

S E M I N A R A R B E I T

Thema der Arbeit:

Whistleblowers – heroes or traitors?

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1 Introduction:

Different conceptions about the term whistleblowing

Today, we live in a data-driven society. Within a decade, a completely new and previously unimaginable way of life was created. Everything now revolves around digital self-expression. Everybody shares, everybody posts even the most intimate details of their lives. But while more and more people go online, fewer and fewer of them are actually caring to know what happens to their data.

This attitude started to change with the disclosure of NSA surveillance programs that exploited people's vulnerability in the digital world (LoGiurato). Published by the NSA employee Edward Snowden in 2013, the leaks revealed that the government's espionage programs, originally intended to detect terrorist attacks, were used on millions of people without any criminal record (Snowden 204). But shortly after the publication, the debate about data security was overshadowed by the discussion of whether the whistleblower Edward Snowden was guilty of a crime or not.

Therefore, there is no question that whistleblowing is a polarizing topic. The opinions ranged from death penalty demands to a Nobel Peace Prize nomination for Edward Snowden (Pozen 327).

This paper will shed light on the act of whistleblowing on a theoretical basis, and then it will be argued whether whistleblowing can be regarded as morally justified because various dilemmas of fundamental moral values occur in the process.

Since the United States of America has such a long history of national security disclosures, an additional focus will be set on the aspects of whistleblowing that target this state and, thus, its government. To theorize these attitudes, I will look at famous whistleblowers like Edward Snowden. In the end, I will discuss whether whistleblowers can be seen as heroes or traitors.

2 The act of whistleblowing

Before going into further detail, the term whistleblowing will be defined and a foundation for whistleblowing will be laid out.

2.1 Definition

“Blowing the whistle”: The whistle in sports (e.g., soccer) is used to signal interruptions because of foul play or the violation of rules by players. By blowing the whistle, the committed wrongdoing gets acknowledged and penalized. The term whistleblowing is based on the same concept but has a different background and application. The following paragraph contains the definition of whistleblowing, which can be used in a broader context and is applicable to any case of whistleblowing.

Whistleblowing portrays the act of reporting or publicly disclosing an occurrence of probable wrongdoing. A whistleblower who is bound to an institution, a company, or the government through membership or employment discloses wrongdoing within these organizations “about which she has documented evidence” (Ceva and Bocchiola 54). These disclosures by an insider call an authority or corporate boards to account when they overstep ethical or legal bounds.

The practice of whistleblowing has emerged “as a potent countermeasure to the deception of the national security state” (Melley 213) and illegal activities like fraud and corruption. Challenging these illegitimate abuses of power by publicly disclosing evidence of wrongdoing may give the public a chance to see these revelations and inflict prosecution.

2.2 Assessing the justifiability

Before discussing whether the act of whistleblowing itself can be acknowledged as justified, the process of disclosing classified information or illicit actions must undergo three conditions. This foundation of whistleblowing is used as a ground ruling and a basis for the subsequent paragraphs and arguments.

2.2.1 Minimizing harm

A potential whistleblower must be aware that unauthorized disclosure of secret documents or illegal activities could also have harmful consequences for uninvolved and innocent people. In order to eliminate these risks, it is important how the disclosed material is published.

Firstly, “the information to be disclosed must be diligently edited” (Boot 33). The publication of names of undercover agents or the movement of on-going military operations, by for example disclosing military documents, could cause serious harm to individuals or pose a threat to national security. Classified information that was not meant for the public to see can thus fall into the hands of the enemy (Boot 33).

Secondly, to mitigate the harm and misperception possibly succeeding the disclosure, it is a wise decision to seek help and support from established journalists and media outlets. As one of the most famous whistleblowers of modern times, Edward Snowden, states: “If I wanted the documents just put on the Internet en masse, I could have done that myself” (Greenwald 53). The journalistic work provides the public with the necessary context to the great flood of material for a better understanding of complex situations. When the publication of misleading and incomprehensible information is prevented, the public will be given a fair chance to form their own opinion about the subject (Greenwald 53; Boot 33).

One criterion that must be used to assess the justifiability of whistleblowing is the degree of harm it may cause because of carelessness.

2.2.2 Exhausting all alternatives

As it was previously outlined, the act of whistleblowing can have severe consequences for uninvolved people as well as for the exposed organization. As a consequence, the disclosure must be well established and thoroughly thought out, which also means that publicly disclosing classified material or publicly exposing any wrongdoing has to be a measure of last resort.¹

¹ The information in paragraph 2.2.2 is all taken from Boot 61- 62

The whistleblower ought to exhaust all alternative channels before deciding to go public. In practical terms, this means addressing the potential wrongdoing to their direct superior or special anonymous internal reporting mechanisms in their organization. This approach will allow those in charge to investigate this issue or explain why the suspected wrongdoing does not indeed represent any violation of the law or of internal norms.

