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Failing Institutions, Whistle-Blowing, and the Role of the News Media

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ABSTRACT *The article discusses the normative grounds for recognising a watchdog role to the news media as concerns the dissemination of information about an institutional failure menacing a well-ordered society. This is, for example, the case of the news media's role in the diffusion of whistle-blowers' disclosures. We argue that many popular justifications for the watchdog role of the news media (as a 'fourth estate'; a trustee of the people's right to know; expert communicator) fail to ground that role in some unique feature that makes the news media special as concerns the performance of the role. We offer an alternative argument that shows how the watchdog role of the news media shares a justificatory ground with the role that any member of a well-ordered society has in terms of a general duty of answerability in the face of institutional failures. Although this duty does not bear only on the news media, we concede that in some contingent circumstances, the news media might be better positioned to discharge it and, therefore, to initiate corrective actions of institutional failures effectively and conscientiously. However, the establishment of the news media's responsibility in this sense is an empirical, not a conceptual or a normative matter.*

1. Introduction

Owing to their popular image as a 'watchdog' and a guardian of the public interest, the news media are customarily thought to be the privileged medium for whistle-blowers' disclosures. This article investigates the normative foundation of the role of the news media in contributing to initiate corrective action of institutional failures by disseminating some otherwise unavailable information on those failures. In this sense, the article asks to what extent the news media may be taken to perform a watchdog role in society and on what grounds it is justified.

We build on a growing debate in political theory about the moral justification of 'whistle-blowing,' the practice through which the member of an institution discloses some information concerning an alleged failure of that institution in order to initiate corrective action.¹ On some occasions, whistle-blowers seek the assistance of external actors, most notably the news media, to raise awareness about their qualms. Arguably the icon of the 'external whistle-blower' is Edward Snowden, a computer specialist working for the CIA and the NSA, who shared his concerns regarding the mass surveillance secret programmes of the US and British governments with some of his coworkers and, being unheard, he revealed these programmes to journalists at *The Guardian* and *The Washington Post*.

The question of whether external whistle-blowing is morally justified has unsurprisingly attracted a great deal of scholarly attention in the fields of practical ethics and applied philosophy.² A received answer to this question maintains that blowing the whistle to external entities such as the police or the news media is morally justified, even a matter of a duty, if the whistle-blower is not able to use internal resources to report her concerns because such internal channels are not available, viable, or have proved insufficient. The role and duties of those who are at the receiving end of whistle-blowers' disclosures, however, have not yet received a systematic philosophical treatment. Unlike in philosophy, the topic has generated important research in media studies. In that context, besides analyses of the (evolution of) news media coverage of whistle-blowing, much scholarly attention has been paid to constructing a model of best practices for journalists to deal with whistle-blowers and anonymous sources.³ The development of best practices modelled on various (deontological or consequentialist) ethical theories has been of critical importance for media scholars to distinguish the news media from other outlets such as WikiLeaks as a conduit for whistle-blowers' disclosures⁴ and to 'assert journalism's central role in the whistleblowing process'.⁵ In this article, we do not question the importance of establishing good practices with regard to the news media's treatment of whistle-blowers, but we discuss the grounds of the underlying idea that the news media, but not other social actors, occupy a unique role as a vehicle for whistle-blowing.

The idea that the news media have a special responsibility or a duty to take action with regard to whistle-blowers' disclosures finds its common expression in the widespread belief that the news media perform a 'watchdog' role in a society. As we argue below, the prevailing view that the news media have such a duty in virtue of the special features that make them uniquely positioned to act as a 'watchdog' is not wholly satisfactory. While we do not reject the intuition that news media are a watchdog, we challenge the source and the kind of duty the news media have to perform that role. Our main claim is that the news media's duty in this respect is just one specific instance of a general duty of membership that accrues to all members of a well-ordered society each of whom may be called upon to discharge it. This claim does not therefore entail or require any privileged treatment or position of any such agent. In some circumstances, the news media might be especially well positioned to initiate corrective actions of institutional failures—e.g. because they have the knowledge and the capacities to make the action effective—but it is a contingent and empirical conjuncture that makes it so.

We start with a critical presentation of the received justification of the duties of the news media as a watchdog (Section 2);⁶ then we lay out our interpretation of the duties of institutional membership with special reference to the duty of office accountability and the duties of institutional answerability binding on the occupants of institutional roles both within (Section 3) and across the institutions of a well-ordered society (Section 4). Then, we bring our discussion to bear on the duties of the news media within this theoretical framework (Section 5). In Section 6, we conclude.

2. The News Media as a Watchdog?

The popular image of the news media as a watchdog presents them as a uniquely suitable interlocutor for those who consider blowing the whistle about (alleged)

institutional failures. In particular, in cases in which whistle-blowers cannot use internal channels for presenting their concerns because these channels are either absent, unavailable, or they have proved useless, the news media, by virtue of their watchdog role, are generally considered as under a special duty to step in by receiving, processing, and investigating the whistle-blowers' information and, if judged appropriate, disclosing it. This is because the news media, in their capacity as a watchdog in society, are perceived as 'the public's eyes and ears',⁷ having the task of sounding alarms when wrongdoing is taking place. This watchdog role applies to various sectors of social life such as when the news media monitor the activities of public and private bodies – government institutions, corporations, industrial, or other organisations – and alert the public when they detect cases of corruption, illegality, mismanagement, negligence, or waste of resources. Cases of institutional failures of this sort are a matter of public concern and, in reporting on such cases, the news media are seen to serve the public by supplying it with information it must have 'to prevent the abuse of power'⁸ and to 'warn [it] about those that are doing them harm'.⁹

In discussing the prevailing account of the news media's watchdog role, our discussion concentrates on the domain of politics, which has seen the most momentous cases of cooperation between the news media and whistle-blowers. The cooperation concerns the broadcasting of unauthorised disclosures of classified government information, but also the disclosure of information withheld without any legal authority. Both kinds of disclosures are clearly at stake, for example, in Snowden's revelations to *The Guardian* and *Washington Post* about the US and UK government mass surveillance programmes. Some of the disclosed information concerned classified documents that were being withheld in the name of national security, but it also contained evidence of abuses of power and violations of citizens' rights to privacy that fell outside the boundaries of political legitimacy. With our focus on the news media as a vehicle of political whistle-blowing, we question in this section the dominant way of justifying the news media's watchdog role. In the next section, we propose a new ground for this role.

