

## The Civic Duty to Report Crime and Corruption

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### Résumé de l'article

Le devoir civique de dénoncer les délits de crime et corruption auprès de l'autorité publique est-il un devoir moral ? Après une clarification de la nature de ce devoir et un examen de deux réponses négatives à la question, j'envisage une position attrayante et répandue, selon laquelle le devoir civique est bien un devoir moral. L'argument est le suivant : le crime et la corruption menacent la stabilité politique et les citoyens ont un devoir de renseigner les autorités sur les délits criminels et de corruption afin de contribuer aux efforts de maintien de l'ordre. Ce devoir est triplement général, puisqu'il concerne tout délit criminel et affaire de corruption et s'applique à chacun et partout. Dans cet article, je conteste la portée générale de cet argument. Je montre que le devoir civique de dénoncer les délits criminels et affaires de corruption auprès *des autorités* est bien plus limité que les gens pensent, dans la mesure où il n'existe que lorsque l'État (i) condamne comme « crime » et « corruption » de réels méfaits et (ii) constitue un destinataire d'information fiable, démontrant la capacité et la volonté de tenir les coupables pour responsables. Je soutiens aussi l'existence d'un devoir d'informer le public directement – devoir qui est plus important qu'on le suppose d'ordinaire. Lorsque la condition (ii) n'est pas satisfaite, les citoyens ne sont pas moralement obligés d'informer le gouvernement, mais ils ont un devoir d'informer *le public*, et cela, même lorsque la cible est le gouvernement et la dénonciation est dangereuse et illégale.



# THE CIVIC DUTY TO REPORT CRIME AND CORRUPTION

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## ABSTRACT:

Is the civic duty to report crime and corruption a genuine moral duty? After clarifying the nature of the duty, I consider a couple of negative answers to the question, and turn to an attractive and commonly held view, according to which this civic duty is a genuine moral duty. On this view, crime and corruption threaten political stability, and citizens have a moral duty to report crime and corruption to the government in order to help the government's law enforcement efforts. The resulting duty is triply general in that it applies to everyone, everywhere, and covers all criminal and corrupt activity. In this paper, I challenge the general scope of this argument. I argue that that the civic duty to report crime and corruption *to the authorities* is much narrower than the government claims and people might think, for it only arises when the state (i) condemns genuine wrongdoing and serious ethical offenses as "crime" and "corruption," and (ii) constitutes a dependable "disclosure recipient," showing the will and power to hold wrongdoers accountable. I further defend a robust duty to directly report to the public—one that is weightier and wider than people usually assume. When condition (ii) fails to obtain, I submit, citizens are released of the duty to report crime and corruption to the authorities, but are bound to report *to the public*, even when the denunciation targets the government and is risky or illegal.

## RÉSUMÉ :

Le devoir civique de dénoncer les délits de crime et corruption auprès de l'autorité publique est-il un devoir moral? Après une clarification de la nature de ce devoir et un examen de deux réponses négatives à la question, j'envisage une position attrayante et répandue, selon laquelle le devoir civique est bien un devoir moral. L'argument est le suivant : le crime et la corruption menacent la stabilité politique et les citoyens ont un devoir de renseigner les autorités sur les délits criminels et de corruption afin de contribuer aux efforts de maintien de l'ordre. Ce devoir est triplement général, puisqu'il concerne tout délit criminel et affaire de corruption et s'applique à chacun et partout. Dans cet article, je conteste la portée générale de cet argument. Je montre que le devoir civique de dénoncer les délits criminels et affaires de corruption auprès *des autorités* est bien plus limité que les gens pensent, dans la mesure où il n'existe que lorsque l'État (i) condamne comme « crime » et « corruption » de réels méfaits et (ii) constitue un destinataire d'information fiable, démontrant la capacité et la volonté de tenir les coupables pour responsables. Je soutiens aussi l'existence d'un devoir d'informer le public directement – devoir qui est plus important qu'on le suppose d'ordinaire. Lorsque la condition (ii) n'est pas satisfaite, les citoyens ne sont pas moralement obligés d'informer le gouvernement, mais ils ont un devoir d'informer *le public*, et cela, même lorsque la cible est le gouvernement et la dénonciation est dangereuse et illégale.

“Report corruption now.”<sup>1</sup> “If you see something, say something.” “Confess your own crimes and report on others.” The first two injunctions are from the U.S. Federal Bureau of Investigation and the Department of Homeland Security, respectively, the third from China. Many countries have anticorruption hotlines soliciting anonymous tips about corrupt and fraudulent practices in the public and private sectors. Governments of all stripes call upon their citizens to report crime and corruption to the authorities: citizen informers, witnesses, and criminal informants are a vital component of police investigations, while whistleblowers are critical for financial, corporate, and tax law enforcement.

Reporting crime and corruption is considered among our “civic duties,” along with voting and taking part in the jury service. Civic duties arise in virtue of our membership in a political community: they fall in the category of “associative duties,” which are special duties that agents incur as a result of their relationships or voluntary undertakings (unlike natural duties, which bind everyone).<sup>2</sup> Although all civic duties seek to promote the “common good,” their content varies somewhat across communities, as does the understanding of the common good. For instance, military service is deemed an important civic duty in Israel, but not in New Zealand; and taking an interest in political life is considered a civic duty in Norway, but not in Russia. Some civic duties, such as jury duty, are also legal duties, while others, such as being a well-informed voter, are not. Interestingly, most if not all states exhort their citizens to report crime and corruption as part of their civic duty.

