Rusbridger's "The Snowden Leaks and the Public" and Mill's *Utilitarianism*: An Analysis of the Utilitarian Concern of "Going Dark"

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Abstract: In the wake of the controversial Snowden leaks, Alan Rusbridger observes that the National Security Administration [NSA] and Government Communications Headquarters [GCHQ] maintain that their mass spying is justified because it prevents the world from "going dark." This paper will explore the meaning and philosophical significance of "going dark" and argue that the NSA and GCHQ's claim appeals—wittingly or unwittingly—to J.S. Mill's ethical principle of utility. This paper will therefore critique this argument within Mill's utilitarian framework to demonstrate that its appeal to utility is illegitimate. Finally, this paper will argue that utility dictates that this mass surveillance is unjustifiable and should be terminated.

Introduction

In "The Snowden Leaks and the Public," Alan Rusbridger describes his recent run-in with the British government as the editor of *The Guardian*.[1] Five weeks prior to the incident, Rusbridger's newspaper had come into possession of documents infamously leaked by Edward Snowden containing sensitive information regarding American NSA and British GCHQ surveillance programs. Threatened by the British authorities with "either an injunction or a visit by the police,"

[1] Alan Rusbridger, "The Snowden Leaks and the Public," *The New York Review of Books*, November 21, 2013, accessed November 24, 2013, http://www.nybooks.com/articles/archives/2013/nov/21/snowden-leaks-and-public/?pagination=false.

Rusbridger had the laptop containing the classified documents obliterated with a power drill and an angle grinder.[2]

From what Rusbridger and others have learned from the leaked documents, the NSA and GCHQ have been indiscriminately collecting reams of data on all American and British citizens. Apparently, both agencies have been operating under a shroud of secrecy—hence, the alarming attempt by British authorities to silence *The Guardian*—and their activities have been virtually unregulated.[3]

As Rusbridger observes, the NSA and GCHQ maintain that what American and British citizens gain in security from this massive data collection outweighs what they lose in privacy, so the practice is justified.[4] Although neither organization claims to subscribe to a certain ethical theory *per se*, this paper will show that—intentionally or not—this particular argument is a distinct appeal to consequentialism. In fact, it will be shown that the NSA and GCHQ appeal specifically to J.S. Mill's consequentialist ethical principle of utility. This paper will therefore critique these claims in terms of Mill's utilitarian framework in order to demonstrate that they are not a legitimate appeal to utilitarianism. Finally, it will be shown that Mill's principle of utility actually dictates that the massive, unregulated data collection being conducted by the NSA and GCHQ is unethical and ought to be terminated.

"Going Dark"

According to Rusbridger, the NSA and GCHQ argue that without both the pervasiveness and secrecy of their current programs, the world would "go dark."[5] This phrase, however, needs clarification. As Rusbridger and others have learned, the NSA and GCHQ have been secretly collecting staggering amounts of so-called metadata from phone calls, text messages, emails, and internet searches made by British and American citizens. Although metadata only includes "information about who sent a communication to whom, from where to where," Stewart Baker, the former general counsel of the NSA,

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Ibid.

has commented that "metadata absolutely tells you everything about somebody's life."[6]

These organizations claim that this secretive omnipresence illuminates their purview to "help the good guys keep track of the bad guys and perhaps stop another terrorist outrage" like, for instance, 9/11.[7] This mass surveillance, then, supposedly makes the world "go light." The NSA and GCHQ therefore claim that revealing their organizational secrets and limiting the data that they can collect would cause the world to "go dark," rendering them blind to the activities of the "bad guys," which would in turn leave Britain and America susceptible to devastating attacks. As a result, the agencies argue that their activities should be unregulated and kept out of the public forum, and journalists like Rusbridger are told: "Write about it and you could have blood on your hands."[8] The NSA and GCHQ maintain that, if they lose their spying abilities and cloak of secrecy, then the "bad guys" will be able to run amok unchecked and the result could be another 9/11.

