Gandhi and Martin Luther King mesmerized global public attention by articulating robust defences of nonviolent law-breaking,\(^4\) political activists in many different national contexts have creatively adapted their ideas and techniques to local conditions. In Germany, protest movements since the New Left have borrowed extensively from US examples and especially the civil rights movement, challenging a deeply instilled elite and popular commitment to authoritarian legalism.\(^5\) For their part, major political theorists and philosophers --- including both liberals like John Rawls and radical democrats like Jürgen Habermas --- have struggled to make sense of the novel protest form, and especially the exact conditions under which civil disobedience should be seen as an indispensable feature of a mature liberal and democratic political culture. The media's general failure to report on Snowden's unexpected contributions to that debate notwithstanding, they deserve our careful attention.

Here I argue that we should interpret Snowden's actions as meeting most of the demanding tests outlined in sophisticated political thinking about civil disobedience. To be sure, some scholars and even prominent political figures have already described his actions as an example of legitimate civil disobedience.\(^6\) However, they have yet to sufficiently justify this view, which will still strike many of Snowden's critics as counterintuitive and tendentious. Like Thoreau, Gandhi, King and countless other grassroots activists Snowden has in fact articulated a powerful defence of why he was morally obligated to engage in politically motivated lawbreaking. He has also undertaken impressive efforts to explain how his actions are distinguishable from ordinary criminality, and why they need not culminate in reckless lawlessness. In fact, his example can perhaps help us advance liberal and democratic ideas about civil disobedience. First, it highlights sound reasons why, pace the orthodox view, the acceptance of punishment by those engaging in civil disobedience should not be seen as a precondition of its legitimacy. Second, Snowden reminds us that ours is an era in which intensified globalization processes directly shape every feature of political existence. Defenders of civil disobedience need to update their reflections accordingly.

**Snowden as civil disobedient**

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If we start with the usual textbook definition of civil disobedience as a "public, nonviolent, conscientious yet political act contrary to the law usually done with the aim of bringing about a change in the law or policies of the government", we can interpret Snowden's revelations as falling under its rubric.7

From the outset, Snowden anticipated that his revelations about the NSA (where he was employed before joining one of its private contractors, Booz Allen Hamilton), would immediately be taken by the US government as evidence "that I have broken the Espionage Act and helped our enemies."8 In an early interview with the Guardian journalists who helped break the story, Snowden not only predicted that he would be accused of illegality, espionage, and even treason, but also that the US government would marshal its imposing power resources to discredit and severely punish him.9 More recently, he has conceded that he signed the standard obligatory government classified information nondisclosure agreement, and that his actions thus might be construed as a violation of a "civil contract" he entered into with the US government.10 In short, he has always acknowledged that the US government would likely describe his actions as illegal, while conceding that it has some legal leg to stand on.

In fact, the US government immediately responded to the NSA leaks by revoking Snowden's passport and then aggressively deterring a number of foreign countries from granting asylum, effectively leaving him with no choice except Russian exile. Attorney General Eric Holder also then promptly announced that Snowden would be charged with violations of the Espionage Act.11 As Snowden presciently predicted, and as it had previously done when confronted with other high profile whistleblowers (for example, Bradley Manning), the Obama administration decided to throw the (law) book at him.

More important for our immediate purposes here, Snowden's actions represent an example of what the philosopher Hugo Adam Bedau once helpfully characterized as indirect yet potentially legitimate resistance or civil disobedience, undertaken at "one (or even several) remove(s), e.g., blacks violate a trespass ordinance to protest racial injustice," in contrast to direct disobedience typically aimed at preventing the effective enforcement of a law seen as unfair or unjust (e.g., blacks violating segregation statutes).12 Though Snowden admits to having violated the standard government nondisclosure agreement, and even though he is sceptical of attorney general Holder's recourse to the Espionage Act, his main target remains existing US policies undergirding NSA surveillance. He has violated prohibitions on whistle blowing only because doing so offers an effective — and in his view: necessary — way to bring the injustices of US surveillance policies to public attention, not because he necessarily aspires to discredit either government nondisclosure rules or the Espionage Act. He even has gone so far as to claim that "I am not trying to bring down the NSA, [but instead] I am working to improve the NSA" by making sure that it abides by proper legal and constitutional limits.13

This basic position was already sketched out by Snowden at the Moscow Airport, where he explained why he felt morally and legally obliged to pursue acts likely to be perceived as "contrary to the law." Most obviously, his was an open and public intervention, for the very simple reason, he observed, that it entailed "a moral decision to tell the public about spying that affects all of us," imperative if policies about which most people — and even most elite political actors — remained in the dark were finally to gain public attention. Addressing not only his fellow US citizens but others around the globe,
Snowden "took what he knew to the public, so what affects all of us can be discussed by all of us in the light of day." Hoping to generate broad awareness about existing surveillance policies along with the necessity of far-reaching reform, his act's public character was essential to that aim. As he remarked in a separate conversation with the Guardian reporters, "[m]y sole motive is to inform the public as to that which is done in their name and that which is done against them."14

Snowden's Moscow statement simultaneously appealed to both US constitutional and international human rights law, boldly asserting that existing NSA programs constitute "a serious violation of the law," including the Fourth and Fifth Amendments to the US Constitution (prohibiting unreasonable searches and seizures, and guaranteeing basic due process), Article 12 of the Universal Declaration of Human Rights (providing basic legal security), and various other statutes and treaties banning legally unchecked state surveillance, which he views the NSA as having recklessly pursued.15 Snowden is hardly condoning illegality or lawlessness in toto. On the contrary, he has regularly insisted that he is upholding fundamental laws and basic rights, which in his view rightly trump any fidelity owed to US whistle blowing statutes and regulations.