Defenders of the news media's watchdog role present it as a part of the democratic system of checks and balances. In this capacity, the news media are seen as a 'fourth branch of government'.¹⁰ 'The watchdog ideal reflects the long-established liberal conception of the news media as the fourth estate,' Pippa Norris writes, 'an independent guardian located in civil society and counterbalancing the power of executive, legislative, and judiciary branches in government'.¹¹ This view of the quasi-official political role of the news media is also a potent part of journalists' self-identity. Amongst others, Glenn Greenwald, reflecting on his role in disseminating Snowden's disclosures, insisted that the press is '[o]ne of the principal institutions ostensibly devoted to monitoring and checking abuse of state power'.¹²

In their capacity as a fourth estate, the news media are presented as having 'the capacity to do business on an equal footing with the government'.¹³ This position implies that the news media have no duty to comply with the government's calls for nondisclosure. On the contrary, the news media are typically considered justified in publishing government information whenever, in the judgement of reporters and editors, its public value defeats the government interest in withholding it.¹⁴ The statement which the editors of *The New York Times* and *The Los Angeles Times* issued after *The New York Times* revealed the existence of the Treasury Department's Terrorist

Financing Tracking Program well illustrates this position: ‘Decision on whether or not to publish classified information (...) is not one we can surrender to the government.’¹⁵ Rather, as the Executive Editor of *The Washington Post* says, ‘it’s important (...) in our constitutional system that (...) final decisions [about publishing classified material and whether publication would indeed threaten the nation’s safety] be made by newspaper editors and not the government.’¹⁶ The watchdog role of the news media is often justified on the ground of their being a trustee of the ‘people’s right to know’. American constitutional scholars were amongst the first to articulate this view. Alexander Bickel put it in the following way: ‘The reporter’s access is the public’s access. (...). The issue is the public’s right to know. That right is the reporter’s by virtue of the proxy which the freedom of the press (...) gives to the press in behalf of the public.’¹⁷ In a recent articulation of this view, Harvard’s Nieman Foundation for Journalism says that the news media see to it that ‘people in power provide information the public should have.’¹⁸

This picture of the news media’s institutional role of watchdog, however, faces an important challenge.¹⁹ Its underlying idea that the news media are the people’s representative and a trustee of the ‘people’s right to know’ presupposes that the public has entrusted to the news media the task of protecting and enforcing its ‘right to know’ in order that the public can be better informed and the public interest better served.²⁰ This view models the relation between the news media and the people as a principal-agent relation in which one party (the principal) authorises another (the agent) to represent her interests and to act on her behalf, and the latter provides an account of her actions with respect to those interests. This idea has been voiced with a certain regularity. For example, in 1974, Justice Lewis Powell declared that ‘in seeking out the news, the press (...) acts as an agent of the public at large. (...) The underlying right is the right of the public generally. The press is the necessary representative of the public’s interest.’²¹

Popular as it is, this description of the relationship of the press to the people is difficult to justify,²² some elements of this description may perhaps apply to the publicly owned traditional news media such as a national state radio or TV network funded by governments, but it will not apply to most news media, which are corporate for profit agencies. This difference is important on various counts. For one thing, in the context of the principal-agent relation, agents are prohibited from acting in their own interests and required to advance the interests of the principals. Most news media do not match this description. In the political context in which the news media are presented as a fourth branch of government, the problem is especially apparent. While the members of the government/agents are prohibited from acting to further their own – private – interests but must act in the interests of their citizens/principals, when the news media are private corporate actors, they are free to act in their own interests as determined by the dynamics of the market.²³ For another, while the people can be said to authorise the other branches of government such as the cabinet or the parliament as their agents, they cannot be said to authorise any news media likewise. Unlike the powers of government, the powers of the news media are neither conferred upon it by the people nor by the people’s representatives (unless, in a derivative sense, we refer only to public news media and only to the extent, say, that journalists are directly nominated by and must respond to political representatives).

What adds further support to this argument is that the special relation of dependence that binds an agent to its principal is absent in the case under discussion. The idea that the news media must respond to the people in the way in which an agent must respond to the principal is problematic, even with regard to the public news media. In terms of legal answerability, the news media in almost all democracies are subject only to general legal restrictions. There are no formal and enforceable legal mechanisms of holding the news media to respond for how well they perform as a trustee of the people's right to know. Do the people, Frederick Schauer asks, have a right against the reporter to have the reporter obtain information that the reporter might not wish to obtain?²⁴ Ronald Dworkin drove this point home when reflecting on claims that the public could legitimately raise against journalists. Imagine, he says, that *The New York Times* chose not to publish the Pentagon Papers. Would it entitle someone to sue *The New York Times* for not publishing them?²⁵ This suggestion, he concedes, would be met with horror by most journalists. Similarly, if any special newsgathering privileges were conferred upon the press by the public, the public might require that the press meet certain standards of training, knowledge, and objectivity in reporting. But it is implausible to say that citizens have the legal standing to withdraw or reduce the news media's newsgathering privileges if they do not measure up to certain standards of performance.²⁶