I discuss crime and corruption together throughout this paper because the two concepts are related: on many accounts, corruption is a subspecies of crime; and what holds of the civic duty to report crime also holds of the civic duty to report corruption. “Crimes” are kinds of conduct that the law defines and recognizes as wrong. Criminal offenses are not necessarily *morally* wrong; depending on the law, they may be harmless (such as consensual sodomy), or even morally right, such as assisting escaped slaves, which was a federal offense in antebellum U.S. The term “corruption” is more ambiguous, and can be understood in a legal or moral fashion, i.e., either as whatever conduct a legal system prohibits as “corrupt,” or as including unethical, but not necessarily illegal, uses of power and influence. Nepotism, for instance, may not be clearly outlawed, though it is often conceived as a paradigmatic form of corruption.

Philosophers have paid little attention to civic duties in general, and to the duty to report crime and corruption in particular. They have long scrutinized the moral duty to obey the law, or “political obligation,” which applies to every citizen, but is typically not treated as a *civic* duty.<sup>3</sup> The philosophical neglect of civic duties is not surprising given that, on their face, they appear less fundamental than political obligation; the duty to obey the law is systemic—it spells out the appropriate attitude toward the socio-politico-legal system as a whole—while civic

duties are relative to states and specific.<sup>4</sup> Through appeals to civic duties, states exhort people to contribute to the common good by assigning responsibilities that go above and beyond mere obedience to the law.

Hence the following question which this paper addresses: is the civic duty to report crime and corruption a genuine moral duty? In other words, does it really exist? First, following up on the idea that political obligation is primary, one might assume that civic duties derive from political obligation, and therefore exist wherever political obligation obtains (viz. in legitimate—just or nearly just—states), and do not exist where political obligation fails to obtain. Call this the Legitimacy View for short. A second possible answer, which I dub the Legal Obligation Argument, is that there is no duty to report crime and corruption: there is a moral and legal duty to obey the law, above and beyond which civic activities are supererogatory, so that only legal requirements to report crime and corruption generate a moral duty.

Third is a common, affirmative answer: many people believe that the civic duty to report crime and corruption is a genuine moral duty. I propose to articulate an argument, which I call the Preserving Stability Argument (PSA), to support this position. According to the PSA, citizens have a moral duty to help produce the vital benefits of peace and stability associated with the rule of law; crime and corruption undermine these benefits; and since denunciations are a critical tool of the government's law enforcement efforts, citizens have a moral duty to report crime and corruption to the authorities. This duty is triply general, as it applies to everyone, everywhere, and covers all criminal and corrupt activity.

In this paper, I challenge all three answers to the central question, but focus especially on the PSA. I reject the Legitimacy View's assumption that civic duties derive from political obligation. For example, it is reasonable to argue that there is a duty to be well-informed voters wherever there are elections, regardless of whether the state generates political obligation. The civic duty to report crime and corruption in particular seems very important under defective political conditions, while it is probably superfluous in just societies that experience little noncompliance. Contra the Legal Obligation Argument, I show that the duty is genuine even where it is not legally defined. Against the PSA, I contend that the civic duty to report crime and corruption *to the authorities* is much narrower than the government claims and people might think, since its existence depends on its content (what is reported) and on the authorities' trustworthiness; and I defend a robust duty to directly report *to the public*—one that is weightier and wider than people usually assume.

The discussion proceeds as follows. Part I clarifies the civic duty to report crime and corruption by sketching a brief analysis of denunciation—its components and varieties. In Part II, I present the Legal Obligation Argument and the PSA

(I shall not consider further the Legitimacy View). I then argue, in Parts III and IV, that the duty to report crime and corruption to the authorities does not apply generally, but only arises when the state (i) condemns as “crime” or “corruption” genuine wrongdoing or conduct that threatens to undermine public trust, and (ii) constitutes a dependable “disclosure recipient,” showing the will and power to hold wrongdoers accountable. In Part V, I argue that when condition (ii) is not satisfied, citizens are released of the duty to report crime and corruption to the authorities, but are bound to report government wrongdoing and corruption to the public, even when the denunciation is risky or illegal.

### I.

To report criminal or corrupt activity is to denounce it. Denunciation contains the following elements: (1) an actor (witness or insider), (2) an act (disclosure of information supposed to be kept secret), (3) a target (someone or some agency), (4) a subject (criminal or corrupt activity), and (5) a recipient (authorities, newspaper, or other public outlet).<sup>5</sup> Informing, providing tips, testifying, “snitching,” tattling, and whistleblowing are all species of denunciation. The difference between these kinds of denunciation tends to hinge on the actor’s position relative to the wrong.