Like many earlier civil disobedients, Snowden thus condones the violation of local or particular laws and statutes solely because of their incongruity with higher — and more fundamental — law. In a Washington Post interview conducted in December 2013, he reiterated the claim that his obligations to the US Constitution override any mere "civil contract", that is, the government nondisclosure agreement he signed: when such agreements conflict with constitutional law, we are obliged to violate them.16

Against those who view NSA activities as basically lawful and therefore legitimate, the Moscow statement asserts that their main legal foundation remains the secret rulings of the controversial Foreign Intelligence Surveillance Court (FISA), "which the world is not permitted to see." Elsewhere Snowden has been quoted as opposing what he pointedly dubs "the federation of secret law, unequal pardon, and irresistible executive power."17 Secret jurisprudence, arbitrary power and burgeoning executive discretion go hand in hand and need to be countered. Given what we now know about the lax judicial oversight of the NSA, with the FISA's own chief judge having forthrightly conceded that the court is badly equipped to perform its job, and with evidence suggesting that the NSA oftentimes blatantly ignored the court's rulings,18 Snowden's worries here seem, at the least, credible.19

The illegality of NSA spying was confounded, the Moscow statement continues, by the Obama administration's decision to place him on no-fly lists and thereby prevent foreign countries from granting asylum. This included "the unprecedented step of ordering military allies to ground a Latin American president's plane".20 According to Snowden, this move constituted an attack on "the basic rights shared by every person, every nation, to live free from persecution, and to seek and enjoy asylum," as guaranteed by a host of human rights treaties to which the US government formally subscribes.

In striking contrast to the open and public character of his actions, the secrecy in which NSA intelligence gathering has been shrouded allegedly corrupts "the most basic notion of justice — that it must be seen to be done. The immoral cannot be made moral through use of secret laws." Publicity is fundamental to the rule of law and constitutional government, whereas secret law tends to be
corrosive, as it risks unduly veiling government action from both individual and collective scrutiny. As the legal theorist Lon Fuller once similarly noted in his classic *The Morality of Law*, secret laws and courts provide an easy cover for arbitrary and immoral state action. 21 Not surprisingly, they remain a favourite device for those who would prefer to keep unjust and even heinous actions from the public eye. Secret law tends to proliferate in authoritarian regimes.

To be sure, and as Snowden might concede, some government activities may need to be veiled from direct public scrutiny; every liberal democracy carves out some place for government secrecy in the context of national security. Yet secrecy still poses a principled threat to any political order committed to basic liberal and democratic values. 22

Snowden's main claim, in short, is that his actions not only protect fundamental — but now systematically endangered — rights and laws, but that they also directly embody core legal virtues (for example, publicity and openness) on which any legitimate liberal and democratic legal order depends. In contrast, NSA data gathering and surveillance, as well as the Obama administration's heavy-handed response to his protests, make a mockery of such virtues.

**Recipe for Lawlessness?**

Snowden's position is still unlikely to satisfy anyone worried about the familiar dangers of reckless and potentially destructive illegality. Are not citizens of a more-or-less well functioning liberal democracy obliged to respect laws based on normal political channels? What is to prevent them from irresponsibly abrogating laws and policies they happen to deem unsatisfactory in the name of some vague "higher" law?

The familiar answer from modern liberal and democratic theory is that politically motivated law-breaking needs to pass a number of tough additional tests. Snowden's comments at the Moscow airport and elsewhere show that he has made a good faith effort to do so.

Significantly, it seems ungenerous to deny that his actions, whatever one's overall assessment of their political merits, are morally serious and thus conscientious, resting on what the Moscow statement described as a "moral decision" deriving "from what I believed right," and what now appears to have been a lengthy period of internal moral reflection, or what Gandhi and King famously described as "self-purification." His "willingness to act in public and to offer explanations to other people suggest also a willingness to reflect upon and worry about the possible consequences", which surely attests to his moral seriousness. 23 The fact that his moral reflections have cost him what he aptly characterized as a comfortable "life in paradise" with his family (i.e., a job reportedly earning him 200K annually in Hawaii, where he resided with his partner) belies the accusation of "narcissism" leveled at him by some major journalists and media pundits, 24 as does his refusal to enrich himself by selling US secrets or partnering with foreign governments. On the contrary, his unusually selfless actions seem to demonstrate a morally praiseworthy willingness to sacrifice the private for the public good. If this in fact constitutes immoral narcissism, contemporary democracies probably could use some more of it.

In the June 2013 conversation with *Guardian* journalists, Snowden also claims to "have carefully evaluated every single document I disclosed to ensure that
each was in the public interest," in part to avoid "harming people." In fact, Snowden's actions have been nonviolent, precisely because they constitute  "disobedience to law within the limits of fidelity to law." His aim is obviously neither violent criminality nor revolution, but instead a peaceful transformation of US policy — and even the NSA itself — so that it might better accord with his interpretations of both the US Constitution and international law. As Snowden implicitly grasps, nonviolence is essential to this project because injury and harm clash with the overall objective of persuading other political actors of injustices in need of correction: coercion and force would deny others their basic rights, undermining the very possibility of political agency on which democratic persuasion rests. Nonviolence is essential to what Bedau aptly described as an "ideal political discourse" predicated on free-wheeling rational exchange, tolerance and patience along the lines any public-minded responsible civil disobedient hopes to instigate.

To be sure, Snowden's critics — including both president Obama and Prime Minister Cameron — have accused him of placing people in harm's way, if only by increasing the odds of catastrophic terrorist attacks. Yet the evidence adduced by governments thus far in support of this position seems paltry, as many observers and even a conservative US federal judge have pointed out. Reasonable observers might legitimately disagree about the likely long-term political consequences of Snowden's actions. Yet this is probably true for all significant political activity, which inevitably generates unexpected and oftentimes unforeseeable consequences. Similar criticisms were once directed against what are now more—or—less universally praised as exemplars of successful civil disobedience: even King was accused of "inciting" violence because his own nonviolent acts presumably would produce a violent backlash from segregationists. The obvious problem with the criticism, however, is that it rendered King oddly culpable for the irresponsibility and violent disposition of his racist opponents. As he rightly countered, "[i]sn't this like condemning the robbed man because his possession of money precipitated the evil act of robbery?"

No political actor can reasonably be held responsible for all of her act's unavoidably manifold long-term consequences, even though she should be expected to ponder their likely character and minimize unnecessary harm to others. If Snowden has in reality devoted careful attention to the question of which documents should be leaked so as to avoid such harm, as he claims, he probably has met this test. Until governments provide some unambiguous evidence to the contrary, there is simply no a priori reason to assume that Snowden has directly endangered anyone.