One could perhaps suggest that what is at stake is the news media's moral, not legal, role and responsiveness to the people. Think of the professional ethical codes for journalists. The moral guidelines of the profession that the codes articulate are arguably requirements incurred by the news media in their capacity as a trustee of the people. This interpretation implies that the people can hold the news media morally to respond for whether they live up to those moral standards. We question this interpretation. Professional codes of journalists' ethics are an outcome of the self-regulation of the news media, and the enforcement of those codes is voluntary.²⁷ The *self-imposed* character of journalists' codes of ethics means that the moral role and duties that journalists recognise for themselves are not entrusted upon them by, or even negotiated with, the people. An individual equivalent of such self-imposed obligations is obligations that originate within the individual and for which the individual is accountable to herself (e.g. first-personal duties of conscience). Compliance with such self-imposed obligations is more properly seen as a matter of personal integrity rather than an interpersonal or social accountability relation: the fact I promise myself to X does not justify your holding me accountable for how I perform in terms of my commitment; the only person who may blame me if I fail to X is myself. Moving from the self-imposed obligations of individuals to self-imposed obligations of social actors, we could conclude by analogy that journalists are accountable to (or among) themselves for abiding by their professional ethical codes, but it does not make sense to say that they can be held to account on that ground by nonjournalists. Their compliance with the terms of their professional codes of conduct is a matter of group integrity. There is an important disanalogy here with other such professional ethical codes as those of doctors, teachers, lawyers, or the police. The professional duties and rights of these groups are not a matter of voluntary self-imposition; they are rather regulated and enforced by government agencies and, hence, originate from a relationship, news mediated by the government, that these professional groups have with the public at large. Thus, if doctors pledge, as a matter of professional ethics, to do no harm, then nondoctors can

hold them to account for that in virtue of that moral relation underwriting their code of professional ethics. In light of these considerations, it does not seem sensible to say that the news media have a moral duty to respond to the people for their performance in keeping with the requirements of those codes. This conclusion weakens the case for seeing the news media as the people's trustee even further.

Before we offer an alternative normative account of the watchdog role of the news media, let us briefly examine another popular view. With special reference to the press, a common view of the role of the news media is that of a 'news provider', of reporting events of public importance. This informational role involves two components. First, the news media have the capacity to transmit specialist knowledge from the government and give voice to public opinion by enabling different organisations, individuals, and groups in society to be heard.²⁸ In that capacity, the news media can set in motion processes of political communication between the government, interest groups, and citizens. Second, in activating this public communicative sphere, the news media have the capacity to reach large numbers of citizens.²⁹ Given the 'sheer size of the body of citizens and the complexity of social problems', the news media are uniquely positioned to do this mediating job.³⁰ This political communicative expertise attributed to the news media in virtue of their special features could make them a unique platform for whistle-blowers and commit the news media to disseminating the whistle-blowers' disclosures.

To the extent that the informational role of the news media is premised on their putative epistemic expertise to assemble, explain, and debate the best available information about policy in ways accessible to ordinary citizens, their privileged position with regard to the dissemination of whistle-blowers' disclosures would presuppose their epistemic expertise to assess the informational value of the material disclosed. It is an empirical question whether the news media have such unique expertise which makes the argument for the special role of the news media that relies on it inconclusive.³¹ It could perhaps be argued that if special newsgathering privileges conferred upon the news media require such expertise and resources, then journalists should acquire these resources and newsrooms should hire experts to fact check and analyse documents leaked to them. If they fail to do so, they fail, thus, in their role of an 'expert communicator' to inform the public. In the light of our argument above, however, the claim that the news media may be called to respond to the people for this failure is undermined by the self-imposed nature of those obligations.

In this section, we have explored the most common grounds for the view that the news media occupy a unique role of watchdog in a democratic society. We have challenged the idea that the distinctive features of the news media establish them in a special position, which justifies their special duty to initiate corrective action in the face of institutional failures and, as such, the news media's privileged position as a vehicle for whistle-blowing. We have argued that this normative understanding of the watchdog role of the news media is implausible, and so is the ensuing normative source of their duty to disseminate whistle-blowers' disclosures. In the remainder of the article, we propose an alternative normative understanding of this duty as a specific instance of a general duty of answerability that qualifies institutional membership in a well-ordered society.

3. Towards an Account of Duties of Institutional Membership

Our sense of a well-ordered society loosely follows John Rawls's: a society's property of being well-ordered depends on the quality of its basic structure, i.e. of its constitutive institutions.³² With a good degree of abstraction, a well-ordered society is thus a network of well-functioning institutions. To understand the role and duties of the news media in support of whistle-blowers' attempts to initiate corrective actions of institutional failures within this framework, we must have a clear preliminary understanding of the duties of institutional membership in a well-ordered society, in general as well as when facing institutional failures.