The term “*informer*” may be used to designate, inter alia, criminal informants (insiders to criminal activity), citizen-informers (e.g., concerned citizens calling the police to report “suspicious activity”), undercover agents, and leakers. Insiders who report on their fellow associates, whether the group is a gang, a labor union, or the police, are often called “snitches” and “rats” by their fellow associates who feel betrayed by the denunciation. A *witness* is usually someone who, as a passerby or victim, gained information relevant to a criminal investigation and prosecution.

*Whistleblowers* are employees, contractors, civil servants, or public officials, who report to the authorities some information concerning illegal or unethical activities at their workplace. Examples of whistleblowers include Jeffrey Wigand, who revealed Brown & Williamson’s intentional manipulation of its tobacco blend to increase the amount of nicotine in cigarette smoke, and Detective Frank Serpico, who exposed the New York Police Department’s widespread corruption. Whistleblowing may also be undertaken by outsiders, such as journalists, public intellectuals (think of Emile Zola’s “J’Accuse!”), and activists like Erin Brockovich, who exposed Pacific Gas and Electric Company’s toxic dumping in California.

There seems to be an important difference between informants, on the one hand, and citizen-informers, witnesses, and whistleblowers, on the other hand, when it comes to the actor’s reasons for denouncing the wrongs. Informants are often criminals, and they do not usually seek out the authorities to inform on other

criminals. For instance, Sal “Big Pussy” Bonpensiero, soldier in the Soprano family on the HBO TV show, is approached by the FBI with the choice of either working for them as an informant or likely facing life in prison. Whistleblowers, in contrast, are often driven by their sense of duty to reach out to the authorities.

According to Peter Jubb, the specific difference between whistleblowing and other kinds of denunciation, such as informing and providing tips, lies in the stand that whistleblowers take when they make the information public: their disclosure amounts to an *indictment* of the wrongdoing.<sup>6</sup> Whereas whistleblowers do not personally benefit from the disclosure, criminal informants often provide information in exchange for some private gain, such as a shorter sentence. From this perspective, one might think that whistleblowers, citizen-informers, and witnesses, but *not* informants, ever fulfill their civic duty, on the grounds that the latter fail to act for the reasons provided by the duty (say, in order to contribute to the common good).

However, Jubb’s rigid distinction between self-interested informants and disinterested whistleblowers does not withstand scrutiny. For one, not all whistleblowers are driven by their sense of duty. In the U.S., the Dodd-Frank Wall Street Reform and Consumer Protection Act provide financial incentives to corporate whistleblowers by rewarding them with a share of the money they help the government save. Bradley Birkenfeld was awarded \$104 million for blowing the whistle on Credit Suisse. It is easy to see how such large pecuniary incentives could motivate potential whistleblowers.

Moreover, not all criminal informants are driven by personal interest. Jorge Luis Borges’s *Unworthy* tells the story of a man moved by his civic-mindedness to inform the police on a burglary that he is about to commit with other gangsters.<sup>7</sup> Even informants who do have something to gain do not necessarily act for that purpose. For instance, the homeless, heroin addict Bubbles in *The Wire*, regularly provides information about crimes to the police detectives.<sup>8</sup> Although he receives small amounts of cash for these tips, Bubbles appears chiefly motivated by his moral conscience (viz., compassion for the victims and desire to see justice done).

But more importantly, determining whether the civic duty of denunciation is a genuine moral duty does not require investigating agents’ motivations for denouncing crime and corruption. Though motives may be relevant to assess the agent’s praiseworthiness, they do not matter when it comes to the duty’s existence. So: does the civic duty really exist?

## II.

First, one might deny that the civic duty to report crime and corruption is a genuine moral duty on the grounds that citizens’ main and only duty *qua* citizens is to obey the law.<sup>9</sup> According to the Legal Obligation Argument, when the law



requires reporting crime and corruption, then the individual ought to do so, because she is morally and legally bound to obey the law. For instance, one is legally obligated to tell the truth to the authorities when one is interrogated about a crime. For another example, physicians and nurses have a duty to report to the authorities injuries resulting from a knife or gunshot, because these may be caused by criminal activity.<sup>10</sup> But when there is no legal duty to report—for instance, there is no general legal duty to disclose or report known or suspected corrupt activity to law enforcement bodies in the U.S., U.K., Australia or China—ipso facto there is no moral duty to report either, even if one's state and fellow citizens exhort one to report corruption. One's denunciation then goes above and beyond one's duty: it is supererogatory.

The Legal Obligation Argument is unpersuasive, for reasons I brought up earlier. The point of civic duties is precisely to assign additional responsibilities to citizens—responsibilities that go beyond mere compliance with the law, toward contribution to the common good. So, one cannot infer from the fact that civic duties are not always inscribed in the law that they are supererogatory. If someone failed to answer an AMBER alert, for instance, while possessing information that could help law enforcement find a missing child, she would not simply be found despicable (as the Legal Obligation Argument might still allow): she would rightly be blamed for violating her *duty* to report that information.