In the recent scholarly debate, both those who provide an adamantly liberal gloss on civil disobedience, and those seeking to give it a more directly democratic and republican face, insist that its legitimacy is necessarily limited to a special case of injustices, what a liberal philosopher like John Rawls famously dubbed "serious infringements" and "blatant violations" of basic liberal rights, or recent and more robustly democratic and republican theorists describe as fundamental threats to the political process, in contrast to mere policy disagreements vis—à—vis governing political majorities. Meeting the demanding tests outlined by both liberal and republican theorists of civil disobedience, Snowden's actions provide fodder for both sides in the debate. Simultaneously, they provide a useful reminder that sharply stylized scholarly attempts to contrast democratic (or republican) to competing liberal models of civil disobedience are only likely to get us so far when applied to real—life
examples. In a liberal democratic political context, elements of both will typically fuse together.

On the one hand, Snowden views his acts as justified by what he holds to be sustained attacks on longstanding core rights, and especially the Fourth and Fifth Amendments to the US Constitution. In sync with the standard liberal model of civil disobedience, his actions can be interpreted as representing an attempt to counter serious and indeed systemic infringements of basic liberties. Politically defensive in nature, they also follow the liberal model by seemingly emanating from a (solitary) individual, whose internal voice of conscience demands that the actor heed its call regardless of social costs or consequences.33

On the other hand, Snowden's acts also fit the republican view, which envisions civil disobedience as a joint or collective undertaking by political actors working in concert, outfitted with express political purposes.34 As noted, his main goal has always been to ignite public debate, and however solitary he may appear, Snowden's is hardly the voice of an isolated moral agent unconcerned with public affairs or the common good. Interestingly, his appeals to individual conscience also lack the overt religious tones found, for example, in parallel statements from Gandhi and King: his seems to be a secular and basically political conscience.

In the republican view, civil disobedience's main function is to challenge political complacency by bringing public attention to issues which may never have been meaningfully deliberated about in the first place, or where an overdue reexamination of policy is stymied by privileged vested interests and institutional stasis. This "may occur because the policy was never approved by the democratic sovereign at all but instead arose in some other way, as through a slow and unattended transformation of an initially very different policy".35 For republicans, the chief dilemma is often not that a political majority has approved legislation which violates individual rights, as the competing liberal model typically suggests. Instead, the requisite public debate and exchange perhaps never occurred, and institutional inertia, rather than a recent legislative decision by a self-conscious political majority, haphazardly drives government action perhaps tangentially linked to some previous — but now outdated — expression of the popular will. For the republican, civil disobedience is only legitimate when there are pressing reasons for believing that a polity has failed to engage vital issues, or its political institutions and their dominant players have effectively conspired to keep the public from taking a fresh look at existing policy. Solely in settings plagued by far-reaching political apathy and/or institutional inertia is nonviolent law-breaking a justifiable strategy.

Snowden's actions arguably pass this test as well. As noted, their open and public character stems from the quest to provoke debate in a context where he accurately judged that mass and even elite ignorance about government spying was ubiquitous. His Moscow statement aptly characterizes US surveillance policies as affecting "all of us", and thus of broad common and perhaps universal interest. As he anticipated, his revelations quickly proved explosive, chiefly because only a tiny group of national security and political elites was familiar with the stunning scope and scale of NSA activities, whose legal foundations partly consist of judicial rulings dating back to 1979 — in other words, well before computers transformed communication and information technology — exempting metadata collected by telephone companies from the Fourth Amendment. The "slow and unattended" evolution of such increasingly obsolescent rulings into a legal veneer for massive full-scale NSA spying
indeed raises difficult questions for democratic legitimacy. Indeed, in the June 2013 *Guardian* conversation, Snowden also recalled his frustration following Barack Obama's 2008 election at the failure to reverse his conservative predecessor's intrusive surveillance policies: Snowden "watched as Obama advanced the very policies that I thought would be reined in," despite Obama's campaign promises to do otherwise, and what initially appeared to be a universal consensus that Obama in reality was pursuing major changes in US counterterrorism policy.

Faced with the task of taming government surveillance, the much−touted US system of institutional checks and balances has in fact performed erratically in the aftermath of the 9/11 terrorist attacks. Even though president Bush periodically assured the American people that his administration was only engaging in domestic surveillance when in possession of a judicial warrant, in reality it aggressively initiated warrantless domestic spying. When news of the administration's illegal actions finally reached Congress, it responded, but arguably only by providing some of the administration's more controversial policies with a stronger legislative base, and by immunizing large telecommunications companies that had cooperated with executive illegality. For its part, the secret FISA court has pretty much given the NSA a free hand, rarely challenging even some of the NSA's most far−reaching assertions of authority. In Snowden's apt phrase, the FISA court has regularly served as a "graveyard of judgment." Rather than effectively reining in executive power, the three branches of government have effectively colluded with one another to condone massive domestic and foreign surveillance while excusing wrongdoers. Nor have regular attempts by human rights organizations to focus public attention on the resulting dangers gained much traction in Washington DC.

Observing this troublesome downward spiral at close quarters, Snowden decided that "you can't wait around for someone else to act. I had been looking for leaders, but I realized that leadership is about being the first to act." He only reached this conclusion, however, after political leaders failed even at making NSA spying a theme for broad public discussion.

Snowden has thus also satisfied what we might describe as the "last resort" test for legitimate civil disobedience: it only represents an acceptable possible option after normal political and legal channels have been exhausted, or in situations characterized by Rawls as where the legal means of redress have proved of no avail. Thus, for example, the existing political parties have shown themselves indifferent to the claims of the minority or have proved unwilling to accommodate them. Attempts to have the laws repealed have been ignored and legal protests and demonstrations have had no success.