Let us start by clarifying how institutions are systems of embodied interrelated rule-governed roles.³³ Each role within an institution is embodied in the sense that it is occupied by a person, and it is interrelated with other institutional roles in a way that makes the functioning of the institution dependent on every role occupant performing his or her functions. The functions attributed to each role are governed by rules – the constitutive rules of an institution – which define an institution and specify what powers are entrusted to each institutional role.³⁴ These powers are entrusted to the various institutional roles with a mandate, which establishes the matters over which those powers should be exercised and the terms and conditions of their exercise. Power mandates are established with a view to ensuring that the interrelated work of institutional role occupants can make the institution perform its functions.³⁵ In this sense, a well-functioning institution is premised on the division of labour between institutional role occupants: institutional roles are interrelated in a way that makes the functioning of the institution dependent on every role occupant performing his or her functions in keeping with their mandates. Notably, by entering into institutional roles, the occupants of those roles acquire *ipso facto* a special set of rights and duties – the rights and duties of institutional membership – that is binding on anyone who acts in an institutional capacity.³⁶ So, for example, a random stranger who comes to my home to demand money has no right to claim it from me, and I have no duty to give it to her; but she acquires that right and I bear the corresponding duty if we share the same institutional membership, and she comes in her institutional capacity as a tax collector.

Against the backdrop of this characterisation, we can see that power mandates are normative in the sense of being action guiding for the occupants of institutional roles: they establish the content of people's rights and duties in their institutional capacity. But we should also point out a further normative dimension that concerns the moral value created by the establishment of well-functioning institutions. A way to spell out the normative force of the system of rights and duties underpinning a well-functioning institutional system is to see it as a value internal to (institutional) relations.³⁷ Consider, as an explicative example, the institutional context of academia. For academia to be well functioning – to successfully perform its educational and scientific development tasks – it is essential that institutional members abide by, amongst others, the duties of academic integrity. These duties, bundled for example in Codes of Conduct for Academic Practice,³⁸ require that scholars report the research process accurately, refrain from making unfounded claims or falsifying the data, and avoid plagiarism. To the extent that these duties are fulfilled, we speak of a positive academic culture as a normative feature of a well-functioning academic institutional system. Now, while the

realisation of a positive academic culture supervenes upon scholars' observing their duties of academic integrity in their institutional interactions, the normative force of these duties does not fully explain the normative value of a positive academic culture. Rather, the realisation of a positive academic culture points also to a form of institutional relation that has value in and of itself. In particular, once people come to relate as academics in the institutional academic environment, a positive academic culture gives them reasons to act on their duties of academic integrity other than, and in addition to, the fact that they have voluntarily consented to an enforceable code of conduct when they entered the profession. And the participants in those relations have reasons to sustain that value, by respecting the duties of academic integrity, whose normative force has its source in those very relations.³⁹

To generalise, we can see how institutions as a system of role-based interactions generate an internal kind of normativity not reducible to the normativity of the separate acts individual role occupants are expected to perform. Arguably, as a role occupant, I acquire a role-specific set of perfect rights and duties on which I must act as a consequence of my decision to enter a certain office. The normative force of those rights and duties may be corroborated by their being instrumental to my institution's capacity to perform its functions. But, we want to add, the members of an institution have also fundamental and more general reasons to abide by their role-based rights and duties. These reasons are internal to the relations that the occupants of institutional roles entertain with each other.

We have seen that for this value internal to institutional relations to be realised, it is essential that institutional role occupants perform their tasks as defined by their power mandates – this is the duty of 'office accountability'.⁴⁰ In virtue of the value internal to a pattern of institutional interactions governed by the duties of office accountability, institutional members acquire new institutional duties of membership. Thus, because a well-functioning institution describes a pattern of multiple acts, and the failure of one institutional member to act in compliance with her duty of office accountability threatens it, any institutional member also acquires a reason to engage in answerability practices to ensure the well-functioning of the institution as a whole. This means both that institutional actors have a primary duty to perform their specific institutional roles in virtue of the normative order that their institution realises, and that, when the system fails, they have a derivative duty to call each other to answer for that failure and to take corrective action. In other words, besides a duty to use, in the first person, their institutional powers in keeping with the terms of their power mandate (the duty of office accountability), the occupants of institutional roles also have a duty to engage in practices of reciprocal control of their actions within the boundaries of their institution to prevent their joint institutional work from going off track or take corrective action when a failure nevertheless occurs (the duty of institutional answerability). This duty is multilateral in the sense that each institutional role occupant holds such a duty with regard to all the others.⁴¹

To revisit our example, members of academia can hold one another accountable for their conduct not only, and not even primarily, by virtue of their individual consent to the professional code of academic integrity, but by virtue of their reciprocal status as fellow members of the valuable social order they form together, in virtue of the interrelatedness of their institutional roles. Thus, I can claim that you refrain from plagiarism not merely by pointing to your consent to comply with the professional code of

academic integrity when entering academia. Rather, I may claim it from you (I may hold you accountable) as a member of the same institution in virtue of the value that resides in the normative order of academic culture that you and I form when we refrain from plagiarism (and thus honour the terms of the exercise of our power mandates that guide our action in our institutional capacity). Besides holding you accountable in this primary sense, I may also claim that you answer for your conduct when I suspect that one of your papers has in fact used unattributed material from another colleague's work. You have a derivative duty to answer to my claim in order to vindicate the rationale of your conduct in your institutional capacity with a view to upholding the academic culture of our institution.

It is important to notice that, in the nonideal conditions of institutional action, the correction of failing institutional trajectories does not necessarily translate into restorative interventions, as if any institutional failure should be seen as a symptom of an institutional decay with respect to an ideal *status quo ante*. Indeed, the corrective action initiated and sustained as an instance of the duty of institutional answerability is intended to uphold institutional ideals that current institutional practices may fail to meet. In this sense, the action of reciprocal control of institutional members may initiate processes of institutional reform and institutional change, which are responsive to societal transformations and new challenges as they arise. A distinctive feature of answerability practices of this kind is that when engaged in, they are done so in good faith as part of the duties of membership to sustain institutional action by mobilising an institution's internal resources.⁴²

4. Duties of Institutional Membership in a Well-Ordered Society

Taking the cue from our discussion of the duties of membership within well-functioning institutions, we want to extrapolate some normative considerations on the duties that accrue to the members of a well-ordered society understood as a system of well-functioning institutions. This exercise is helpful to show how the watchdog role of the news media is grounded in an ordinary duty of membership in a well-ordered society.