"Going Dark" as a Utilitarian Argument

Clearly, the NSA and GCHQ claim that the positive consequences of their surveillance practices outweigh the negative ones, so they are justified. This claim, by definition, is an appeal to consequentialism. Indeed, Mill writes that "all action is for the sake of some end, and rules of action, it seems natural to suppose, must take their whole character and color from the end to which they are subservient."[9]

Rusbridger rightly observes that these organizations face the "problem of balancing surveillance with civil liberties."[10] The NSA and GCHQ maintain that they have balanced the scales favorably so that what the British and American people gain in security from their spying activities outweighs what they lose in personal privacy and freedoms. This is an invocation of Mill's ethical calculus, which Mill

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[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] John S. Mill, *Utilitarianism*, ed. George Sher, 2nd ed. (Indianapolis: Hackett, 2001), 2.

[10] Rusbridger, "The Snowden Leaks and the Public."



refers to as utility or the greatest happiness principle.[11] This utilitarian calculus dictates that "actions are right in proportion as they tend to promote happiness; wrong as they tend to promote the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure."[12] In utilitarian terms, the intelligence programs of the NSA and GCHQ supposedly produce happiness in the form of security because they protect the American and British people from tragic attacks, while they produce unhappiness insofar as they rob them of personal privacy and freedoms.

Indeed, the maximization of happiness and minimization of unhappiness for everyone involved is the paradigm of utilitarian ethical theory. However, the NSA and GCHQ's argument also hinges on the distinction that all pleasures do not bear equal moral weight. This is again an appeal to Mill, who maintains that there is a pivotal distinction between higher and lower pleasures. Mill contends, "It is quite compatible with the principle of utility to recognize the fact that some kinds of pleasure are more desirable and more valuable than others. It would be absurd that, while in estimating all other things quality is considered as well as quantity, the estimation of pleasure should be supposed to depend on quantity alone."[13] Higher pleasures are not only more sophisticated for Mill but also more essential for happiness.

As such, the NSA and GCHQ justify their practices by assigning greater moral weight to security than to privacy and freedoms. Indeed, next to physical needs such as food and water, Mill also holds that security is the most indispensable pleasure. "On it," he asserts, "we depend for all our immunity from evil and for the whole value of all and every good, beyond the passing moment, since nothing but the gratification of the instant could be of any worth to us if we could be deprived of everything the next instant by whoever was momentarily stronger than ourselves."[14] Therefore, the NSA and GCHQ certainly invoke Mill in their argument that, without security, no other pleasures are guaranteed since attackers would be able to strip them away at any moment. Despite the pervasiveness of the invasions of privacy

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[11] Mill, *Utilitarianism*, 7.

[12] Ibid.

[13] Ibid., 8.

[14] Ibid., 54.

and freedom incurred by their intelligence programs, the NSA and GCHQ claim that this pain is offset by the comparatively higher moral worth of the pleasure (specifically, the security) that they supposedly provide. Without these security measures, they posit that American and British citizens would be in danger of losing pleasures including, but not limited to, personal privacy and freedom at the hands of attackers (perhaps even to a greater degree).

Ignorance of American and British Officials

Although the NSA and GCHQ invoke Mill's utilitarianism by maintaining that their practices are justified since they maximize the happiness (especially the security) of everyone involved, Mill emphasizes that utility is not determined arbitrarily. Conversely, it is dictated by the "preference felt by those who, in their opportunities and experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison."[15] Mill imposes high standards on how pleasures and pains are to be weighed in the utilitarian calculus. The determination is made according to how an agent intimately familiar with the distinction between higher and lower pleasures would make it.