With some evident justification, Snowden believes that the failure of the US polity to counter NSA spying constitutes a scenario of just this type, and that he consequently had no choice as a conscientious and public−minded citizen but to leak the ugly facts of NSA spying. What alternatives were in fact available to him? A donation to the ACLU or Human Rights Watch? A letter to his congressional representative, or perhaps president Obama himself? Or maybe a collegial conversation with his superiors? Interestingly, Snowden claims to have shared his misgivings with his bosses. However, they ignored...
him, "almost certainly because the agency and its leaders don't consider these collection programmes to be an abuse."\textsuperscript{42} In light of the effectively nonexistent legal protections provided whistle blowing private contractors working for the NSA, as the \textit{New York Times} has rightly concluded, "Mr. Snowden was clearly justified in believing that the only way to blow the whistle on this kind of intelligence gathering was to expose it to the public."\textsuperscript{43}

Even those with a more benign assessment of our political system's recent operations should recall Rawls' additional proviso that

\begin{quote}
[s]ome cases may be so extreme that there may be no duty to use first only legal means of political opposition. If, for example, the legislature were to enact some outrageous violation of equal liberty, say by forbidding the religion of a weak and defenceless minority, we surely could not expect that sect to oppose the law by normal political procedures.\textsuperscript{44}
\end{quote}

To be sure, NSA spying differs in some important ways from openly discriminatory laws against defenceless minorities. However, sound arguments could still be adduced for buttressing the view that unchecked NSA surveillance is proving disturbingly ruinous of our most fundamental liberties.

\textbf{Civil disobedience without penalties?}

Despite the conventional wisdom that civil disobedients should accept the legal ramifications of their actions, Snowden fled the United States and has since refused to turn himself into US authorities. This scenario poses some obvious problems for any attempt to interpret his deeds as a legitimate case of civil disobedience. For Gandhi, nonviolence demanded "voluntary submission to the penalty for non−cooperation with evil."\textsuperscript{45} King famously penned a "Letter from a Birmingham Jail," not "Letter on the Run from a Birmingham Jail."

Yet as critical voices in a protracted legal and philosophical debate have already posited, the standard grounds for assenting to punishment as an unavoidable consequence of civil disobedience are perhaps less airtight than typically get recognized.\textsuperscript{46} Snowden's example, in my view, helps buttress that dissenting position. In any event, US officials are obliged to offer clemency to Snowden. The exorbitant penalties they presently hope to exact are simply inappropriate.

Those who insist that civil disobedience entails enduring its legal repercussions typically offer up a potent — yet ultimately unwieldy — brew of principled along with strategic and tactical reasons. Most fundamentally, they argue that undergoing punishment allows for lawbreakers to evince what King described as the "very highest respect for law."\textsuperscript{47} By accepting punishment even for an unjust law, lawbreakers express their fidelity to the general idea of legality or the rule of law, as well as their appreciation for the basic legitimacy of a given legal or constitutional order as a whole. In contrast to the criminal or revolutionary, both of whom presumably lack such an appreciation and thus try to avoid getting caught when violating the law, a responsible civil disobedient anticipates criminal prosecution and its consequences, their potentially unjust character notwithstanding.

Typically, this stock argument then gets fused with the related notion that civil disobedience must be open or public, which — as we have already seen — plays a decisive role in distinguishing it from competing varieties of illegality.
King, for example, famously suggested that willingly accepting "the penalty by staying in jail to arouse the conscience of the community" was essential to "openly, lovingly" breaking the law, which he juxtaposed to the acts of hateful segregationists who conspiratorially torched black churches under the cover of darkness and then did everything in their power to avoid prosecution.  

Academic theorists of civil disobedience have defended the punishment requirement in even more unabashedly strategic or tactic terms. Accepting punishment is how lawbreakers provide concrete evidence of their unselfishness and public-mindedness, their moral seriousness and the intensity of their concerns, and also their moral and political sincerity. On one view, they should neither expect nor seek special treatment because fidelity to the rule of law demands strict legal generality and therefore nondiscrimination. Because of their commitment to the idea of legality and the overall legitimacy of the existing legal order, it would presumably be inconsistent to expect better treatment than others — including ordinary criminals — who have broken the law.

According to the conventional view, criminal punishment also serves a fruitful deterrent function: without its looming specter, the costs of even well considered law-breaking would be unduly cheapened. Irresponsible illegality lacking in the requisite dose of moral seriousness might ensue.

This basic account rests on a rich intellectual tradition arguably doing back to Plato's Crito. Upon closer examination, however, it raises as many questions as it purports to answer.

Most immediately, to the degree that the arguments proffered are chiefly strategic or tactical in character, they also imply that dissenting lawbreakers might follow alternative paths in order to bring about the desired moral and political results.

Exiled to Putin's Russia, with no likelihood of returning home on the horizon, has Snowden not already provided sufficient evidence of his moral seriousness and public-mindedness? Though he has never appeared in a US courtroom, the open and public character of his actions can hardly be denied. Even absent judicial proceedings and criminal punishment, they continue to rivet public attention, generating a massive worldwide debate not only about US surveillance, but also about the moral responsibilities of individuals in an age of unprecedented technological possibilities for state surveillance. Can we be so sure that better or even equivalent results would have been achieved if Snowden had remained in the United States and effectively assented to the Obama administration's classification of his deeds as falling under the Espionage Act?

As for the thesis that punishment serves a necessary deterrent function, it hardly seems self-evident that Snowden's example will lead anytime soon to a dramatic increase in irresponsible and morally intemperate law-breaking. On the contrary, the whole world can now clearly see what he has been forced to sacrifice, and that his moral decision has come at an exceedingly high personal cost — even absent criminal punishment — most of us would not willingly bear.

Nor is it even clear that previous practitioners of civil disobedience followed this orthodox view of punishment. Thoreau neither advertised his illegal acts nor sought punishment for them; his readers will look in vain for a celebratory description of the legal penalty meted out to him by his Massachusetts jailers.
Gandhi accepted the legal repercussions of his acts, yet surely not because of an implicit respect for the general legitimacy or underlying framework of British colonial law in India, which he despised. And when the overall framework of a specific legal order is increasingly polluted by corrosive forms of secret law and court rulings, as Snowden believes is the case for US law, can we be sure that accepting legal punishment will buttress the rule of law and not instead help bury it?