As elucidated, an institution is a system of interrelated embodied roles amongst which there is a division of labour necessary to make the institution perform its functions. By the same token, a well-ordered society can easily be seen as a system of interrelated institutions amongst which there is a division of labour necessary to ensure that the society as a whole performs its basic function of action coordination. We have also seen that there is a value internal to well-functioning institutions, which is internal to the normative relations between the members of those institutions and gives them reasons to honour their duties of membership, notably the duty of office accountability. We now claim along the same lines that there is also a value inherent to a well-functioning network of institutions, that is a well-ordered society.

The value of a well-ordered society may not be entirely reduced to the (accumulated) value(s) realised by its constituent institutions considered separately. We propose to regard a well-ordered society as a form of human relationship that also has value in and of itself. Proceeding by analogy with the argument in the previous section, we can say that there are reasons to preserve and maintain a well-ordered society other than, and in addition to, the reasons for sustaining the individual well-

functioning institutions that compose it— for example, the reasons for sustaining the well-functioning institutions of health care, education, or law enforcement considered separately. This reasoning also corresponds to our common moral intuitions insofar as we experience a failing institution, say, a corrupt judiciary, not only as an assault on the rights of those they deal with, but also as an attack on one of the pillars of our way of life that we value for its own sake. This is to suggest that once a well-ordered society is in place, it generates new reasons for action. The normative source of these reasons resides in a network of well-functioning institutions: institutions where uses of power can be accounted for with reference to those power mandates.

The pursuit of this analogy allows us to make an important point concerning institutional reasons for action. When institutional role occupants respond to the value of a well-ordered society, their acting in keeping with their power mandates is not just a response to the specific obligations they have as concerns the performance of the tasks entrusted to their roles. It is also and more fundamentally a response to the value that resides in the normative order all of them form when their actions are coherent with the terms of the power mandates proper to their institutional roles from within their respective institutional settings. For example, consider Sarah, a physician working in a public hospital, who is called upon to administer some delicate medical procedure to Larry, a civil servant who happens to have helped her in the past with submitting her visa application for travelling to a foreign country. Of course, Sarah has a duty to provide Larry with good medical treatment independently of her personal relation of gratitude towards him. But what is more relevant to our discussion, we argue that Sarah's duty is not only a response to her professional duty as a medical doctor. It is also and more fundamentally a response to the value that resides in the normative order of the well-ordered society Sarah and Larry form when they act in keeping with the power mandates of their specific institutional roles as a medical doctor in a public hospital and a civil servant in the municipal administration. Sarah owes it to Larry by virtue of their status as fellow members of the valuable social order they form together when each of them acts in keeping with their respective power of office mandates. In this way, we can see that the relations of mutual accountability and the related duties of office accountability that hold between the members of well-functioning institutions also extend across the constituent institutions of a well-ordered society.

The conduct of those who act in their institutional capacity within a well-ordered society as a whole and, thus, the reasons that motivate them, are interdependent in the sense that without the other, each of them fails to take on the additional normative quality that a well-ordered society would otherwise confer on it. Your failure deprives me of the value of a well-ordered society, and thereby I have a claim against you that you act in a way that sustains it. As they all depend on (are accountable to) one another for the valuable society to be realised, they may call upon each other to answer for their conduct when the system fails. From this vantage point, we can recall an important feature of the duties and rights of institutional membership sustained by the value of a well-ordered society: their multilateral nature. This feature is crucial to seeing why Larry may claim, by virtue of his institutional membership in a well-ordered society, not only that Sarah acts in keeping with her medical doctor's mandate when he presents himself at the hospital for the relevant treatment; Larry can claim the same of Sarah with regard to any other member of society who presents themselves

as patients. Their set of institutionally derived rights and duties holds both within and across institutions.

5. The Well-Ordered Society and the Duties of the News Media

We have submitted that, because a well-ordered society is a network of well-functioning institutions and the failure of one institution threatens the general social order, any member of society acquires a reason to ensure that the institutional system as a whole is well functioning. This means both that (a) institutional actors have a duty to perform their institutional role in virtue of the value that inheres in a society in which all institutions properly function and that (b) when the system fails, they have a duty to call each other to answer for their conduct and to take corrective action to remedy the relevant institutional failure. We suggest that these coordinates can be usefully employed for characterising the watchdog role of news media and, consistently, their duties as the addressees of whistle-blowers' disclosures.

To the extent that whistle-blowers disclose some information about an institutional failure, the members of a well-ordered society at the receiving end of these disclosures have a duty to act in order to support the initiation of corrective action in that respect. Relevant addressees of whistle-blowers' external disclosures are wide ranging, and their identification may depend on a society's specific structure, legal arrangements, and cultural traditions. This set of agents may include, but is not limited to, national or local authorities (such as a dedicated commission like an anticorruption authority), civil society organisations (such as NGOs), individual citizens (such as activists battling for citizens' rights), and the news media. There is nothing extraordinary about the claim that the members of a well-ordered society have a duty to take corrective action to respond to institutional failures nor is the normative source of the duty special or arcane. Our argument thus far allows us to see how fulfilling this duty is no more than a component of the answerability practices in which members of society ought to engage in to secure its well functioning. As seen, *all* members of an institution or of a network of institutions have a general and unconditional duty of office accountability with respect to the performance of their institutional functions. However, their duty to engage in answerability practices – to raise awareness of an institutional failure and initiate corrective action thereof – is actualised (that is, they have practical reasons to act on that duty) only if they find themselves in the right place and the right time to acquire information about the institutional failure. So when, at the right time and place, a civil servant finds herself in a position to obtain some information on an institutional failure, her institutional duty to engage in the answerability practice of whistle-blowing is actualised as she acquires practical reasons to act on that duty. Similarly, when the news media acquire that information, thanks to the whistle-blower's disclosure, they have a duty to disseminate it as part of what it means for them, as members of a well-ordered society, to engage in practices of answerability. To be sure, this is not an absolute duty. As is the case with almost any positive institutional obligation, the duty to engage in answerability practices is a *pro tanto* duty, whose omission might be discounted in specific circumstances (e.g. the disclosure of certain information might be temporarily withheld if its revelation might endanger the life of an individual under certain dire circumstances). Nevertheless, this qualification