Rusbridger correctly observes that, although the NSA and GCHQ invoke the dictates of utility in their justification of their practices, they did not do so with a full understanding of the pains and pleasures involved, and he underscores this irony through a clever reversal of the image of "going dark." He observes that the British and American officials supposedly responsible for overseeing the surveillance practices are "kept in the dark" about them.[16]

As Snowden has pointed out, those government officials who are charged with overseeing the NSA and GCHQ practices only have "partial information and poor technical understanding."[17] The technologies employed by the NSA and GCHQ are extraordinarily complex, and Rusbridger rightly observes that those with no technical background in them cannot appreciate their implications and far-reaching consequences. One senior member of the British cabinet admitted that "most of us don't really understand the

[15] Ibid., 12.

[16] Rusbridger, "The Snowden Leaks and the Public."

[17] Ibid.

internet"—hence, they do not understand the capabilities of GCHQ practices.[18] Government officials who ostensibly oversee intelligence practices are also kept "in the dark" by being misled. On one recent occasion, the U.S. Congress was told a flat-out lie by James Clapper, the U.S. Director of National Intelligence. He falsely reported that the NSA was not collecting any data on Americans. In another reversal of the image of "going dark," Rusbridger aptly calls the NSA and GCHQ "spooks" because they act "in the dark."[19] As a result, the activities of both intelligence organizations are virtually unregulated and out of control.

As a result of their ignorance, American and British officials in charge of these security practices have not made legitimate determinations of the dictates of utility. Since they are misled and lack technical understanding, they cannot fully understand the pleasures and pains at issue, and their utilitarian calculus is skewed and wayward. Although they judge the positive consequences to outweigh the negatives ones, they cannot legitimately make this claim within the utilitarian framework to which they appeal since Mill argues that only an agent intimately familiar with the pleasures and pains involved can determine the dictates of utility.

Overestimation of the Benefits of Spying

Rusbridger also correctly observes that, despite the utilitarian appeal made by the NSA and GCHQ, the benefits of the secretive, pervasive spying practices do not actually outweigh the drawbacks. The NSA and GCHQ assign more moral weight to the security derived from their surveillance activities than is due. In a recent NPR segment, Senator Ron Wyden, a senior member of the Senate intelligence committee, commented, "At one point, we were told the bulk phone record collections program produced in . . . over 50 instances, information that was absolutely fundamental to dealing with the terrorist threat. And when asked in more detail, that number kept going down and down and down. And now, it's essentially been

[18] Ibid.

[19] Ibid.

in the vicinity of two."[20] The NSA and GCHQ claim that their mass surveillance programs are absolutely vital for security. Senator Wyden's claim indicates, however, that the NSA and GCHQ have over-exaggerated how much security is actually produced by their mass surveillance practices. The positive consequences of these actions are actually quite paltry.

Underestimation of the Negative Consequences of Spying

The NSA and GCHQ also downplay the seriousness of the losses of privacy and freedoms—the negative consequences—caused by their surveillance practices. Rusbridger once again employs a clever reversal of the image of "going dark" in order to emphasize the irony that, despite claims made by these organizations to the contrary, their actions have done more to decrease American and British security than to increase it. Whereas the NSA and GCHQ maintain that the world will "go dark" if their surveillance activities are curtailed, Rusbridger holds that their "all-seeing technologies could lead societies into very dark places."[21] Upon closer analysis, it becomes clear that the drawbacks outweigh the benefits of these spying activities, and, hence, utility does not justify them.

First of all, the NSA and GCHQ are undermining internet security. Their actions not only make it easier for them—the supposed "good guys"—to access private information, but they likewise make it easier for the "bad guys" to hack into it. Although the NSA and GCHQ claim to be protecting American and British citizens from potential threats, they have actually made citizens more vulnerable. Rusbridger poignantly observes, "If you're anxious about your bank details or medical records sitting online, you're probably right to be."[22]

Secondly, Rusbridger notes that, as Snowden has pointed out, the massive stores of data maintained by the NSA and GCHQ are not benign. They allow any American or British citizen to have his or her private information arbitrarily scrutinized at any time. All it

[20] Ron Wyden, interview by Arun Rath, "Edward Snowden's NSA Revelations Keep Coming," *All Things Considered*, National Public Radio, *NPR.org*, November 11, 2013, accessed November 24, 2013, http://www.npr.org/2013/11/09/244204131/edward-snowdens-nsa-revelations-keep-coming.