Considering that “the heroic insider is not a grandstander but a conflicted servant struggling to do the right thing” (Melley 219) it is also important to seek help from independent oversight bodies, which can grant the whistleblower legal advice, especially in cases where the internal reporting system in an organization hasn’t led to effective countermeasures against the contested activity or behaviour and in cases where whistleblowers suspect the destruction of crucial evidence when reporting it to superiors. The whistleblower Edward Snowden experienced the same situation when he encountered information about the secret spying machinery of the NSA: “I had reported these clearly problematic programs to more than ten distinct officials, none of whom took any action to address them” (Peterson).

As a matter of fact, only if all internal and confidential channels have been exhausted without any outcome or repeal, the whistleblower ought to publicly disclose the alleged wrongdoing if this constitutes the most effective way.

2.2.3 Public interest

According to Eric R. Boot, the last and most important condition that has to be fulfilled in the process of whistleblowing is content-related. Whistleblowers only ought to publish wrongdoing if the disclosure serves the public interest (Boot 32). But determining where the public interest lies is not without its difficulties and requires careful deliberation on the part of the whistleblower.

It is important to understand that the public interest is not defined as the sum of individual wills or the private interests of individuals shared by the majority (Boot 26+58). But it “consists in the interest in the conditions that render it possible for each of us to develop and strive to realize our own values, objectives, and life plans” (Boot 58).

So the difficult question is whether the public interest in the disclosure of information outweighs the public interest in continued secrecy through nondisclosure (Boat 32). By observing the ensuing harm from each of these actions, it will be possible to determine if the whistleblower serves the public interest or not.

In cases where the wrongdoing poses a serious threat to the physical health and safety of unsuspecting citizens (e.g., when a company's toxic waste disposal is contaminating water resources) or in cases where the fundamental rights of citizens, like the right to privacy, are being secretly undermined by the government, the disclosure of this information is crucial to stop harm that would remain to ensue with continued secrecy.

Consequently, the whistleblower has to decide whether the disclosed material is in favour of the public interest before deciding to go public with his allegations. In Snowden's case, it goes without saying that government surveillance, whereby citizens' telephone and internet records were monitored on a massive scale, is a matter of public concern, involving the right to privacy (Snowden 179 + 279). The negative sides of that behaviour will be determined in the following paragraphs.

3 Is whistleblowing morally justifiable?

The public perception of whistleblowing is ambivalent as there are valid arguments that speak for and against the act of whistleblowing. By assessing the justifiability of that act, a special focus will also be laid on the significance of whistleblowing by public civil servants.

3.1 Whistleblowing as an immoral act

In this passage, it will be established why whistleblowing can be regarded as immoral.

3.1.1 Role obligation of obedience

Working in an institution like the NSA comes with significant workplace obligations. Whistleblowing in an environment where the handling of deeply classified and confidential information represents the daily routine can have severe consequences for a country's democratic structure. Therefore, the role obligation of obedience and loyalty to their superiors, especially of public civil servants, has to be taken into account.

Whistleblowing can be viewed as wrongful and immoral because it violates the role obligation one has as a civil servant. By seeking employment in a government institution, the person places loyalty to the constitution, the government, and moral principles above financial or personal gain². "The honor of the civil servant is vested in his ability to execute conscientiously the order of the superior authorities, exactly as if the order agreed with his own conviction" (Boot 15).

Even if the orders differ from personal moral or religious values, the employees still owe strict obedience to their superiors who can therefore rely on their subordinates and guarantee the public that plans and policies are effectively put into action (Boot 17). Therefore, exposing governmental secrets or even wrongdoing inhibits efficient democratic government functioning and weakens legal certainty (Boot 15). The execution of policies imposed by politicians couldn't be guaranteed just because they don't overlap with one employee's moral conviction. It's not their job to make ethical judgements. In this behaviour the whistleblower overrules the

² <https://www.law.cornell.edu/cfr/text/5/2635.101> (download on 11 October 2020)

democratically elected officials by deciding what can be kept a state secret and what has to be published (Boot 46). This practice indeed brings harmful risks with it. An average civil servant might not have access to all the necessary documents to assess whether the public has a right to have knowledge about something.

