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TRUST, BETRAYAL, AND WHISTLE-BLOWING: REFLECTIONS ON THE EDWARD SNOWDEN CASE

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Abstract

Is every act of whistle blowing, by definition, a betrayal of trust on the part of the whistle-blower? If so, are employees who blow the whistle, by implication, untrustworthy employees? Assuming that they are, would employees who blow the whistle (presumably on the grounds of moral obligation) also be willing to concede that they are not trustworthy employees, by virtue of carrying out their whistle-blowing act(s)? In answering these questions, we first propose some working definitions of whistle-blowing, trust, and trustworthiness. We then ask whether some instances of whistle-blowing are morally permissible (and perhaps also morally required), even if it turns out that an employee's act of whistle-blowing always violates ("betrays") the trust relationship between that employee and his/her employer. Next, we examine a framework that purports to differentiate between cases of whistle-blowing that are morally permissible, and those that are morally required. Finally, we apply that model in our analysis of a recent case involving Edward Snowden, an employee, who intentionally leaked sensitive US-government information to the press.

Keywords: *Edward Snowden, Trust, Trustworthiness, Trust Betrayal, Whistle-blowing*

1 Introduction and Background

Most people seem to assume that trustworthiness (in general) is an inherently good thing and that betrayal is an inherently bad thing, such that one's being trustworthy is always a desirable quality or positive character trait, while one's betraying the trust of someone or some group/organization/nation is viewed in a negative light. But we question that assumption; for example, is one's being trustworthy *always* an intrinsically good trait? Consider that people who do evil things – e.g., "hit men" for the Mafia, or the Nazi officers who carried out executions in death camps – may have been very "trustworthy employees." In these cases, many people would likely say that the individuals involved *should* have intentionally violated the trust relationships they had with their respective employers (by blowing the whistle), even if that also meant betraying the trustor(s) involved.¹ But some whistle-blowers, as well as some people

¹ The idea for examining trustworthiness vis-à-vis betrayal of trust in whistle-blowing contexts developed from discussions with Lloyd Carr, whose work on trust and rational agents (Carr 2014) suggests that there is an explicit recognition on the part of the agent (i.e., the whistle-blower) that he/she has clearly the betrayed the trust of the organization that had initially entered into the trust relationship with that agent. While we do not commit to the view that there is an explicit recognition of betrayal on the part of whistle-blowers, we nevertheless explore some of the logical relations between the concepts of trust/trustworthiness and betrayal in whistle-blowing cases, with a special focus on the controversy involving Edward Snowden.

who are inclined to defend them, might take a different tack by using the following kind of rationale: “X was not really betraying the trust of his/her employer, rather X was simply doing the right (honorable, moral, etc.) thing by blowing the whistle.” Can this kind of rationale – one that is reduced to a “not-P but Q” kind of claim, as opposed to a situation in which both “P and Q” are acknowledged to be true – be viewed as plausible?

To see the central problem, or logical flaw, with this kind of rationale, consider a case that is unrelated either to trust or whistle-blowing – one involving the controversial USA Patriot Act. Many of the Act’s supporters claim that (i) “The Patriot Act does not violate the civil liberties of US citizens, but instead protects Americans from future terrorist attacks.” Opponents, on the other hand, claim that (ii) “The Patriot Act clearly violates civil liberties, and that there is no evidence that the enforcement of this act protects Americans from future terrorist attacks.” But why can’t specific clauses in (i) and (ii) both be true? After all, there is no contradiction involved in asserting the following conjunction (iii): The Patriot Act both protects Americans against future terrorist attacks and violates the civil liberties of American citizens. However, political conservatives in the US tend to reject the claim that the Patriot Act violates civil liberties, and many liberals are skeptical regarding how much that act protects Americans (suggesting instead that the US government uses that rationale as a convenient foil to spy on its citizens). So, it would seem that in the case of the Patriot Act, one’s political ideology can obstruct one’s ability to reason critically in defending either side in this controversy. We will also see how this conceptual/logical confusion might also work in obscuring the inherent tensions involved in trustworthiness and betrayal on the part of employees who blow the whistle.