[21] Rusbridger, "The Snowden Leaks and the Public."

[22] Ibid.



takes, Snowden posits, is a "wrong [phone] call" and "they [the NSA or GCHQ] can use this system to go back in time and scrutinize every decision you've ever made."[23] The collection of metadata therefore revokes from the American and British people the pleasures of personal privacy and freedoms. Although the revocation of pleasures can be justifiable within a utilitarian framework, Mill places strict limits on the circumstances in which this ought to occur.

What sort of claim do people have to such pleasures within the utilitarian framework? Mill explains this in terms of security, the most foundational of all pleasures. Mill argues, "The feelings concerned are so powerful, and we count so positively on finding a responsive feeling in others (all being alike interested) that *ought* and *should* grow into *must*, and recognized indispensability becomes moral necessity."[24] Therefore, it is in everybody's interest to protect everyone else's security, since this makes it more likely that everyone's own security will, in turn, be respected.

For Mill, it therefore follows that, "When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it."[25] It is something considered so crucial that everyone feels that they must respect it in others in order to ensure that it will be respected in themselves by others. Security, it has been demonstrated, is the most indispensable moral right. Legitimate claims can also be made to moral rights to privacy and freedoms within the utilitarian framework since they, too, concern everyone alike, and, as has been shown, it is therefore in each person's interest to respect them in everybody else.

For Mill, such rights cannot be upheld without mutual recognition by all. This mutual recognition is what "preserves peace among human beings" and therefore allows society to function in the utilitarian framework.[26] As such, Mill argues that "it is by a person's observance of these [rights] that his fitness to exist as one of the fellowship of human beings is tested and decided."[27]

Mill further explains that, since these moral rights—especially security—are recognized as indispensable, all members of society have

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[23] Ibid.

[24] Mill, *Utilitarianism*, 54.

[25] Ibid., 53.

[26] Ibid., 59.

[27] Ibid., 60.

tight emotional ties to them. Mill argues that humans have the unique capacity to perceive a crime against one or a few as a crime against the whole and, therefore, themselves.[28] As a result, "The same powerful motives which command the observance of these primary moralities enjoin the punishment of those who violate them; and as the impulses of self-defense, of defense of others, and of vengeance are called forth against such persons, retribution, or evil for evil, becomes closely connected with the sentiment of justice."[29]

Therefore, the instinct towards self-defense and emotionally charged desire for retribution is an expression of utility. Punishing criminals revokes certain rights from them, but Mill argues that they receive "what they deserve."[30] Insofar as they violate the moral rights that allow society to function, criminals disconnect themselves from society. Criminals pose a threat to everyone's rights, and punishing them is therefore justified because it suppresses this threat and preserves these rights for society as a whole.

For Mill, these are the only circumstances under which moral rights such as security, privacy, and freedoms may be revoked. Utility therefore does not dictate that it is permissible to arbitrarily revoke these rights, as the NSA and GCHQ are doing. That each ought to receive what he or she justly deserves does not only apply when giving "evil for evil" in cases of retribution, Mill clarifies, but also when giving "good for good."[31] Therefore, to arbitrarily revoke the rights of innocent British and American citizens to privacy and freedoms when they have not breached the moral rights of others is not ethically justified according to the utilitarian calculus. It is instead, in Mill's words, "simply expedient."[32] Indeed, Mill writes that, "society should treat all equally well who have deserved equally well of *it*."[33]

Innocent citizens do not deserve to lose their rights to privacy and freedoms at the hands of the NSA and GCHQ since they have done nothing to violate the rights of others. The practices of the NSA and GCHQ therefore threaten the moral rights that allow society to function within the utilitarian framework rather than protect them.

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[28] Ibid., 51.

[29] Ibid., 60.

[30] Ibid., 61.

[31] Ibid.

[32] Ibid.