Secondly, even the journalist Glenn Greenwald who helped Edward Snowden publish the allegations against the NSA, agreed on the fact that “political leaders must be permitted to exercise power in the dark” (Greenwald 235). Confidentiality is sometimes necessary, and total state transparency is impractical and can even be dangerous. When, for example, exposing criminal investigations or security matters, the average civil servant can’t assess whether the disclosure endangers innocent people or national security.

To prevent leaks and the publication of classified information, the “US government efficiently suspended First Amendment rights for employees by enforcing the secrecy contract” (Mistry 146). NSA and CIA employees that have potential access to secret documents are obliged to follow the Non-disclosure-agreement. This lifelong contract with the United States Government obliges them to keep every entrusted piece of information confined in secrecy (Immerman 187+207). Therefore, the employees are bound to the state not only through the invisible bond of the role obligation by strict obedience but also through the legally binding promissory obligation.

The whistleblower Edward Snowden violated his promissory agreement by revealing top-secret documents, which contained programs originally intended to protect national security (Snowden 204). This behaviour seems problematic to the extent that compliance with the law and mutual trust to follow agreements form the base of an orderly working society. If those values didn’t count anymore, chaos would likely ensue.

In conclusion, whistleblowing by public civil servants can reduce trust and credibility in government organizations. The democratic structure of a country relies on efficient government execution. In the case of whistleblowing, this is not apparent, and as a consequence, citizens don’t know who to trust concerning these allegations, especially in cases where there might be an innocent explanation for the conduct, and the suspicion could be unfounded.

3.1.2 The Confidentiality dilemma

An efficient but also respectful work-environment is crucial for the well-being of the employees. But the relationships that have been formed between the members of the organization put the potential whistleblower in a moral dilemma. Whistleblowers do not only owe loyalty to their institution but also to their fellow colleagues.

Many workspace relationships can develop into friendships, which are characterized by “confidential exchanges of pieces of personal information that come with an expectation that they remain between the parties involved” (Ceva and Bocchiola 98). The closer a collaboration within the workspace between two colleagues is, and the longer a relationship has been established, the weightier such duties of loyalty to other employees would be (Malek). An easy application for this example would be school: Should I honor my friend’s relationship and not tell the teacher that he cheated on a test, or should I enhance the transparency in my class by reporting this wrongdoing to create equal and fair conditions for everybody?

This can be transferred to a case where an employee reveals to another colleague some sort of wrongdoing that he committed, for example, accepting money with the intention to influence law-making or corporate relations. In this instance of bribery, the other colleague to whom the information was passed in a confidential manner as a friend has to decide if the sacrifice of their personal relationship for the sake of transparency is worth more than the person’s privacy (Ceva and Bocchiola 99).

The potential whistleblower has to evaluate the consequences and risks of two potential scenarios. The first case, being the non-disclosure of the malpractice, honours the colleague’s privacy but on the downside tolerates this clearly problematic behaviour. The second scenario, the revelation of the wrongdoing, would imply a betrayal of loyalty to the relationship, but on the other hand, would enhance the organization’s transparency (Ceva and Bocchiola 99+103). If the whistleblower thinks that it should not be concealed because the disclosure serves the public interest, then it could be permissible to report this wrongdoing.

Nevertheless, this behaviour has one risk that has to be taken into account. Blowing the whistle can have negative effects on the working environment in the

organization because “it implies a breach of confidentiality, and [...] might have the consequence of undermining personal bonds of trust between the members of the same organization” (Ceva and Bocchiola 113). A company or an organization with no cohesion or team spirit between the employees cannot work sufficiently in the long term. The whistleblower is therefore damaging the workforce atmosphere by putting the interests of others above the well-being of the individuals in the institution.

3.2 Whistleblowing as a courageous act

Despite the risks that were established in the previous paragraphs, it will be pointed out why whistleblowing can also be regarded as courageous and morally.

3.2.1 Disclosure of malpractices

The main reason why the practice of whistleblowing has originally emerged is the revelation of crimes occurring in a workplace. The whistleblower’s behaviour is crucial to stop harm ensuing from these malpractices and also, therefore, serving as a part of democratic regulations within a state.

Whistleblowers “are the early warning signal to nip problems in the bud and prevent avoidable disasters” (Devine 94). The insiders who blow the whistle play an important role in uncovering alleged wrongdoing or even crimes because cases of fraud, power abuse, or the implementation of illegal spying programs (see the case of Edward Snowden) usually involve an attempt to conceal the crime, making it harder for normal state law enforcement to retrace it. Through whistleblowing, employees are able to by-pass their superiors since, at times, that’s the area where the problem arises or where it might get blocked because “the people who create the rules have no incentive to act against themselves” (Snowden 52). This is proven by the fact that most of occupational fraud that was hinted at by tips is captured through whistleblowing³.