does not weaken the duty that the news media have by virtue of their participation in an institutional network to contribute as appropriate to address actual or suspected institutional failures by disseminating whistle-blowers' disclosures. Our main point is that this watchdog function is neither unique nor exclusive to the news media; it is, rather, part and parcel of their duty of membership to engage in answerability practices, a duty they share on the same ground with the other members of society. For example, the traditional press, blogs, social networks, or such portals as WikiLeaks may well perform this function just as any NGO or civil-society organisation.

Let us pause to emphasise that our argument thus far lends normative support to the watchdog role of the news media on the grounds of a general duty of membership *within* the boundaries of well-ordered societies. This characterisation of the news media's function might be dissonant with a generic common sense concerning the news media coverage of whistle-blowers' disclosures regarding foreign matters (such as large corruption scandals involving multinational corporations or a domestic abuse of power by a foreign government). Even though our argument entails that the watchdog role of the news media is reserved to reporting domestic affairs, it does not exclude that the news media may have other weighty reasons to disseminate whistle-blowers' disclosures addressing the affairs of a foreign state.⁴³ Such reasons might be of a humanitarian nature, or, consistently with our Rawlsian framework, derive from a general duty of assistance within a well-ordered international society in the face of grave violations of human rights.⁴⁴ These possible integrations should not, however, distract from our main line of argument concerning the cogency of grounding the watchdog role of the news media in the context of a special set of duties of membership within a well-ordered society.

Returning to our main line of argument, the watchdog role of the news media and the duty to disseminate whistle-blowers' disclosures attached to it are not a special responsibility related to the news media's unique systemic or political role in virtue of their special features. Instead, we propose to understand this duty – as well as the watchdog role itself – as one borne on the same normative ground by any citizen and, of course, by those who occupy a role in the news media industry. Therefore, on principled grounds, the watchdog role of the news media and the responsibility to disclose relevant information on institutional failures that comes with it are shared by any member of a well-ordered society, as a specific instantiation of the duty of answerability. In certain circumstances, however, it might be the case that the duty of answerability becomes more stringent for the news media than for other members of society (e.g. an ordinary citizen or some NGO or an authority). For example, in some cases, the news media's duty may become more stringent because other society members have failed to take effective action. In other cases, the news media's duty of answerability may become more stringent because the news media better meet the conditions that the performance of this duty must satisfy.

In particular, the dissemination of whistle-blowers' disclosures must be sensitive to the function that the dissemination is expected to perform: to contribute to initiate corrective action of an institutional failure. It is plausible to postulate, for example, that in order to perform this function the disclosures must be accompanied by a promise to be effective. Discharging the duty of institutional answerability effectively, say by disseminating whistle-blowers' disclosures in ways that touch the right buttons, as it were, to initiate corrective action, requires a complex set of actions and therefore a

set of practical competences, which might be too difficult to master for some members of society. The news media may have the knowledge and the capacities to make the action effective and, thus, to meet this condition better than other society members because, for example, they have better access to certain relevant power networks than ordinary citizens.

Furthermore, any sound theory of institutional answerability should be capable of resisting the claim that ‘anything goes’ as a matter of disclosure, thus more or less advertently either sanctioning libel or defamation or promoting a ‘witch hunt’. So, the watchdog role applies more stringently to those members of society who can perform it conscientiously, for instance, by disseminating whistle-blowers’ disclosures in ways that are sensitive to the potential risks for the parties involved. Conscientiousness requires a complex set of considerations and, therefore, a set of epistemic competences. The news media are often especially well positioned to discharge the duty of answerability conscientiously because they might be able to undertake actions that might be too costly to exercise for some members of society, e.g. ordinary citizens who lack the knowledge necessary to check facts to avoid risks, for instance of calumny, for themselves and others.

Thus, while the watchdog duty to disseminate whistle-blowers’ disclosures applies to all members of a well-ordered society, the ways in which each of them may be called to discharge it may vary and so may its stringency. This reflects the empirical and contingent fact that different members of society may meet the conditions of performance of this duty in different degrees depending, *inter alia*, on the empirical detail of the issue (the kind of institutional failure at stake, e.g. if it is a technical matter that occurs in a governmental organisation or a private corporation). The news media are often well positioned to meet these requirements, and, therefore, they are often, contingently and empirically, well suited to fill the watchdog role, and their duty of answerability is more stringent. However, whatever condition might make the news media best positioned to perform the watchdog role, this is not – and this is our main claim – because they have a special mission in virtue of their ontological or systemic status. Their watchdog duty is the same kind of duty that is borne by other members of society (with the same normative source in the value that a well-ordered society realises). If the news media are, in certain circumstances, best positioned to discharge it whereby their watchdog duty is more stringent and, in this sense, special, its special character, *pace* the prevailing view, is not a matter of principle, but a matter of empirical contingency.