The civic duty to report crime and corruption is widely accepted, both in ordinary and critical morality, so that the Legal Obligation Argument conflicts with the common view. Not only do most, if not all states, exhort their citizens to report crime and corruption as part of their civic duty, but citizens exhort each other as well; and whistleblowers and witnesses often advance this duty to justify their actions. Philosophers, too, in their rare mentions of the civic duty to report crime and corruption, take it for granted. Joel Feinberg posits a duty to report crimes to the police in the context of his analysis of blackmail: “[t]he requirement to report criminals is a civic duty presupposed by our legal system and implicitly recognized by it in many ways.”<sup>11</sup> Violating this duty in exchange for pay is blackmail, in his view. Feinberg does not clarify whether the duty in question is legal or moral, but there are reasons to think that, insofar as it is not systematically inscribed in the law, it should be conceived as going beyond legal compliance.<sup>12</sup>

This leads us to the Preserving Stability Argument, which I take to be the argument that the government would make if, like the Laws of Athens in the *Crito*, it were to address its subjects and make explicit the grounds of its appeals to citizens' civic duty. The PSA goes like this: (1) the state supplies the vital benefits of peace, security, stability, and the rule of law to everyone within its borders; (2) citizens ought to help produce these benefits; (3) criminal and corrupt activities compromise these benefits (say, they reduce security, destabilize ins-

titutions, and undermine the rule of law); (4) law enforcement against crime and corruption is crucial to the state's continued production of these benefits; and (5) denunciations are a vital tool of law enforcement. Therefore, (6) citizens have a moral duty to report crime and corruption. According to the PSA, the civic duty to report crime and corruption is based on a moral duty to assist the state in producing the vital benefits of peace, security, stability, and the rule of law.<sup>13</sup> The resulting duty is triply general, since it applies to everyone, everywhere, and covers all criminal and corrupt activity.

The civic duty to report crime and corruption, on the PSA as well as on my account, is a *pro tanto* duty: it provides ordinarily decisive, yet defeasible, reasons for action. That is, it may be overridden by countervailing considerations, and it may fail to arise at all. In the next two sections, I shall show that the duty (i) does not arise when the denunciation is morally impermissible, and (ii) is defeated when the authorities fail to constitute reliable disclosure recipients. These defeaters, each of which is sufficient to lift the duty to report to the government, in turn spell out the conditions that are necessary to generate the civic duty to the government: the state must (i) condemn the right kind of misconduct as "crime" and "corruption" and (ii) constitute a dependable disclosure recipient. The upshot is that the duty to report crime and corruption to the government is much narrower than it is alleged to be on the PSA.

### III.

The first defeater of the duty of denunciation concerns the content or subject of the denunciation, that is, the nature of the misconduct that is reported. Decent and totalitarian states alike encourage denunciation. The U.S. promotes denunciations in the "war on drugs" and in the "war on terror." As he took office in 2009, President Barack Obama praised whistleblowers, whom he described as "often the best source of information about waste, fraud, and abuse in government."<sup>14</sup> Denunciation also flourished in police states such as Nazi Germany and the Soviet Union, which used it to root out "political" and "moral" corruption. The Soviets saw revolutionary denunciation as both necessary and virtuous, going so far as to establish "denunciation quotas."<sup>15</sup> In Nazi Germany, the real instruments of surveillance were less the Gestapo than the citizenry, who reported everything from Jews' holding hands with non-Jews to Germans' listening to foreign radio—often in order to settle petty grievances.<sup>16</sup>

Whether done out of concern for the public or for petty motives, these latter denunciations were not fulfilling a genuine moral duty. For there is no moral duty to report criminal offenses that are harmless and do not constitute any moral wrongdoing.<sup>17</sup> Uganda's egregious Anti-Homosexuality Bill, which criminalizes "the promotion of homosexuality," is a case in point; the denunciation of gay persons, though praised as a civic duty by the state and some media outlets, is plainly immoral, insofar as homosexuality is itself perfectly permissible. For



another example, Alabama's anti-immigration law HB 56 requires public school officials to determine students' immigration status and report back to the state. Not only there is no duty to report gays or unauthorized immigrants, but it is further plausible to argue that there is in fact a moral duty *not* to report such "criminals." As the case of HB 56 suggests, the civic duty's existence does not depend on the state's overall legitimacy, but rather on the nature of the conduct that is reported.

Similarly, there cannot be a moral duty to report corruption when the conduct in question is morally permissible or morally right. When the state equates corruption with disloyalty to the ruling party ("counterrevolution" under the Bolsheviks), for instance, it sanctions thoughts rather than actions, and thereby violates individuals' fundamental interest in freedom of conscience.<sup>18</sup> There cannot be a duty to report corruption under circumstances like these.

What kind of criminal and corrupt activity might there be a duty to report, then? My suggestion, in broad strokes, is that one has a *prima facie* duty to report criminal offenses that are harmful or intrinsically wrong (*mala in se*), and corrupt activities that undermine public trust and good governance. The latter deserves some elaboration. Joseph Nye's seminal conception of corruption as "behavior that deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains" targets the *right* kind of *wrong* action.<sup>19</sup> Rod Blagojevich's soliciting of bribes for political appointments is a good example. Bribery is appropriately considered a paradigmatic form of corruption, given its toxic effects on public trust and good governance.<sup>20</sup>

Yet Nye's view is unnecessarily narrow in restricting corruption to the abuse of public office. The World Bank rightly extends the understanding of corrupt practice beyond the public sector, and includes embezzlement and insider trading, which involve the violation of fiduciary responsibilities to the clients and generally threaten public trust in the securities market. Fraud is also generally included in, or associated with, corruption, insofar as it harms the public and undermines trust. The World Bank defines "fraudulent practice" as "any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation."<sup>21</sup> For instance, predatory lending harms not only the borrowers but also the communities (through subsequent foreclosures).