Though rarely mentioned in the literature, the core intuition that the acceptance of legal penalties is intimately related to respect for the law only makes sense if disobedients can count on criminal proceedings embodying basic rule of law virtues. Evasion of punishment should probably remain the exception to the norm. However, if peaceful lawbreakers face a situation where there is "no right of public trial, and no possibility of using punishment for publicity purposes, or if punishments were made draconian in order to prevent dissenters from publicizing their views," then evasion could prove justified for the simple reason that it might best guarantee the requisite publicity. When criminal proceedings rest on vague and poorly defined legal norms, suffer from excessive politicization so as to impair the possibility of a fair trial, and regularly mete out draconian sentences, then a conscientious disobedient's decision to escape them is potentially supportive and not destructive of the rule of law.

Unfortunately, as the jurist Reinhard Merkel has similarly observed, such concerns are disturbingly pertinent to the Obama administration's decision to prosecute Snowden under the Espionage Act, an infamous statute whose main political accomplishment has arguably been its inadvertent contributions to the creation of the twentieth−century US civil liberties movements. Since the First World War, when it functioned as an "efficient tool for the blanket suppression of antiwar views," the Espionage Act has allowed the executive branch to clamp down on unwanted dissident voices, in ways oftentimes soon recognized as both legally dubious and politically counterproductive.

As former Yale University president Benno Schmidt chronicled in a landmark co-authored Columbia Law Review survey, the Act is riddled with vague and oftentimes incomprehensible statutory language, providing the executive with what amounts to arbitrary power over a stunning range of activities loosely related to the undefined terrain of "national security". Because the ideal of rule of law is congenitally tied to the quest for far-reaching doses of both clarity and consistency in the law, the Espionage Act is inconsonant with it. Not surprisingly, Schmidt and others have argued that it is probably unconstitutional.

In part because of its myriad legal failings, most presidents have been reluctant to enforce the Espionage Act, though president Obama — for reasons still being debated among political observers — has been far more aggressive than his predecessors in doing so, with a definite upick in its employment occurring under his watch. Among liberal−minded law professors and civil libertarians, this development has understandably proven contentious. Another prominent recent whistleblower just prosecuted under the Espionage Act, Chelsea (formerly: Bradley) Manning, is now serving a 35 years' sentence.

The enigma at hand goes well beyond the Espionage Act's widely noted legal failings. As Snowden is well aware, and as the Manning case surely helped remind him, whistleblowers in the context of the national security apparatus enjoy few real legal protections and guarantees. As civil libertarians and others have noted, their legal status is precarious at best, and that area most directly
relevant to his case, basic rule of law virtues, remain underdeveloped. And just in case of any remaining legal ambiguity, attorney general Holder has consistently made it clear that the US government already considers Snowden guilty as charged, and that it will fight ferociously for him to receive at least 30 years’ — and probably life — imprisonment. Is it any wonder that Snowden quickly decided that his chances of a fair trial in the US were close to nil?59

Snowden’s precarious legal status in the US gets downplayed by those in Germany and elsewhere who have opposed growing calls to offer him asylum. Former Die Zeit Editor-in-Chief Robert Leicht, in a critical rejoinder to major newsweeklies (including Der Spiegel and his own Die Zeit) along with a long list of prominent public figures who favour granting asylum to Snowden,60 argues that only those facing political persecution deserve asylum. Although he admits that the NSA affair is of a “highly political” character, Leicht asserts that the US government can nonetheless legitimately point out that Snowden will appear before an “ordinary court of law,” analogous to similar courts in Germany, notwithstanding the severe charges leveled against him.61 This view obscures the extent to which the Espionage Act, a shoddy piece of emergency law from the First World War, makes a mockery of what most Germans and US Americans now widely understand as essential components of a fair and therefore legitimate “ordinary court of law.” It also obfuscates the fact that political asylum can legitimately be granted to those whose right to a fair trial back home seems unduly impaired, in part because of political demagoguery and repression.

Of course, the United States is no dictatorship. Yet the authoritarian contours of the Espionage Act unduly compromise basic features of the liberal rule of law.

Even short of granting asylum to Snowden, other legal options are available to countries hoping to provide Snowden with a measure of legal security. As the liberal-minded jurist Heribert Prantl correctly noted in the Süddeutsche Zeitung, the commonly expressed view among German politicians that the extradition convention with the US would require Germany to return Snowden immediately to the US is disingenuous: that agreement not only expressly permits exceptions in the case of political crimes (as determined by the host state), but as an international treaty remains legally subordinate to the Basic Law’s fundamental commitments to democracy and the rule of law. As a state committed to democracy and the rule of law, Germany — and other democracies — should be expected to provide some way for Snowden to escape Putin’s Russia.63

Pace the Obama administration’s hard line approach, and against those outside the US who have decided that the political cost of helping Snowden is too high to pay, major public voices in the US — including the New York Times editorial staff — have called on Obama to encourage Snowden to return home in exchange for a promise of clemency or even amnesty.64 The longstanding debate on civil disobedience suggests some pressing reasons why this would represent both a humane and intellectually sound course of action.

All legal systems — and especially the US system — provide room for leniency in the law’s application. Prosecutors and judges regularly allow for plea-bargaining, the reduction of charges, or the mitigation of penalties when faced with special circumstances (e.g., a young or inexperienced offender, extreme poverty or other special circumstances).65 The orthodox view that disobedients should not be treated differently from ordinary criminals obscures
the crucial point that they are different: Snowden did not break the law for private gain or to aid foreign terrorists, but instead to bring gross violations of the law to the attention of his compatriots in order to help generate overdue public debate. The Obama administration's decision to enforce the Espionage Act against him just as it would against "ordinary" spies may initially seem to represent a praiseworthy commitment to legal rigour and nondiscrimination. In reality, it constitutes a glaring example of spurious legal generality incongruent with basic legal and constitutional ideals.