³ <https://acfepublic.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf> (download on 31 October 2020)

Furthermore, the practice has one major advantage for the prosecution process. The legitimacy of the disclosed evidential material can be assured through the whistleblower's nature, which is characterised by the element of membership in the accused organization. The insiders are close to the action and have evidence from first hand, where it originated.

By stopping these practices and demanding justice, whistleblowers can also be seen as a part of the democratic regulations in a state, and as having many similarities with journalists. Whistleblowers and the press could be referred to as natural allies as both sides demand greater transparency and defend public interests. Especially investigative journalists improve the quality of a democratic state by actively trying to expose governmental malpractices or corporate wrongdoing, leaving no room for malpractices. It is because of these activities in defending the public interest that the media is also referred to as the fourth power, alongside the legislature, the executive, and the judiciary. "The theory of a "fourth estate" is to ensure government transparency and provide a check on overreach, of which the secret surveillance of entire populations is surely among the most radical examples" (Greenwald 210).

Viewing whistleblowers in the same line as the press indicates that whistleblowers strengthen the democratic structure of a state by addressing wrongdoings that could seriously undermine the quality of the institution's work. With the urge to change and improve corporate wrongdoing and governmental malpractices, whistleblowers take an active role as indirect law enforcers and public interest representatives, securing the democratic structure.

3.2.2 Public Accountability

Whistleblowers play a crucial part to restore the public conception about moral values in a society. Whistleblowers can have a positive effect on the societal construct shaped by moral accountabilities.

Even though whistleblowing does not necessarily restore the faith in the authorities (please refer to 3.1.1), it strengthens the faith in the collective's moral standards and values. Uncovering severe wrongdoings on the part of big corporations or the

government restores the public conception about the sense of justice. Whistleblowers “ought to do so in order to restore the logic of public accountability that such an alleged wrongful practice or behaviour has altered” and furthermore “re-establish disrupted relations of public accountability” (Ceva and Bocchiola 74). The feeling that has crept into society that small devoted and obedient citizens are held accountable for anything whereas the most powerful members in society seem to be untouchable even before the laws with their unethical practices diminishes the national identity shaped by moral values we all share as a society: ‘We can’t get away with anything, but they can?’ (Coleman 111). Whistleblowing reduces this societal inequality, created for example, by any behaviour within a workplace that contradicts moral values like honesty, or the accepted standards about what’s right or wrong. The mass surveillance of entire populations by the United States surely belongs to that category.

“Ultimately, it [public accountability] is about ensuring that people are able to trust each other to do what is expected of them”⁴. This act shows each member of society that moral standards do indeed still matter, and therefore social cohesion gets strengthened, and faith in the collective gets restored.

Whistleblowers sacrifice themselves for society’s conception of moral standards to assure that we live in a society where cheating does not become the pathway to success. By not ‘letting the bad guys win’ Edward Snowden’s behaviour cost him his career, home in America, and freedom (Greenwald 47). He took a huge burden on him to point out that the United States’ government practice represents a breach with any moral standards and even the law.

⁴ <https://oag.parliament.nz/2019/public-accountability/docs/public-accountability.pdf> (download on 1 November 2020)

4 Treatment of whistleblowers in the United States

The question of the title and the categorisation of whistleblowers goes beyond the justifiability of whistleblowing. The responses from the authorities and the public images also influence the depiction of whistleblowers. The United States of America was chosen as an example here due to its long history of national security disclosures involving the exemplary case of Edward Snowden.

4.1 Governmental responses

The governmental responses to whistleblowing differ from country to country. But the United States government certainly has reputation to lose in the case of a whistleblower, as it constitutes one of the most powerful countries in the world.

The United States represents one of the most powerful countries in the world. To maintain this position, the government has to make sure that no internal information falls into the hands of the enemy. Therefore, whistleblowing that targets this state enjoys great significance.

The United States, especially the Administration of President Barack Obama, valued state secrecy and national security as one of their highest goals. They “had waged [...] an unprecedented war on whistleblowers” (Greenwald 50), even though campaigning with the promise to protect them and value transparency (Greenwald 50).