2 Whistle-blowing, Trust, and Trustworthiness in an Employment Context

Before examining the concept of a trust relationship in an employer-employee context, we consider a working definition of whistle-blowing. Sisela Bok (2003) defines a whistle blower as an individual who makes “revelations meant to call attention to negligence, abuses, or dangers that threaten the public interest.” According to Bok, whistle blowing can be viewed as a form of *dissent*; but whereas dissent can arise from all forms of disagreement (e.g., religious, political, etc.), Bok argues that whistle blowing has the “narrower aim of casting light on negligence or abuse, or of alerting the public to a risk.”² Some analysts view whistle blowers as courageous employees who should, in certain cases at least, be praised for their heroic actions. Others, however, see whistle blowers as *traitors*, as well as snitches and spies (Brenkert 2010). So, not surprisingly, ethicists and legal scholars have debated the merits vs. the harms associated with whistle blowing. But before we consider whether some instances of whistle blowing can be justified on moral grounds, we first briefly examine the concepts of *trust* and *trustworthiness* in the context of an employer-employee relationship.

What, exactly, do we mean by a trust relationship in an employer-employee context? And what is the nature of the (more general) relationship between trust and

² Our discussion of whistle-blowing definitions here draws from Tavani (2013).

trustworthiness? We believe that trust (in general) is best understood as a normative relation between two agents: a trustor and a trustee.³ Trustworthiness, on the other hand, is typically regarded as a characteristic, property, or attribute that applies (only) to the trustee. So it is important to distinguish between trust qua (normative) *relation* (affecting two agents, a trustor and a trustee) and trustworthiness qua *property/characteristic* of the trustee. It is also important to note at this point that in whistle-blowing scenarios, the agents involved in the trust relationships can be either individual human agents or an aggregate of human agents such as a corporation or organization.⁴ A trust relationship in an employment context can take many forms; for our purposes, however, it can be understood as a normative relationship between an employer and employee where the employer expects an employee not to disclose information about the employer to the public without first getting permission. Often this is formalized in a non-disclosure agreement. In this scheme, then, all acts of whistle-blowing by an employee always violate the employer-employee trust relationship; hence, an employee who blows the whistle must be regarded as an “untrustworthy” agent in the context of that relationship.

Contrary to what many people seem to assume, however, trustworthiness need not be understood as simply a binary concept, where someone either *is* or *is not* trustworthy (*in toto*). For example, someone may be a very trustworthy spouse and father, but be untrustworthy as an athlete (by using Performance Enhancing Drugs). A person might also be highly trustworthy as a military officer, yet untrustworthy as a spouse. In this sense, trustworthiness needs to be understood as “context-sensitive” and “state-like,” rather than general and “trait-like” (Buechner, Simon, and Tavani, 2014). Yet many people assume that if some agent, X, is untrustworthy in respect Y, that agent must be untrustworthy in general. However, once we see that this view is inadequate, we also see why it is not necessarily a bad thing for some agent (X) to be untrustworthy in some respect or situation (Y) but not in another (Z) – e.g., in a specific context, such as an employment context involving whistle-blowing. Of course, it does not follow from this that it is *ipso facto* morally permissible for a trustee to be untrustworthy in every employment context where a whistle-blowing act is being considered.

3 When is an Act of Whistle-Blowing Morally Justified?

Providing clear-cut criteria for justifying whistle blowing on moral grounds has proved to be very difficult, and the schemes for doing so have often been very controversial. Nevertheless, some very thoughtful frameworks for this have been put forth. We examine and then apply a model advanced by Richard De George (1999).⁵ Focusing on

³ For an interesting analysis of theories of trust proposed in the past twenty-or-so years, see Taddeo (2009). Also, see Simon (2013) for an excellent bibliography of the available literature on trust.

⁴ In the present essay, we examine the concepts of trust and trustworthiness only as they apply in the case of human agents and institutions (i.e., aggregates of human agents); we do not extend this to include artificial agents (AAs) such as “machines.” For a fuller account of the distinction between trust and trustworthiness, as well as for a critique of the standard account of trustworthiness as a characteristic or property that affects only the trustee in a trust relationship, see Buechner, Simon, and Tavani (2014).

⁵ One might ask why we have selected the De George model, as opposed to alternative models. As Brenkert (2010) points out, De George’s model is one of the most frequently cited among business ethicists. So we

employer-employee relationships in the context of an engineering environment, De George proposes a set of conditions that must be satisfied for an employee to justifiably blow the whistle. His scheme also differentiates when an employee (in his examples, an engineer) is *morally permitted* to blow the whistle from when an employee is *morally obligated* to do so. De George argues that engineers (and other workers) are morally permitted to go public with information when:

1. Something (e.g., some practice, some product, etc.) will likely do “serious and considerable harm” to the public.
2. The employee(s) have reported the “serious threat” to their immediate supervisor(s).
3. The employee(s) have “exhausted the internal procedures and possibilities” within the company, including going to the board of directors, having received no support from their immediate supervisor(s).⁶