The general point here is that the civic duty to report crime and corruption is constrained by the content of the disclosure; just because the government demands denunciation—and even if the government is legitimate—it does not follow that such denunciation is permissible. For there to be a moral duty to

denounce crime and corruption, there must be genuine wrongdoing, not simply transgression of the regime's laws and ethical standards.

#### IV.

The second defeater has to do with the disclosure recipient. Per the PSA, the goal of denunciation is usually to have the authorities investigate the criminal or corrupt activity and prosecute the wrongdoer, thereby deterring further misconduct of the same kind. In his analysis of whistleblowing, Jubb notes that the disclosure recipient, that is, the entity receiving the information, must have the "potential to remedy the wrong."<sup>22</sup> I propose we understand this "potential" in terms of will and power. Institutions (viz., authorities or the government) deserve the public trust to the extent that they demonstrate such will and power.<sup>23</sup>

In Southern Italy, under the Mafia's de facto rule, whistleblowing, informing, investigating, and prosecuting were routinely met by death threats.<sup>24</sup> The Italian authorities arguably lacked the power to investigate and prosecute wrongdoing at least until the 1990s. Italy has since shown serious lack of will to fight corruption and hold wrongdoers accountable. This was especially clear in 2003, when Prime Minister Berlusconi took over as chair of the Council of the European Union, while facing corruption charges. The Italian Parliament passed an immunity law to protect him from prosecution for allegedly bribing judges. After the Italian constitutional court revoked the law, the Italian trial court in Milan used the statute of limitations to clear Berlusconi of the charges. All three branches of the Italian government showed themselves undeserving of public trust.

Ditto with crime: the law enforcement agency must have the power and will to hold wrongdoers accountable. Under Jim Crow, state officials systematically failed to investigate, arrest, and indict white offenders when the victims were African American. They had the power, but lacked the will, to prosecute crimes committed against African Americans, including assault and murder. The effect was to tolerate, and even encourage, racist violence, since people knew there would be no consequences for the wrongdoers. Untrustworthy institutions fail to obligate citizens to report to them.

Of course there will be some penumbral cases, in which it is difficult for citizens to determine whether the authorities constitute reliable disclosure recipients. But the very lack of evidence of the government's will and power provides a *prima facie* reason to distrust it, insofar as the state ought to *publicly* demonstrate, and persuade the people of, its will and power to hold wrongdoers accountable.

Take the distrust of police in poor urban areas in the U.S. Part of it has to do with the "anti-snitching" culture by which criminals frighten people with information out of reporting their activities to the police.<sup>25</sup> But another part has to do with real flaws of police work in areas that need it the most, including insuffi-

cient police protection and harassment of young black males through racial profiling tactics such as “stop and frisk.” In such places, the police often appear as an unreliable disclosure recipient. Citizens thus have a weaker duty, if any, to report crime to the authorities.

What if citizens wrongly believe their institutions to be trustworthy? This may happen if they fail to exercise due care in the assessment; or it may be the intended result of government’s lies and propaganda. What matters is that untrustworthy governments fail to generate genuine duties to report to authorities, even where citizens in fact trust their institutions.

One reliable measure of the authorities’ will and power to fight crime and corruption lies in the protections they afford whistleblowers and informants. If reporting to the authorities carries too great risks, citizens will be reluctant to do it. They might well be violating their civic duty by remaining silent, especially if they overestimate the risks of informing. But authorities can show their sincere commitment to eliminating crime and corruption by encouraging citizens’ civic activity; and they encourage the latter by protecting its exercise.

Informing and whistleblowing are a risky business indeed. *The Wire* begins with the trial of D’Angelo Barksdale, lieutenant of a powerful criminal organization which controls most of the drug trade in West Baltimore. D’Angelo is charged with the murder of another drug dealer. Though one witness, William Gant, willingly testifies, the Barksdale Organization has scared the other witness into recanting her testimony, and D’Angelo is acquitted. The Barksdale Organization kills Gant in retaliation for his testifying. Gant’s death appears as a tragic, yet predictable, result of the shortcomings of the police witness-protection program. By murdering a “civilian,” i.e., an ordinary citizen, the Barksdale Organization sends a clear message to the community: “snitches should die.” *The Wire* portrays West Baltimore as a violent, fear-ridden, lawless enclave in American society, in which the call for conscientious citizens like Gant to discharge their civic duty appears misplaced. Ordinary citizens cannot be morally obligated to risk their lives to report information about crime.