In response to national security threats, the US government has expanded and intensified the culture of state secrecy. Exploiting the memory and fear of the 9/11 terror attacks, the US justified the over-classification of policies and documents, making it harder to leak those (Devine 76). In that manner, the government is “criminalising disclosures” (Devine 76) because the highly classified nature of these documents, including the illegal suspicionless surveillance program by the NSA, makes any disclosure of that material an official crime against the United States. The Espionage Act of 1917, a relic of World War I originally intended to limit demer of the war, gives the state the right to initiate criminal charges against somebody who could potentially endanger United States security (Asp and Fisher). Because of the broad and loose terms of this law, the Obama administration “has

prosecuted more government leakers [...] than all previous administrations in the US history *combined* ” (Greenwald 50), including Edward Snowden. But contradictorily, it is not proven that his disclosure of the NSA mass-surveillance programs did pose a direct threat to the national security of the United States.

The disclosed programs, originally intended for the detection of terrorist attacks, failed to present even one case in which crimes could have been prevented (Greenwald 202). The apparatus itself is broken as it “ ‘collects far more content than is routinely useful to analysts’ ” and is therefore not serving national security (Greenwald 98).

This contradiction about the treatment of whistleblowers in the United States goes even to the extent that, as Snowden describes it, “American law makes no distinction between providing classified information to the press in the public interest and providing it, even selling it, to the enemy” (Snowden 249) In this manner whistleblowers are equated with spies or traitors and denounced as public enemies.

4.2 Societal response

Even though Edward Snowden regards himself as a worker for the public (Snowden 1), the public itself does not have a clear opinion of whether he can be regarded as a hero or traitor. A survey conducted by the Pew Research Center and USA TODAY about the disclosure of the secret NSA programs “finds that [...] 49% say it serves the public interest. However, 54% of the public [...] say the government should pursue a criminal case against the person responsible for leaking the classified information”⁵.

To assess whether the exposed allegations can be taken seriously, the media and the public eye tend to slide off to the whistleblower’s private life. As the individual’s appearance has an influence on the public’s reaction to the disclosure, Edward Snowden wanted to underline his credibility and legitimize his behaviour by giving small insights into his life and personal beliefs in a documentary he shot with

⁵ <https://www.pewresearch.org/politics/2013/06/17/public-split-over-impact-of-nsa-leak-but-most-want-snowden-prosecuted/> (download on 11 October 2020)

journalists in Hong Kong before the final disclosure (Mistry 116). If the public regards the person himself as trustworthy, then the claims in the disclosed material are more likely to be listened to. As a consequence, the public, especially the media or magazines, start analysing his personal and professional life. Because of the fact that whistleblowing is a polarizing topic, the phenomenon that can be observed is the defamation of whistleblowers on a personal level. Many of the personal details are displayed in an exaggerated way: “If they’d ever visited a psychiatrist [...] they were ‘mentally unsound’. If they’d been drunk even once, they were said to be alcoholics. If they’d had one extramarital affair, they were said to be sexual deviants.” (Snowden 295). The public image could get distorted and not focus on the actual disclosed material.

But Snowden’s initial fear was that the public wouldn’t care about his allegations (Greenwald 19). The fact that the NSA collects virtually everything that could be tracked through electronic devices, like your browser history or emails or even a motion profile (Snowden 179) still couldn’t bother some people: “ ‘If they want to listen to my boring life, then they’re welcome’ ” (Greenwald 195). But this attitude signals to the authorities that there is no opposition against those illegal practices, and thus the government can continue to undermine fundamental rights.

5 Conclusion: hero or traitor?

Due to the polarizing atmosphere evolving around this topic, the title and classification of whistleblowers are hard to determine and usually require a case-by-case study. But spreading the image of the two extreme views, being a hero or traitor, can be misleading.

Seeing whistleblowing as a heroic act, where one sacrifices his life for the greater good, makes it seem like a 'one-shot game'. The image of martyrs might seem extraordinary and praiseworthy, but it goes beyond the capacity of most ordinary individuals to do the same thing when encountering wrongdoing in their workplace. On the contrary, portraying whistleblowers as traitors or spies presumes a fundamental tendency to the evil side and the urge to destroy for private gain, which does not apply to whistleblowers.

The case of Edward Snowden showed that there is still no acceptance of whistleblowing in our society. He remains a tragic figure in the history of national security disclosure of the United States, stuck between both of these extremes.

Even though there are valid arguments that speak against the act of whistleblowing, modern society is in need of this practice to expose grave governmental wrongdoing and malfunction and therefore, must endure the consequences that come with whistleblowing.

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7 Affidavit

Eidesstattliche Erklärung

„Ich erkläre hiermit, dass ich die Seminararbeit ohne fremde Hilfe angefertigt und nur die im Literaturverzeichnis angeführten Quellen und Hilfsmittel benützt habe.“

....., den

Ort

Datum

Unterschrift

J. Lehm