De George further argues that although one is morally permitted to blow the whistle when these three conditions are satisfied, he or she is not morally required, or obligated, to do so. For the latter to obtain, De George believes that two additional conditions must also be satisfied:

4. The employees have “accessible, documented evidence that would convince a reasonable, impartial, observer that one’s view of the situation is correct.”
5. The employees have “good reasons to believe that by going public the necessary changes will be brought about.”⁷

There are numerous cases of whistle-blowing in engineering contexts where De George’s criteria can easily be applied in a fairly straight-forward manner. Consider, for example, the now classic whistle-blowing cases involving the Ford Pinto (automobile) and the Space Shuttle *Challenger*. But can De George’s model also be easily applied in whistle-blowing incidents in non-engineering contexts as well? In particular, we ask whether that model can guide us in assessing a recent whistle-blowing controversy involving Edward Snowden.

4 The Case of Edward Snowden

Edward Snowden, a former employee of NSA contractor Booz Allen Hamilton, leaked sensitive material to *The Guardian* and the *Washington Post*. Some of Snowden’s critics believe that the sheer scale of the material involved makes it the “most significant leak in US history.” The leaked reports, published in May 2013, revealed a number Internet surveillance programs used by the NSA; these included the Tempora, PRISM, and XKeyscore programs, as well as information involving metadata from telephone interceptions in the US and Europe. What are the moral implications involved, and how should Snowden’s behavior be assessed? Depending on one’s point of view, Snowden’s

believe that it would be fruitful to apply this whistle-blowing model as our “litmus test” in the Snowden controversy.

⁶ The full text for these three conditions is included in De George (1999), pp. 251-253.

⁷ See De George, pp. 250-256 for the full text of his five conditions for whistle blowing. Our analysis of De George’s model in this section draws from material in Tavani (2013).

whistle-blowing activities (resulting in the leaks to the international media) were either a horrible deed or a courageous act. While Snowden's critics have described him as a "dissident" and a "traitor" (who has also caused grave damage to US intelligence capabilities), his defenders see him as a "hero" and a "patriot" (because the US Government, through the NSA, had gone too far in its surveillance practice on its own citizens and the leaders of closely allied nations).

Snowden has claimed that his "sole motive" for leaking the documents was "to inform the public as to that which is done in their name and that which is done against them" (Rieder, 2013). Arguing in his own defense, by appealing to the interests of the international community, Snowden cites Article 12 of the Universal Declaration of Human Rights. He also states:

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."

In attempting to justify his actions as an American citizen, Snowden claims:

The 4th and 5th Amendments to the Constitution of my country...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... (Snowden, 2013).

He further asserts, "I took an oath to support and defend the Constitution. And I saw the Constitution was being violated on a massive scale" (Griggs and Gross, 2014). In June 2014, the US Government officially charged Snowden with "theft of government property, unauthorized communication of national defense information" and "willful communication of classified communications intelligence information to an unauthorized person." In part, the charges against Snowden were brought under the Espionage Act (See Finn and Horwitz, 2013). But our main concern in this paper is not so much with the legality of Snowden's behavior, but with whether Snowden's actions were morally justifiable (i.e., either morally permissible, or possibly even morally required, in light of the five criteria specified in De George's framework.)

5 Applying De Gorge's Whistle-Blowing Model to the Snowden Case

Arguably, the first criterion or condition in De George's model was satisfied in the Snowden case – viz., the NSA's practice with respect to surveillance did cause some "serious and considerable harm" to the public in the form of mass surveillance of the phone uses and Internet practices of US citizens. Even if one objects that no American citizens were physically harmed in the Snowden incident, the international fallout from the disclosure that "friendly" heads of states were being monitored clearly harmed the US's reputation abroad. However, because we have no evidence suggesting that Snowden had first gone to (any of) his superiors before going public with the information about NSA's surveillance practices, it is difficult to argue that Snowden had

satisfied De George's second and third conditions. And if Snowden had failed to do that, then it would appear to follow (on De George's criteria), that Snowden's whistle-blowing act was not morally permissible. In that case, there would be no need to ask whether Snowden's act of whistle-blowing was morally required (i.e., whether Snowden satisfied De George's fourth and fifth conditions). However, we should note that according to an interview with Ellsberg, one of the reasons that Snowden did not pursue the appropriate chain of superiors in his organization is that he saw what had happened to those people who did go forward to their supervisors in previous incidents; for example, he knew that the FBI had conducted early morning raids on each of the suspects, including confiscation of computers and "thumb drives," based on the suspicion that they might have been the leakers of information. (Democracynow, 2014).