Whistleblowers face different kinds of risks, but no less serious than witnesses and other criminal informants. As insiders, they meet accusations of disloyalty to the organization, and are often considered troublemakers and traitors. Many employers punish and discourage internal whistleblowing by following a pattern of “harsh reprisals—from blacklisting, dismissal, or transfer to personal harassment.”<sup>26</sup> A survey of whistleblowers in the public and private sector revealed more than 60% of respondents lost their jobs because of employer reprisals.<sup>27</sup> Loss of income and expensive lawsuits often lead to bankruptcies, home foreclosures, divorces, and depressions.

In the U.S., a robust apparatus of federal and state law shields whistleblowers from employers' retaliation. The Lloyd-La Follette Act of 1912, for instance, guarantees the right of federal employees to furnish information to the U.S. Congress and shields them from wrongful dismissal. The Military Whistleblower Protection Act protects the right of members of the armed services to communicate with any member of Congress. Providing financial incentives is a good way to encourage whistleblowing on corruption and offsetting its costs, as the False Claims Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, which I mentioned above, do. Legal protections and rewards bespeak to the reliability of the disclosure recipient.

## V.

To recap, I have argued that the civic duty to report crime and corruption to the authorities is lifted when (i) the denunciation would be morally impermissible, given its subject, or (ii) the state does not constitute a dependable disclosure recipient. What happens when citizens come across information about grave misconduct, but the state has shown itself unreliable, ineffective, or worse? In this final section, I shall sketch an approximate answer to this question, focusing on government wrongdoing and public corruption, not private citizens' commissions of crimes or corporate corruption *per se*.<sup>28</sup> Governmental abuse of public trust, and the whistleblowers who denounce it, raise particularly pressing concerns in light of recent events: Bradley (now Chelsea) Manning, who leaked the Iraq and Afghanistan War Logs to WikiLeaks, was recently sentenced to 35 years in prison; and Edward Snowden found temporary asylum in Russia after he blew the whistle on the National Security Agency's massive domestic surveillance program.

I submit that when the state does not constitute a dependable disclosure recipient, citizens in possession of information regarding serious government wrongdoing have a *prima facie* moral duty to report it *to the public*, and not to the authorities. Reporting to the public typically involves transmitting the information to a media source or other outlet, which then diffuses the information to the public. This duty is a civic duty, based on the responsibility to promote the common good. When institutions fail to be trustworthy, this general responsibility entails special vigilance or alertness, which is not only an appropriate response to imperfect and less-than-trustworthy institutions, but is also a significant tool to enhancing institutions' trustworthiness, by holding them (and officials in them) accountable. Citizens may thus be morally bound to alert the public about crime and corruption, even when the target of disclosure is the government, the act of disclosure (*viz.* leaks) is illegal and costly, and there is some disagreement about the legal or ethical status of the subject of disclosure, as has been the case with the NSA's surveillance program, which the government insists was legal.

The difference in the recipient of the civic duty—the authorities or the public—leads to a difference in the goals of the disclosure. One reports to the government in order to halt the wrongdoing. From this perspective, the denunciation fails (not as an act of disclosure but in terms of its goal) if the government does not do anything about the wrong in question. The government’s learning about some criminal or corrupt activity, in short, has no value independently of its effects on such activity. The standard of success is different when it comes to reporting to the public: informing the public about government wrongdoing is a valuable goal even if one can reasonably expect the wrongs in question to go on. Indeed, public awareness about wrongs may be deemed intrinsically good, whatever else happens.

In general, public awareness matters because adequately informed citizens make better collective decisions. This is at the root of another civic duty—the duty to keep informed.<sup>29</sup> Further, the distinctly democratic ideal of self-determination grounds something like the public’s right to know. The civic duty to report information about crime and corruption to the public is crucial, then, insofar as its fulfillment enhances the community’s epistemic position and promotes its self-determination. Hence the following dimensions by which to assess the civic duty’s moral force: *the graver the wrong, the more important the benefits, the weightier the duty.*

One may object that blowing the whistle on government wrongdoing cannot be required because it is too costly. The Obama administration has used the Espionage Act of 1917 to press criminal charges in seven alleged instances of national security leaks.<sup>30</sup> It is important to note, in response, that civic duties in general, such as military service, can require significant sacrifices. Nonetheless, the duty can be overridden by conflicting considerations such as prudential costs. Various measures may be taken to minimize the agent’s risks to herself, such as blowing the whistle anonymously. Think of Deep Throat, who tipped off the *Washington Post* about the Watergate scandal, and whose identity remained hidden for decades. For another example, Russian activist and lawyer Alexei Navalny’s website RosPil “crowdsources” evidence of corruption in major Russian oil companies, banks, and government ministries, allowing people to report information anonymously. Government contracts worth millions of dollars have been annulled since the site went up.