The simplistic view apparently endorsed by the administration that "the law is the law" — and hence that Snowden's acts require strict prosecution — also downplays the fact that he has repeatedly explained why his actions were similarly required by constitutional and international law. Obviously, the Obama administration does not share Snowden's legal views, but many others in the US and elsewhere now apparently do, in part because he has so forcefully outlined them. At the very least, there are sound reasons why reasonable people might disagree about how state surveillance is best regulated by both the US constitution and various international agreements to which the US is a party. We face a situation where "the law is uncertain, in the sense that a plausible case can be made on both sides". As the late legal philosopher Ronald Dworkin wrote in an earlier yet still immediately germane context, "then a citizen who follows his own judgment is not behaving unfairly." Since liberal democracy should not only permit but encourage citizens to cultivate their own judgments about complex constitutional issues, and because fidelity to the law cannot be equated with blind loyalty to a particular political official's or even institution's legal views, "our government has a special responsibility to try to protect him, and soften his predicament, whenever it can do so without great damage to other policies." Of course, no government can guarantee blanket immunity to those who violate the law in the name of conscience. "But it does follow that when the practical reasons for prosecuting are relatively weak in a particular case, or can be met in other ways, the path of fairness lies in tolerance."

Having revealed that NSA officials regularly broke the law, and then brilliantly succeeded at igniting a much needed political debate about the modern surveillance state, Edward Snowden deserves better than Russian exile or thirty years in a US prison.

**Civil disobedience in a global age**

One of the most striking traits of Snowden's Moscow statement is the degree to which it acknowledges the directly global parameters of contemporary law and politics. His statement appeals to the US Constitution, as noted above, but also to the Universal Declaration of Human Rights and even Law of Nations and the legal principle of non-refoulement, which prohibits countries from rendering victims of persecution to their persecutors. According to Snowden, Attorney General Holder's attempt to force Hong Kong in June 2013 to return him to the US thus also represented a violation of international law. He even references the Nuremberg Trials as concluding that

> [i]ndividuals have international duties which transcend the national obligations of obedience. Therefore individual citizens have the duty to violate domestic laws to prevent crimes against peace and humanity from occurring.

Snowden not only apparently believes that he acted in accordance with the
Nuremberg principles, but that his actions have been conducive to international peace. Finally, the Moscow declaration directly addresses not just US citizens but a global public: "I asked the world for justice." Snowden specifically lauds the governments and peoples of Russia, Venezuela, Bolivia, Nicaragua, and Ecuador — each of which sought to grant him asylum, before facing a nasty backlash from the US — for having "earned the respect of the world". Since the June 2013 leaks, and with remarkable efficacy, Snowden has in fact successfully mobilized not only specific national publics, but an emerging worldwide public, in support of his cause.

From one perspective, this strategy is familiar from the annals of modern civil disobedience. Gandhi and King also sought to influence foreign governments and favourably shape nascent global public opinion, while also periodically appealing to supranational political norms and moral values. During the Vietnam War, politically motivated lawbreakers in the antiwar movement similarly described the Nuremberg Trials as offering a basis for a "higher" law, which they envisioned as superordinate to US law.70

Yet it remains difficult to deny that Snowden's statement also evinces some significant novelty. Even if earlier civil disobedients hinted at our increasingly global condition, Snowden takes it as a given, as his comparatively direct and detailed appeal to international law effectively attests. Revealingly, Snowden's actions not only had astonishingly immediate worldwide political ramifications, but he is suitably more attuned than his historical predecessors to the prominence of key global political and legal innovations, some of which now offer a useful launching pad for checking unjust state action. International human rights lawyers probably risk conflating their normative wishes with political realities when describing ours as a new system of global "humanity's law", where human security consistently trumps state or national security.71 By the same token, it would be equally misleading to obfuscate the ways in which supranational political and legal institutions — including the emerging human rights regime — are now core pillars of the evolving global order. Even if the global system remains messy and contradictory — too often driven by old-fashioned power politics, even when faced with shared tasks suggesting its obsolescence — its main features nonetheless rest on some identifiably cosmopolitan moral and political aspirations.72

This observation points to an alternative reading of Snowden's actions and their relevance to the question of whether civil disobedients should be required to submit themselves to criminal prosecution. Crucially, he has never claimed that he should be immune from punishment. Instead, as noted, he has chiefly accused the US government of trying to deny him a fair trial. In addition, he has repeatedly insisted that his actions are consonant with international law, whereas the US — by spying on foreign countries and close allies, and then by violating those rights accorded him under it as an asylum seeker — has regularly abrogated it. As Snowden obviously understands, however, he has no real chance of effectively validating the legality of his position given the massive power inequalities plaguing the existing global order. We still lack a sufficiently independent global legal system in which Snowden and others could freely and openly defend their legal claims, and where they and other vulnerable global political actors might have a reasonable chance of defeating major global players in a court of law.

Given that institutional lacuna, Snowden perhaps concluded, his only real option was to seek political asylum. Yet implicitly, his actions point to an important constructive political task: we need to build a stronger global legal
and especially human rights system, where the rights of those who take on the
great powers garner real protection, and where the big boys and girls on the
(global) playground would be forced to respect the same rules as the small
boys and girls. If such a system were operative, and if it were able to secure the
requisite dose of legal and constitutional attributes likely to be missing from
US legal proceedings under the Espionage Act, Snowden would probably be
obliged to appear before it, and thus also accept the possibility of any
hypothetical penalties.

Yet we lack such a global legal system, and none seems likely to emerge in the
near future: our playground bullies prefer the status quo. In the meantime, we
are forced to settle on makeshift solutions, recognizing both their political
necessity and oftentimes unsatisfactory normative character. So US Americans
should demand of the Obama administration that it treat Snowden with
clemency.

Politicians elsewhere who have tapped into public anger about US spying for
political gain need to back up their rhetoric with deeds: if US officials refuse to
show clemency towards Snowden, he should still have somewhere to go
besides Putin's Russia. Burgeoning calls in Brazil, Germany and elsewhere to
provide some sort of residency status to Snowden represent a positive sign,
even though they face the usual resistance from political interests more focused
on cozying up to the US than defending basic human rights. Yet the
predictable preference for elite-level diplomacy seems unlikely to exact many
concessions: chancellor Angela Merkel's apparent hope that she might cleverly
cajole the US into a joint "No spying agreement," for example, now seems
unrealistic. Even if Obama has apparently assured his friend "Angie" that he
will not be listening in on her cell phone conversations, the unacceptable status
quo remains basically unaltered. One reason for this may be the fact that
Germany remains "a state afraid of the US." Yet, notably, Merkel does not
always kowtow to the US when it comes to vital economic matters — for
example, in the context of her EU austerity policies, which Obama has
frequently criticized, and for which Greece and other countries have paid a
terrible price. Perversely, all the elite-level rhetoric about the alleged dangers
of undermining good relations with the US only matters when it permits
politicians to ignore basic human rights and Germany's fundamental
obligations as a rule of law-based democracy. Merkel and other world leaders
should be expected to do the right thing: allow Edward Snowden to stay in
their countries.