6. Conclusion

In this article, we have discussed the normative grounds for recognising a watchdog role for the news media in relation to the dissemination of information concerning an institutional failure menacing a well-ordered society. With special reference to the role of the news media in the dissemination of whistle-blowers’ disclosures, we have shown how the current justifications of the watchdog role of the news media fail to ground it in some distinctive feature that makes the news media special as concerns the performance of this role (either because they are a ‘fourth estate’ or as a trustee of the people’s right to know). We have argued that these justifications are erratic (their

arguments might work for some – e.g. publicly owned traditional news media such as a national state TV network – but not for others) and riddled with conceptual and practical problems.

In response, we have offered an alternative argument that shows how the watchdog role of the news media is in fact shared by any other member of a well-ordered society as an instance of a general duty of answerability in the face of institutional failures. Although this duty does not bear only on the news media, we have conceded that in some contingent circumstances, the news media might be better positioned to discharge it and, therefore, to initiate corrective actions of institutional failures effectively and conscientiously. These empirical conditions may include the news media's potential access to the material resources to disseminate some information more effectively than, say, the random author of a personal blog and also an arguably more solid fact-checking capacity necessary to do so conscientiously. However, the establishment of the news media's responsibility in this sense is an empirical, not a structural or a systemic matter.

With this argument, we hope we have achieved a threefold goal: (1) to clarify the kind of duties that the news media and other members of a well-ordered society have facing institutional failures; (2) to promote a critical reflection on the news media's self-understanding by questioning the normative grounds of their social and political function; (3) to call all society members, citizens included, to take on the responsibility to sustain by their action the well-functioning of a society and its institutions by partaking in practices of answerability and, thus, share the news media's watchdog role as the circumstances and the issue at stake demand.

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NOTES

- 1 Emanuela Ceva, Michele Bocchiola, *Is Whistle-blowing a Duty?* (Cambridge: Polity Press, 2018), p. 21.
- 2 See, *inter alia*, Ceva and Bocchiola op. cit.; Michael Davis, 'Some paradoxes of whistle-blowing', *Business and Professional Ethics Journal*, 15, 1 (1996): 3–19; R.T De George, *Business Ethics* (New York: Macmillan, 2010), pp. 298–318; Candice Delmas, 'The ethics of government whistle-blowing', *Social Theory and Practice*, 41, 1 (2015): 77–105; Manohar Kumar, Daniele Santoro, 'A justification of whistle-blowing',

- Philosophy & Social Criticism*, 43, 7 (2017): 669–84; Rahul Sagar, *Secrets and Leaks. The Dilemma of State Secrecy* (Princeton: Princeton University, 2013).
- 3 James Hollings, ‘The informed commitment model: best practice for journalists engaging with reluctant, vulnerable sources and whistle-blowers’, *Pacific Journalism Review*, 17, 1 (2011): 67–89.
 - 4 E. B. Hindman, R. J. Thomas, ‘When old and new news media collide: The case of WikiLeaks’ *New media and Society* 16, 4(2014): 541–58.
 - 5 Brett Johnson, Liz Bent, Caroline Dade, ‘An ethic of advocacy: metajournalistic discourse on the practice of leaks and whistle-blowing from Valerie Plame to the Trump administration’, *Journal of Media Ethics*, 35, 1 (2020): 2–16, p. 3.
 - 6 The watchdog concept dates back to 19th-century America. While we do not have the space for a thorough survey of its historical background, relevant discussions can be found in Timothy Gleason, *The Watchdog Concept: The Press and the Courts in Nineteenth-Century America* (Ames: Iowa State University Press, 1990); Beth Knobel, *The Watchdog Still Barks: How Accountability Reporting Evolved for the Digital Age* (New York: Fordham University Press, 2018); R. C. Moore, ‘Environmental issues and the watchdog role of the media: How Ellul’s theory complicates liberal democracy’, *Bulletin of Science, Technology & Society*, 21, 5 (2001): 325–33.
 - 7 Sheila Coronel, ‘Corruption and the watchdog role of the news media’ in P. Norris (ed.) *Public Sentinel: News media & Governance Reform* (Washington DC: The World Bank, 2009), p. 2.
 - 8 Murrey Marder, ‘Journalism - This Is Watchdog Journalism’, *Nieman reports*, 53 (1998): 20.
 - 9 Coronel op. cit., p. 3.
 - 10 The term ‘fourth estate’ is often attributed to Edmund Burke, see Thomas Carlyle, *On Heroes, Hero-Worship, and the Heroic in History. Six Lectures. Reported with emendations and additions* (London: James Fraser, 1908). For a history of the idea in journalism, see M. A. Hampton ‘The fourth estate ideal in journalism history’ in S. Allan (ed.) *The Routledge companion to news and journalism* (London and New York: Routledge, 2010); D.K. Thussu, ‘Fourth Estate’ in W. Donsbach (ed.) *The International Encyclopaedia of Communication* (Malden, MA: Blackwell, 2008).
 - 11 Pippa Norris, ‘Watchdog Journalism’ in M. Bovens, R.E. Goodin, T. Schillemans (eds.) *The Oxford Handbook of Public Accountability* (Oxford: Oxford University Press, 2014), p. 525. This image of the news media has been especially popular amongst American constitutional scholars, see e.g. John Bollinger, *Images of a Free Press* (Chicago: University of Chicago Press, 1991), pp. 58–9.
 - 12 Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State* (New York: Metropolitan, 2014), p. 179.
 - 13 Bollinger op. cit., p. 20.
 - 14 Albert Bickel, *The Morality of Consent* (New Haven: Yale University Press, 1975), p. 80.
 - 15 *New York Times* 2006, <https://www.nytimes.com/2006/07/01/opinion/01keller.html>, accessed 3 September 2020.
 - 16 Lillian BeVier, ‘The journalist’s privilege. a skeptic’s view’, *Ohio Northern University Law Review*, 32, 3 (2006): 472.
 - 17 Bickel op. cit., p. 85.
 - 18 See Norris op. cit., p. 526.
 - 19 For an extensive discussion, see Dorota Mokrosinska, ‘Why Snowden and not Greenwald? On the accountability of the press for unauthorized disclosures’ *Law and Philosophy*, 39, 2 (2020): 203–38.
 - 20 Frederick Schauer, ‘Rights and the right to know’, *Philosophic Exchange* 14 (1983): 72.
 - 21 BeVier op. cit, p. 469, emphasis added.
 - 22 Mokrosinska op.cit..
 - 23 BeVier op. cit., 2006, p. 475. Notice that to say that an agent may not act to further its private interests is not the same as saying that it may not pursue or represent partial interests. The latter is the case of political parties that act on special interests, for example, interests of ethnic minorities, specific regional interests, or particular separatist movements. To say that the news media act on special interests is to say that they act on the private interests of their owners, for example, the personal commercial interests of news media tycoons.
 - 24 Schauer op. cit., p. 72.
 - 25 Ronald Dworkin, ‘Does the Public Have a Right to Know?’ in *Appendix: The Request of the NIH for a Limited Exemption from FOIA* (Ethics Advisory Board, Department of Health and Human Services, 1980), p. 15.
 - 26 Schauer, op. cit., p. 73.