A proponent of the PSA would further object that there cannot be a civic duty to illegally report on government wrongdoing insofar as such illegal disclosure puts institutions at risk and destabilizes them. Indeed one might worry that government whistleblowers endanger national security by revealing classified information. However, this fear may be abated by requiring agents to exercise due care in the release of information, including through careful editing. For instance, *The Guardian* and the *New York Times* published “digest” articles des-

cribing the NSA's surveillance program, while the 1.7 million documents leaked by Snowden have not been accessible to the public. On the other hand, one may argue that WikiLeaks failed to exercise sufficient care by "dumping" online the 750,000 unedited documents leaked by Manning, as this may have put military personnel at risk. Arguably, special care should be shown in the release of top-secret army information when military operations are ongoing.<sup>31</sup>

Rawls writes that the agent who engages in civil disobedience "addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected."<sup>32</sup> One points out significant deviations from justice and tries to persuade the majority of the need for reform. Civil disobedience thus "serves to inhibit departures from justice and to correct them when they occur" and "helps to maintain and strengthen just institutions."<sup>33</sup> It promotes justice by proposing to rectify injustices. While Rawls's theory of civil disobedience applies to the special case of a "well-ordered society," the civic duty to report to the public their government's failures and abuses applies across the political spectrum—and it may play a similar role as civil disobedience does.

It is fruitful to view the duty to report to the public as standing in relation to the duty to report to the authorities the way civil disobedience stands with respect to the duty to obey the law: though the duty to report to the authorities, like political obligation, is the baseline, the state's failures open space for the justification of dissident or transgressive public addresses such as civil disobedience and government whistleblowing (as one might say is their common genus). By denouncing illegal or morally reprehensible government practices, government whistleblowers, like civil disobedients, can invigorate the public debate and enhance justice and legitimacy. Theirs is an imperfect but critical way of exposing the government's failures of trustworthiness.

In conclusion, the civic duty to report crime and corruption to the authorities, according to one apparently compelling argument, the PSA, is grounded in the duty to help produce the benefits of life under political authority. Contra this argument, I showed that the duty is lifted when (i) the law condemns as "crime" and "corruption" morally unproblematic conduct, and (ii) the authorities fail to constitute a dependable disclosure recipient, able and willing to halt the wrongdoing. Hence the civic duty to report to the government is narrower than people usually think. But the responsibility to promote the public good does ground a weighty civic duty to report information about crime and corruption to the public, even if doing so involves breaking the law. Government whistleblowing, like civil disobedience, is thus justifiable on the basis of its contribution to public deliberation.



## NOTES

- <sup>1</sup> I wish to thank Jill Delston, Meena Krishnamurthy, Chris Grau, David Lyons, Todd May, and Gabriel O'Malley for thoughtful comments on previous drafts of this paper.
- <sup>2</sup> Prominent associativist theories include: MacIntyre, Alasdair, *After Virtue*, 2nd ed., Notre Dame, University of Notre Dame Press, 1984; Walzer, Michael, *Spheres of Justice: A Defense of Pluralism and Equality*, New York, Basic Books, 1983; Dworkin, Ronald, *Justice for Hedgehogs*, Cambridge, MA, The Belknap Press of Harvard University, 2011, chap. 14.
- <sup>3</sup> One exception is Parekh, Bhikhu, "A Misconceived Discourse on Political Obligation," *Political Studies*, vol. 41, no. 2, 1993, p. 236-251.
- <sup>4</sup> See e.g., Richard Dagger, "Political Obligation," *The Stanford Encyclopedia of Philosophy*, Summer 2010 Edition, Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/sum2010/entries/political-obligation/>>.
- <sup>5</sup> This account is adapted from Peter Jubb's account of whistleblowing. See Jubb, Peter, "Whistleblowing: A Restrictive Definition and Interpretation," *Journal of Business Ethics*, vol. 21, no. 1, 1999, p. 77-94, 83-88.
- <sup>6</sup> *Ibid.*, p. 79.
- <sup>7</sup> Borges, Jorge L., "Unworthy" [*El indigno*], originally published in *Brodie's Report*, August 1970.
- <sup>8</sup> *The Wire*, created and produced by David Simon, HBO television series, 2002-2008.
- <sup>9</sup> I thank a referee at *Les Ateliers de l'éthique/The Ethics forum* for suggesting this position.
- <sup>10</sup> Lindh, Wilburta Q., Pooler, Marilyn, Tamparo, Carol D., Dahl, Barbara M. and Julie Morris, *Delmar's Comprehensive Medical Assisting: Administrative and Clinical Competencies*, 5<sup>th</sup> ed., Cengage Learning, 2013, p. 124. This duty is, arguably, not only legal, but also professional.
- <sup>11</sup> Feinberg, Joel, *The Moral Limits of Criminal Law*, Vol. IV: *Harmless Wrongdoing*, New York, Oxford University Press, 1988, p. 245.
- <sup>12</sup> There is some debate among scholars as to whether the duty is merely legal or moral. See Robinson, Paul H., Cahill, Michael T. and Daniel M. Bartels, "Competing Theories of Blackmail: An Empirical Research Critique of Criminal Law Theory," *Texas Law Review*, vol. 89, 2010, p. 291-352, 301.
- <sup>13</sup> Though the duty upon which the civic duty is based is natural, the civic duty binds individuals specially to their political community. This apparent "transformation" of a natural duty into an associative one should not be surprising, as most associativist theorists consider that special duties are based on general ones. Thus for Dworkin, conventions and social practices fix the scope of general responsibilities, and clarify the obligations that people standing in special relationships have. See Dworkin, *Justice for Hedgehogs*, *op. cit.*, chap. 14.
- <sup>14</sup> See: [http://change.gov/agenda/ethics\\_agenda/](http://change.gov/agenda/ethics_agenda/). Recent events cast doubt on the sincerity of such praise, as the Obama administration has pressed criminal charges against five whistleblowers who reported waste, fraud, and abuse in the National Security Agency (Edward Snowden being the latest).
- <sup>15</sup> See Fitzpatrick, Sheila, "Signals from Below: Soviet Letters of Denunciation of the 1930s," *The Journal of Modern History*, vol. 68, no. 4, 1996, p. 831-866.
- <sup>16</sup> See e.g., Gellately, Robert, "Denunciations in Twentieth-Century Germany: Aspects of Self-Policing in the Third Reich and the German Democratic Republic," in Sheila Fitzpatrick and Robert Gellately (eds.), *Accusatory Practices: Denunciation in Modern European History, 1789-1989*, Chicago, University of Chicago Press, 1997, p. 185-221; Gellately, Robert, *Backing Hitler. Consent and Coercion in Nazi Germany*, Oxford, Oxford University Press, 2001.
- <sup>17</sup> I hereby assume an objective standard of morality, which may differ from positive law and positive morality.
- <sup>18</sup> For sustained defenses of freedom of conscience, see e.g., Mill, J. S., *On Liberty* (1869), chap. 2; Scanlon, Thomas, "A Theory of Freedom of Expression," *Philosophy and Public Affairs*, vol. 1, no. 2, 1972, p. 204-226; and Leiter, Brian, *Why Tolerate Religion?*, Princeton, Princeton University Press, 2013.