His contributions to the democracy and the rule of law, in striking
juxtaposition to those who have tried to silence him, remain auspicious.

The author would like to thank Stefan Mörchen for a number of vital
suggestions which have substantially improved this essay.

Addendum

"Statement by Edward Snowden to Human Rights Groups at Moscow's
Sheremetyevo Airport", Friday 12 July 2013, 15:00 UTC

Hello. My name is Ed Snowden. A little over one month ago, I had family, a
home in paradise, and I lived in great comfort. I also had the capability without
any warrant to search for, seize, and read your communications. Anyone's
communications at any time. That is the power to change people's fates.
It is also a serious violation of the law. The 4th and 5th Amendments to the Constitution of my country, Article 12 of the Universal Declaration of Human Rights, and numerous statutes and treaties forbid such systems of massive, pervasive surveillance. While the US Constitution marks these programs as illegal, my government argues that secret court rulings, which the world is not permitted to see, somehow legitimize an illegal affair. These rulings simply corrupt the most basic notion of justice — that it must be seen to be done. The immoral cannot be made moral through the use of secret law.

I believe in the principle declared at Nuremberg in 1945: "Individuals have international duties which transcend the national obligations of obedience. Therefore individual citizens have the duty to violate domestic laws to prevent crimes against peace and humanity from occurring."

Accordingly, I did what I believed right and began a campaign to correct this wrongdoing. I did not seek to enrich myself. I did not seek to sell US secrets. I did not partner with any foreign government to guarantee my safety. Instead, I took what I knew to the public, so what affects all of us can be discussed by all of us in the light of day, and I asked the world for justice.

That moral decision to tell the public about spying that affects all of us has been costly, but it was the right thing to do and I have no regrets.

Since that time, the government and intelligence services of the United States of America have attempted to make an example of me, a warning to all others who might speak out as I have. I have been made stateless and hounded for my act of political expression. The United States Government has placed me on no-fly lists. It demanded Hong Kong return me outside of the framework of its laws, in direct violation of the principle of non-refoulement — the Law of Nations. It has threatened with sanctions countries who would stand up for my human rights and the UN asylum system. It has even taken the unprecedented step of ordering military allies to ground a Latin American president's plane in search for a political refugee. These dangerous escalations represent a threat not just to the dignity of Latin America, but to the basic rights shared by every person, every nation, to live free from persecution, and to seek and enjoy asylum.

Yet even in the face of this historically disproportionate aggression, countries around the world have offered support and asylum. These nations, including Russia, Venezuela, Bolivia, Nicaragua, and Ecuador have my gratitude and respect for being the first to stand against human rights violations carried out by the powerful rather than the powerless. By refusing to compromise their principles in the face of intimidation, they have earned the respect of the world. It is my intention to travel to each of these countries to extend my personal thanks to their people and leaders.

I announce today my formal acceptance of all offers of support or asylum I have been extended and all others that may be offered in the future. With, for example, the grant of asylum provided by Venezuela's President Maduro, my asylee status is now formal, and no state has a basis by which to limit or interfere with my right to enjoy that asylum. As we have seen, however, some governments in Western European and North American states have demonstrated a willingness to act outside the law, and this behavior persists today. This unlawful threat makes it impossible for me to travel to Latin America and enjoy the asylum granted there in accordance with our shared rights.
This willingness by powerful states to act extra–legally represents a threat to all of us, and must not be allowed to succeed. Accordingly, I ask for your assistance in requesting guarantees of safe passage from the relevant nations in securing my travel to Latin America, as well as requesting asylum in Russia until such time as these states accede to law and my legal travel is permitted. I will be submitting my request to Russia today, and hope it will be accepted favourably.

If you have any questions, I will answer what I can.

Thank you.


1 The evidence, in fact, suggests that President Putin — a former KGB agent in the German Democratic Republic — is envious of US surveillance capacities, and that the predictable result will be a destructive arms race here, as in so many other areas of longstanding US–Russia power rivalry.

2 That statement is reprinted at the end of this essay. It is also readily available on YouTube: youtu.be/1tCb_1Z1zQ8

3 In fact, an unnamed editor chose the term for a posthumously published version (1866) of Thoreau's famous (1849) essay, "Resistance to civil government," which was retitled "Civil disobedience." In the immediate aftermath of the US Civil War, the original title probably seemed too incendiary! (For more on which, see Lewis Perry, Civil Disobedience: An American Tradition Yale University Press, 2013, 65).

4 For a discussion, see Bidyut Chakrabarty, Confluence of Thought: Mahatma Gandhi and Martin Luther King, Oxford University Press, 2013.


6 For example, at the Bad Füssinger Gespräche on 2 August 2013, SPD candidate Peer Steinbrück used the term civil disobedience to describe Snowden's actions, which he praised. The Hamburg law professor Reinhard Merkel has offered a more sustained defence of Snowden on the basis of liberal theories of civil disobedience, including John Rawls's (David Hugendick, "Snowdens Strafe wäre existenzvernichtend" [Interview with Reinhard Merkel], Die Zeit, 27 June 2013, www.zeit.de/kultur/2013–06/Interview−Reinhard−Merkel−Moral). Some interpretative differences notwithstanding, what follows is not only congruent with Merkel's important insights, but also can be read as an attempt to provide a firmer basis for them. In the US context, where Snowden is still being widely described as a "traitor," his actions have not been widely interpreted as representing an example of civil disobedience.