So it is possible that Snowden had reasonable and justifiable grounds for not complying with De George's second and third conditions. But let us next assume, for sake of argument, that Snowden had satisfied conditions 1-3 in De George's scheme. We can then ask whether Snowden would also have been morally required/obligated to go public with the information. In this case, perhaps somewhat ironically given Snowden's (apparent) failure to satisfy conditions 2 and 3, Snowden could plausibly be said to satisfy conditions 4 and 5. Consider that in compliance with De George's fourth condition, Snowden had "documented evidence that would convince a reasonable, impartial, observer that one's view of the situation is correct." Also, consistent with condition 5, Snowden had "good reasons to believe that by going public the necessary changes will be brought about." So, Snowden seems to have met De George's criteria for being morally obligated to go public, despite his (apparent) failing to satisfy two of the conditions that De George specifies for being morally permitted to blow the whistle.

Of course, we can question whether De George's criteria are too stringent, as some critics have suggested, or too lenient as others have argued. However, we will not pursue that debate here. We conclude our discussion by noting that one virtue of De George's model is that in many cases it has provided a fairly clear and straightforward set of guidelines for engineers to consider in a morally complex case without also requiring them to be what De George calls "moral heroes," and what others call "moral saints." But we also note a potential defect in his model: it seems possible (as in the Snowden case) for an agent (qua employee) to be morally *obligated* to blow the whistle even when that agent fails to satisfy all of the preceding requirements necessary to be morally *permitted* to blow the whistle. So, what are to make of this anomaly in the application of De George's model in the Snowden case?⁸ For example, what if both the employer and chain of command has proved untrustworthy? According to Daniel Ellsberg, one of the most

⁸ Why does this anomaly present a serious challenge for De George's model? We saw that Conditions 1-3 constitute the set of necessary conditions for justifying a whistle-blowing act on moral grounds. So, failure to satisfy all three conditions means that, technically, one cannot proceed to Conditions 4-5 to evaluate the whistle-blowing situation in the Snowden case. Yet there is something counterintuitive here – how can one be morally required to do something, X, if one is not morally permitted to do X. An analogy involving this kind of anomaly can be found in satisfying the conditions required for "just war," where we are told that conditions 1-4 must be satisfied for a nation to (morally) enter into war (*jus ante bellum*). Only then, we are further told, can a nation be evaluated as satisfying the next two conditions in just war theory – viz., the conditions for carrying out a just war (*jus in bello*). But we can certainly think of one or more cases where a nation may have conducted a war justly (i.e., morally) *in bello*, yet potentially still have failed to satisfy one or more of the *ante-bellum* conditions.

famous whistleblowers, Snowden “learned from ... the experience of four or five NSA senior officials [who] went to their superiors in great detail when they thought the program ...was unconstitutional and ...should be modified or changed or dropped. They got no response from that, and their recommendations were simply ignored” (Democracynow, 2014). To compound this, Snowden saw the head of the NSA lie to a U.S. Congressional committee and saw Congress accept these lies, even though some of the participants have since admitted that they knew they were being lied to. Therefore, Ellsberg concludes that “Snowden knew that it would be foolish and hopeless for him to try to call attention to this within the channels” (Democracynow, 2014). Would the same hold true, for example, in the case of other high-stakes whistle-blowing incidents, such as the one involving WikiLeaks.

6 Whistle-Blowing Activities in the Snowden Case vs. WikiLeaks

Some people might be inclined to associate or even link together whistle-blowing activities affecting the Snowden case and WikiLeaks. So, an interesting question to consider is: How is the Snowden case both similar to and different from WikiLeaks, with respect to whistle-blowing activities? For one thing, both the Snowden and the WikiLeaks controversies involved national security leaks in which sensitive national security was leaked, affecting many sovereign nation states, especially the US. The two cases might also, at some general level, both be viewed as instances of high-stakes whistle-blowing-related incidents where the general public was better served because of the leaks involving classified government documents. However, many believe that the kinds of potential justifications and defenses involved in the Snowden case differ significantly from those of WikiLeaks.

In his examination of WikiLeaks’ activities from the vantage point of whistle-blowing, Luciano Floridi (2013) identifies two key problems with trying to support that organization’s (whistle-blowing) activities on ethical grounds: (i) WikiLeaks’ motivation was based on resentment (and the intent to cause harm to its target), and (ii) WikiLeaks’ activities put some innocent people at risk. Floridi also points out that some of WikiLeaks’ supporters have tried to justify that organization’s practices by appealing either to consequentialist/utilitarian or deontological theories, or both. But Floridi believes that neither kind of ethical theory can be used successfully to justify WikiLeaks’ practices.