- <sup>19</sup> Nye, Joseph, "Corruption and Political Development: A Cost-benefit Analysis," *American Political Science Review*, vol. 61, no. 2, 1967, p. 417-427.
- <sup>20</sup> See e.g., Noonan Jr., John T., *Bribes*, New York, Macmillan, 1984; Green, Stuart P., *Lying, Cheating, and Stealing: A Moral Theory of White-Collar Crime*, Oxford University Press, 2006, chap 16.
- <sup>21</sup> *World Bank's Anti-corruption Guidelines and Sanctions Reform: A User's Guide*, available online at: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1173795340221/RevisedPMNDFinaluserGuideline031607.pdf> (last accessed 9/26/13).
- <sup>22</sup> Jubb, "Whistleblowing," *op. cit.*, p. 83.
- <sup>23</sup> This proposal draws on Hardin, Russell, *Trust and Trustworthiness*, New York, Russell Sage Foundation, Vol. IV, 2002; Hardin, Russell, *Trust*, Cambridge, Polity Press, 2006; and Warren, Mark (ed.), *Democracy and Trust*, Cambridge, Cambridge University Press, 1999.
- <sup>24</sup> *Omertà*, the code of conduct in Mafia-governed territories implies "the categorical prohibition of cooperation with state authorities or reliance on its services, even when one has been victim of a crime"—in short, silence and non-interference. See Paoli, Letizia, *Mafia Brotherhoods: Organized Crime, Italian Style*, Oxford, Oxford University Press, 2003, p. 109.
- <sup>25</sup> The campaign called *Stop Snitchin'*, launched in Baltimore in 2004, illustrates this ethos. See e.g., Anderson, Elijah, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City*, New York, Norton, 1999, chap. 3.
- <sup>26</sup> See Glazer, Myron P. and Penina M. Glazer, *The Whistleblowers: Exposing Corruption in Government and Industry*, New York, NY, Basic Books, 1989, p. 7.
- <sup>27</sup> Jos, Philip H., Tompkins, Mark E., and Steven W. Hays, "In Praise of Difficult People: A Portrait of the Committed Whistleblower," *Public Administration Review*, vol. 49, no. 6, 1989, p. 552-561.
- <sup>28</sup> The answer will differ in the latter case, I think. For instance, vigilantism may be found justifiable to control (prevent or punish) private citizens' crime in the face of incompetent or unwilling law enforcement. See e.g., Dumsday, Travis, "On Cheering Charles Bronson: The Ethics of Vigilantism," *The Southern Journal of Philosophy*, vol. 47, no. 1, 2009, p. 49-67.
- <sup>29</sup> See e.g., McCombs, Maxwell and Paula Poindexter, "The Duty to Keep Informed: News Exposure and Civic Obligation," *Journal of Communication*, vol. 33, no. 2, 1983, p. 88-96.
- <sup>30</sup> Besides Snowden, four other NSA whistleblowers, WikiLeaks' Julian Assange, and Chelsea Manning have been charged. In contrast, only three people were prosecuted by all previous administrations combined. See e.g., Fung, Archon, "What the Snowden Affair Tells Us About American Democracy," *Boston Review* (published online July 7, 2013), <<http://bostonreview.net/blog/what-snowden-affair-tells-us-about-american-democracy>>.
- <sup>31</sup> For more on the possible justification of, and constraints on, leaks of classified information, see Delmas, Candice, "The Ethics of Government Whistleblowing" (manuscript in progress).
- <sup>32</sup> Rawls, John, *A Theory of Justice*, rev. ed., Cambridge, MA, Harvard University Press, 1999, p. 320.
- <sup>33</sup> *Ibid.*, p. 336.