[33] Ibid., 61-62.

Moreover, the recent revelation of these practices has generated much public outcry—Rusbridger's article is an example of this. As previously described, violations of security within the utilitarian framework generate a strong emotional response. Therefore, this public outcry can be understood as a symptom indicating that security has actually been damaged rather than bolstered in America and Britain.

As mentioned previously, Snowden is concerned that innocent individuals will be susceptible to being arbitrarily criminalized by the NSA and GCHQ.[34] However, the unregulated spying activities of the NSA and GCHQ can be understood as a violation of security on an even more basic level. Even if they are not a violation of security *per se*—like the arbitrary criminalization Snowden warns about—the outcry generated by the program at least indicates that the public feels less secure. The sentiment of security itself is very important for the functioning of society in the utilitarian framework. If moral rights—especially security—are not respected, Mill argues that "everyone would see in everyone else an enemy against whom he would be perpetually guarding himself."[35] As previously discussed, the mutual recognition of moral rights is crucial to the peaceful functioning of society in the utilitarian framework. However, the recent public distress indicates that the surveillance activities conducted by the NSA and GCHQ break down this mutual recognition rather than promote it. Therefore, although the NSA and GCHQ claim that their activities bolster the security of American and British citizens (and protect their rights), utility dictates that they are doing more to damage security (and to take away these rights).

Conclusion

What the British and American people gain in security from the surveillance activities of the NSA and GCHQ is modest in comparison to what they lose in security. These practices also strip away their moral rights to privacy and freedoms. The utilitarian appeal put forth by the British and American officials who support these practices has been shown to be unsustainable in a utilitarian framework—largely because they determine the dictates of utility with a fundamental lack of understanding of the pleasures and pains involved.

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[34] Rusbridger, "The Snowden Leaks and the Public."

[35] Mill, *Utilitarianism*, 59.

Therefore, according to Mill's theory of utility, these surveillance programs are expedient rather than ethical. Indeed, Mill writes, there have been many institutions throughout history which have been justified by supposed appeals to utility, only to be condemned later as blatantly unethical. One example which Mill cites is slavery: at one point in the history of the United States, slavery was argued to be a "necessity of social existence" because the social benefits outweighed the drawbacks.[36] It has since been clarified, however, that the institution is a violation of the utilitarian paradigm that each ought to receive what he or she justly deserves. Mill writes, "The entire history of social improvement has been a series of transitions by which one custom or institution after another, from being a supposed primary necessity of social existence, has passed into the rank of a universally stigmatized injustice and tyranny."[37]

Indeed, history will show that the mass surveillance programs of the NSA and GCHQ followed the dictates of expedience rather than ethics. This fact is evident in a remark by the head of a British intelligence agency: "There's nothing in it for us in being more open about what we do."[38] This official is clearly more concerned about the efficiency of his organization than the good of British citizens. Indeed, although the NSA and GCHQ appeal to utilitarianism in attempting to justify their practices, when these practices (i.e., their consequences) are critiqued according to the utilitarian framework, it becomes clear that these practices are consistent with efficiency rather than utility. The negative consequences of these activities clearly outweigh the positive ones: the NSA and GCHQ are compromising rather than bolstering security in the United States and Britain, and they are threatening the moral rights promoted in the utilitarian framework rather than protecting them, so they are detracting from the peaceful functioning of society rather than facilitating it.

Government officials who approve of the indiscriminate, large-scale spying on American and British citizens by the NSA and GCHQ claim that, if their practices are limited, the world will "go dark" and chaos will ensue. Although the utility behind this argument initially seems compelling, it does not hold. Those who oversee the intelligence organizations are not fully informed as to the pleasures

[36] Ibid., 63.

[37] Ibid.

[38] Rusbridger, "The Snowden Leaks and the Public."

and pains involved, and, hence, their ethical calculus is skewed. In actuality, the negative consequences of these programs outweigh the positive ones. As a result, these programs can be said to be expedient rather than ethical, and they ought to be terminated.