We can see how the Snowden case differs from WikiLeaks in at least one of the two key respects described by Floridi. Although Snowden’s activities may have put some innocent people at risk, it is in no way clear that Snowden’s motivation was based on resentment (as it appears to be in the case of WikiLeaks and Julian Assange). And while Floridi may be correct in asserting that the whistle-blowing activities in the WikiLeaks incident cannot be justified on consequentialist or utilitarian grounds, it is not clear to the present authors that the same is true in the Snowden case. In fact, we believe that it may be possible to make a very strong utilitarian argument in defense of both WikiLeaks and Snowden’s activities. But that would be the topic for a different paper and thus will not be pursued here.

7 Some Alternative Models of Whistle Blowing

Before concluding this paper, we should note that George Brenkert (2010) suggests that the “standard” whistle-blowing models can be understood in terms of three broad kinds of theories: the “harm,” “complicity,” and “good reasons” theories. In Brenkert’s scheme, De George’s model is an example of the harm theory of whistle-blowing, since it concentrates on criteria affecting “serious harm” as the principal grounds for an employee’s moral justification for blowing the whistle.⁹ Brenkert has criticized De George’s model for focusing too closely on the criterion of harm, at the expense of ignoring alternative conditions that take into account a broader range of factors such as “wrong doing,” which need not include harm, especially physical harm. In this sense, Brenkert suggests that Michael Davis’s complicity theory (Davis, 1996) has an advantage over conventional “harm theories” because there can be cases where harm itself does not seem to be at issue so much as our obligation to “avoid doing moral wrongs” (Brenkert, p. 571).

Brenkert is also critical of the complicity model, however, arguing instead for what he calls an “integrity theory of whistle blowing.” Brenkert (p. 575) argues that because of “one’s association or membership with an organization, one takes on certain responsibilities one would not otherwise have.” And focusing on concerns affecting moral “wrong doing,” as opposed solely to harm-related concerns involving an organization, Brenkert proposes his Principle of Positional Responsibility (PPR) and the “integrity considerations of one’s commitment to PPR” in determining when one has a responsibility to blow the whistle. Unfortunately, a full review of Brenkert’s theory would take us beyond the scope of the present work. We believe that his integrity theory is worth mentioning, however, because it addresses some of the concerns that the present authors have with the De George model. As noted in the preceding section, we find De George’s model problematic in the Snowden case, mainly because it suggests that Snowden’s actions might be justified as morally required/obligated even though it is not clear that Snowden had satisfied all of De George’s conditions for one’s being morally permitted to blow the whistle.

8 Concluding Remarks

We have argued that Snowden may have been justified in blowing the whistle on NSA’s surveillance practices – perhaps even morally obligated to do so – based on our interpretation of the conditions specified in De George’s model. However, we have also argued that Snowden, as a whistle-blower, would, by extension, be classified as an untrustworthy employee and as a “betrayal of his employee’s trust,” regardless of whether his whistle-blowing acts were morally permissible or even morally required. There are, however, some interesting twists in this case – both in the way in which Snowden probably found the NSA to be an “untrustworthy agent” and in the potential flaw in De George’s model where an employee might be required/obligated to blow the whistle (given the satisfaction of Conditions 4 and 5), yet not permitted to do so

⁹ Brenkert also notes that Michael Davis’ whistle-blowing model (Davis, 1996) is an example of the complicity theory, while Sisela Bok’s model (briefly described in our analysis of definitions of whistle blowing in Section 2) is an instance of the “good reasons” theory of whistle blowing (Bok, 2003).

(because of failure to satisfy Conditions 1-3). One could surmise that the perceived untrustworthiness of the NSA on the part of Snowden precipitated his action. We should also note that on the various levels of trust regarding this incident, the American public, while perhaps not in total agreement with Snowden's methods, tends to trust the veracity of what he revealed vs. the NSA's claims.

So it would seem that there can be cases when it is morally permissible (and perhaps even morally required) for someone to be untrustworthy and to act in a way that betrays the trust of one's employer. If this is the case, then trustworthiness is not an inherently good trait, and betrayal (of trust) is not always necessarily a bad act. It also follows that a whistle blower such as Snowden does not have to deny the charge that he was untrustworthy and the charge that he betrayed the trust of his employer (and the NSA) to justify his act of whistle blowing on moral grounds.

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