7 John Rawls, "Definition and justification of civil disobedience", in Hugo Adam Bedau (ed.), Civil Disobedience in Focus, Routledge, 1991, 104


9 Ibid.


11 See the discussion below of the Espionage Act's legal pathologies. Snowden has been charged with the theft of government property and the unauthorized communication of classified information.

12 Hugo Adam Bedau, "Civil disobedience and personal responsibility for injustice," in Bedau, ed., Civil Disobedience in Focus, 50

13 Quoted in Gellman, "Edward Snowden, after months of NSA revelations"

14 Quoted in Greenwald et al., "Edward Snowden: The whistleblower"

Gellman, "Edward Snowden, after months of NSA revelations"

Quoted in Greenwald, et al., "Edward Snowden: the whistleblower"


Similar concerns have been echoed in statements by civil libertarian and human rights organizations.

Suspected of transporting Snowden to Bolivia, on 3 July 2013 a plane carrying its president was forced to land in Austria, allegedly because of US political pressure.

Lon L. Fuller, The Morality of Law, Yale University Press, 1964, 40–1, 157–9


On CBS' "Face the nation", aired 16 June 2013, Bob Schieffer called Snowden a narcissist. For a more cultivated audience, Jeffrey Toobin did so as well ("Edward Snowden is no hero", New Yorker, 10 June 2013, www.newyorker.com/online/blogs/comment/2013/06/edward−snowden−nsa−leaker−is−no−hero.html). Sean Wilentz (see "Operation Mayhem" New Republic 3 February 2014, 14–25) notes that Snowden has endorsed right-leaning antistatist "libertarian" views: he is no "man of the left." In my view, however, this does not detract from the legitimacy of his present cause.

Quoted in Greenwald, et al., "Edward Snowden: The whistleblower"

Rawls, "Definition and justification of civil disobedience", 106

Bedau, "Introduction," in Bedau, ed., Civil Disobedience in Focus, 8

Speaking before parliament on 15 October 2013, prime minister David Cameron criticized the Guardian for publishing Snowden's story, accusing its writers and Snowden of endangering national security and handing "the advantage to the terrorists." The British newspaper has been subjected to intrusive government searches (Alan Rusbridger, "The Snowden leaks and the public", New York Review 21 November 2013, 31–34). In an interview with the New Yorker, Obama accused Snowden of "putting our people at risk" (David Remnick, "Going the distance: On and off the road with Barack Obama," New Yorker 27 January 27 2014, 59).


On the irreversibility and unpredictability of political action, see the now classic discussion by Hannah Arendt, The Human Condition, University of Chicago Press, 1958), 175–247, and esp. 236–47

Martin Luther King, "Letter from a Birmingham Jail," in Bedau, ed., Civil Disobedience In Focus, 76. As King correctly added, "society must protect the robbed and punish the robber."

Rawls, "Definition and justification of civil disobedience", 108–9


Markovits, "Democratic disobedience", 1933

For a summary of the overall story, see Ryan Lizza, "State of deception: Why won't the president rein in the intelligence community?" New Yorker 16 December 2013, 48–61


Quoted in Gellman, 'Edward Snowden, after months of NSA revelations'

Quoted in Greenwald, et al., “Edward Snowden: the whistleblower”

Rawls, “Definition and justification of civil disobedience”, 110


Ibid.

Rawls, “Definition and justification of civil disobedience”, 110

Gandhi, “Nonviolence”, in Jeffrie G. Murphy, ed., Civil Disobedience and Violence Wadsworth, 1971, 93


King, “Letter from a Birmingham jail”, 74. The idea that the acceptance of a legal penalty demonstrates respect for the law was also then quickly endorsed by many academics. See, for example, Bedau, “Introduction,” 8; Carl Cohen, “Civil disobedience and the law”, Rutgers Law Review 21, no. 1 (1966): 5–7; Rawls, “Definition and justification of civil disobedience”, 106–7. For a critical discussion, see Gene G. James, “The orthodox theory of civil disobedience”, Social Theory and Practice 2, no. 4 (1973): 475–98.


Cohen, “Civil disobedience and the law”, 5–7; James, “The orthodox theory of civil disobedience”, 491–95

For example, see Smith, “Civil disobedience and the public sphere”, 163


As noted by Arendt (“Civil disobedience”, 77), an interesting critic of the orthodox view that civil disobedients should necessarily accept criminal punishment. She hoped that it would "be possible to find a recognized niche for civil disobedience in our institutions of government" (99).

The rule of law, of course, is an unavoidably contested concept. For a useful overview, however, see Brian Z. Tamanaha, On the Rule of Law: History, Politics, Theory, Cambridge University Press, 2004.


Merkel early on noted that the authoritarian contours of the Espionage Act raise tough questions for those who believe Snowden should return to the US and face legal proceedings (David Hugendick, “Snowdens Strafe wäre existenzvernichtend!”). The Espionage Act provoked the creation of the National Civil Liberties Bureau, forerunner to the American Civil Liberties union (ACLU).


The ACLU and Human Rights Watch, for example, has used his case as a rallying cry for strengthening whistle−blowing protections in the context of national security. For a detailed scholarly account of the existing legal regime, see David E. Pozen, “The leaky Leviathan: Why the government condemns and condones unlawful disclosures of information”, Harvard Law Review 127, no. 2 (2013), harvardlawreview.org/2013/12/the−leaky−leviathan−why−the−government−condemns−and−condones−unlawful−disclosures−of−information/.

Interestingly, Edward Snowden’s father, Lon Snowden, initially hoped that his son would return home to face criminal proceedings. However, the Obama administration’s apparent presumption of guilt led him to change his views (“Edward Snowden better off in Russia than US, his father says”, Guardian, 26 July 2013, www.theguardian.com/world/2013/jul/27/nsa−snowden−father−justice−russia). The fact that leading politicians have regularly described his son a traitor, and that some have even publicly joked about the possibility of assassinating him, has probably not inspired much confidence either.

supported granting asylum to Snowden.


64 Editors, "Edward Snowden, Whistle−Blower"

65 Dworkin, *Taking Rights Seriously*, 207

66 Ibid., 215

67 Ibid.

68 Ibid.

69 Ibid., 215−16


73 Prantl, "Auslieferung als Schicksal"