- 27 Daphne Koene, *Press Councils in Western Europe* (The Hague: Netherlands Press Council Foundation/The Netherlands Press Fund, 2009).
- 28 J. P. Curran 'What democracy requires of the media' in G. Overholser, K. H. Jamieson, (eds.) *The Press* (New York: Oxford University Press, 2005), p. 130.
- 29 James Bohman, 'The Division of labor in democratic discourse: media, experts and deliberative democracy' in S. Chambers, A. Costain (eds.) *Deliberation, Democracy and the Media* (Lanham, MD: Rowman and Littlefield, 2000), p. 55–56.
- 30 Bohman op. cit., pp. 55. Amongst others Bollinger op. cit., Michale Gurevitch, J. G. Blumler, 'Political communication systems and democratic values' in J. Lichtenberg (ed.), *Democracy and the mass media* (Cambridge: Cambridge University Press, 1990), and Jurgen Habermas, 'Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension?' *Communication Theory*, 16, 4 (2006): 411–26 endorse this view (though they acknowledge that the press currently performs this communicative function poorly).
- 31 For arguments calling it into doubt, see Sagar op. cit.; Benjamin Page, *Who Deliberates? Mass Media in Modern Democracy* (Chicago: University of Chicago Press, 1996), p. 198.
- 32 John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971).
- 33 Dorothy Emmet, *Rules, Roles and Relations* (London: MacMillan, 1966); Seumas Miller, 'Social Institutions', in E. Zalta, *The Stanford Encyclopedia of Philosophy*, 2014, <https://plato.stanford.edu/archives/win2014/entries/social-institutions>. Here and throughout we refer only to *legitimate* institutions as structures of rule-based roles with a rightful claim to exercise some kind of power (as defined by the mandates governing the institutional roles). This qualification is entirely formal – and therefore compatible with different substantive theories of legitimacy – and is primarily meant to exclude such criminal role-based organisations as the Mafia.
- 34 For the concept of constitutive rules, see John Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969); John Searle, *The Construction of Social Reality* (London: Penguin, 1995).
- 35 For a recent functional account of institutions as structures of human coordination, see Francesco Guala, *Understanding Institutions* (Princeton: Princeton University Press, 2016).
- 36 Emanuela Ceva, 'Political Corruption as a Relational Injustice', *Social Philosophy & Policy*, 35, 2 (2019): 118–37; Emanuela Ceva, Maria Paola Ferretti, *Political Corruption. The Internal Enemy of Public Institutions* (New York: Oxford University Press, 2021).
- 37 Dorota Mokrosinska, *Rethinking Political Obligation: Moral Principles, Communal Ties, Citizenship* (Houndmills: Palgrave Macmillan, 2012).
- 38 See, e.g. https://www.organisatiegids.universiteitleid.nl/binaries/content/assets/ul2staff/reglementen/be-stuur-en-organisatie/the_netherlands_code_of_conduct_for_scientific_practice_2012.pdf, accessed 3 September 2020.
- 39 Mokrosinska op. cit. For a classic discussion of the voluntariness of role-based obligations, see John Simmons, *Moral Principles and Political Obligation* (Princeton: Princeton University Press, 1979).
- 40 Ceva, Ferretti, op. cit..
- 41 Mokrosinska, op. cit.; Emanuela Ceva, *Interactive Justice* (New York: Routledge, 2016) and Ceva, op. cit..
- 42 This reasoning is also helpful to understand the function of whistle-blowing within this institutional framework as a practice of institutional answerability with a clear structural role (not just as an individual *extrema ratio*, see Emanuela Ceva, Michele Bocchiola, 'Personal Trust, Public Accountability, and the Justification of Whistle-blowing', *Journal of Political Philosophy*, 27, 2, 187–206.
- 43 We thank an anonymous reviewer for pressing us to address this issue.
- 44 John Rawls, *The Laws of People* (Cambridge MA: Harvard University Press, 1993).