

Care Ethics in Apple v FBI

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Kevin Ivey

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On my honor as a University Student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments

Advisor

Benjamin Laugelli, Department of Engineering and Society

Introduction

In 2016, a federal court ordered Apple to aid the FBI in unlocking a phone used by one of the terrorists who killed 14 people in San Bernardino, California (Isaac, 2016). The FBI applied for an order of assistance in the federal court system to compel Apple to aid them in unlocking the phone, and in response, Apple filed a motion to vacate the order (Electronic Privacy Information Center. n.d.). Ultimately, the FBI unlocked the phone without assistance, so the case never reached a trial (Benner & Lichtblau, 2016). Scholars have viewed this case as a problem of privacy versus security, with Apple wishing to protect the privacy of its users and the FBI wishing to protect the safety of U.S. citizens. Opinions differ regarding if the privacy of an individual user outweighs the safety of the community at large. However, this sole view of privacy and security is limited in scope as it fails to account for the responsibility of Apple to its customers and how this relates to the morality of its actions. By studying the relationship between Apple, a large technology company, and its customers, we can gain an understanding of how a company can respond to questions of user privacy via an analysis of its customer relationship. If such relationships are not studied, we lose valuable knowledge on how a company should act in order to best maintain its relationships.

I will demonstrate that Apple's response to the FBI was determined by its understanding of its relationship with customers. To do so, I will draw upon the framework of care ethics, which seeks to understand morality through actions that nurture and maintain relationships. Specifically, I will utilize Apple's message to customers addressing the FBI's demand, Apple's court filings fighting the motion compelling it to aid the FBI, and amicus briefs submitted in support of Apple to demonstrate how Apple practiced care ethics in its decision to not comply with the FBI's request. In utilizing this information, I will demonstrate how Apple acted morally

by understanding the asymmetrical nature of its relationship with customers and by showing attentiveness, responsibility, and competence when providing for its customers.

Background

In December 2015, a terrorist attack occurred in San Bernardino, California, killing 14 people. The terrorists died during the attacks, but as part of the resulting investigation, the FBI seized the phone of one of the terrorists. The phone was unable to be accessed as it was encrypted, so the FBI requested that the court order Apple to decrypt the phone (Electronic Privacy Information Center. n.d.). However, Apple had no backdoor to access the data, so the FBI requested that Apple be required to build a tool to disable security features in order to gain access to the phone's data. Apple opposed the order on the grounds that the request was unlawful and set a dangerous precedent (Electronic Privacy Information Center, n.d.). Ultimately, the case was dropped as the FBI was able to access the phone without the assistance of Apple (Benner & Lichtblau, 2016).

Literature Review

Many sources explore the dispute between Apple and the FBI as a matter of privacy and security and through the legality of the request. While these sources seek to decide if either the FBI's request or Apple's response is ethical, they do so by viewing the case as a matter of individual rights versus public safety. However, these sources do not analyze the relationship that Apple has with its customers and how this relationship impacts Apple's responses to the FBI.

In *Apple: Good Business, Poor Citizen?*, Amitai Etzioni, professor of international affairs and director of the Institute for Communitarian Policy Studies at George Washington University, utilizes liberal communitarian ethics to analyze the validity of the arguments made by the FBI and by Apple. Liberal communitarian ethics assumes that a nation is committed to both

individual rights and to the advancement of the common good and that “neither should be assumed to a priori trump the other” (Etzioni, 2016, p. 3). To apply this framework, he considers the importance of the Fourth Amendment in the case. He asserts that the Fourth Amendment, which protects “against unreasonable searches and seizures” and provides a means of obtaining probable cause via the court system, demonstrates liberal communitarian ethics (U.S. Const. amend. IV). Since the Fourth Amendment is concerned with protecting both individual rights and the common good, any ruling stemming from the Fourth Amendment is ethical under liberal communitarian ethics, so Etzioni concludes that Apple should comply with the lower court order. Furthermore, he argues that this specific incident is clear. Since the phone is known to be the former property of a terrorist, the risk of invading the personal rights of a law-abiding, innocent citizen is minimized. Additionally, the owner of the phone is deceased, which minimizes the harm to individual privacy. Thus, the “value of security should trump the remaining privacy rights of a dead person, a known terrorist” (Etzioni, 2016, p. 4).

Similarly, in *The ethical consequences of “going dark,”* Richard Spinello, director of the Carroll School Ethics Program at Boston College, argues that the ethical tension in this case resides from the conflicting rights of security and privacy. He develops his argument through the usage of infraethics, which “refers to the pre-moral ... infrastructure that facilitates responsible, coordinated action for benefit of the community and its members” (Spinello, 2020, p. 120). Drawing on teleological, or consequence-based ethics, and deontological, or rule-based ethics, he argues that the right to privacy is a fundamental moral right due to its value as a protector of “intrinsic human goods” (Spinello, 2020, p. 121). However, Spinello asserts that the preservation of security “is essential for the implementation of all basic rights” (Spinello, 2020, p. 122). Hence, the right to privacy must be subordinate to the right to security. Thus, using logic derived

from the freedom principle, he concludes that “A's right to protect confidential information must yield to B's right to life in all its aspects including the right to be secure against physical injury” (Spinello, 2020, p.125). In application to this case, since the phone may contain sensitive data that could aid in security, unlocking the phone trumps privacy, so Apple should yield to the FBI's request.

Both sources explore if Apple's actions were ethical through the lens of individual privacy in conflict with security and the common good. However, these bodies of work fail to understand the relationships at play in this case. While the conflicting rights of privacy and security are important to study, I deploy the framework of care ethics to judge the morality of Apple's actions through the lens of relationships.

Conceptual Framework

I will analyze Apple's responses to the FBI using the framework of care ethics, which allows me to study the relationships between Apple, individuals, including Apple's customers, and the federal government in order to determine the morality of Apple's actions. Care ethics is an ethical theory which places an importance on relationships and maintains that understanding the dynamics of a relationship and promoting their well-being accordingly is crucial to morality (van de Poel & Royakkers, 2011). To maintain relationships, both parties must accept mutual responsibility and practice care.

Central to understanding care ethics is an understanding of what care actually is. Although care is hard to specifically define, Joan Tronto, professor of political science at the University of Minnesota, provides a broad definition that care is an activity including “everything we do to maintain, contain, and repair our ‘world’ so that we can live in it as well as possible” (Sander-Staudt, n.d.). Furthermore, she identifies four sub elements of care: (1)

attentiveness, or becoming aware of the needs of others; (2) responsibility, or a willingness to respond to and take care of the needs of others; (3) competence, or providing good and successful care; and (4) responsiveness, or recognizing how others see their care (Sander-Staudt, n.d.). Using this definition, care is primarily an action that one can take. Hence, moral actions are akin to those that are actions of care.

However, the practice of care does not only involve actions. To practice proper care, the attitudes and motivation behind the act of care have to be considered (van de Poel & Royakkers, 2011). An attitude of compassion, attention, and empathy is needed for proper care, and to exhibit such attitudes, the relationships between parties must be understood. A key point of care ethics is understanding the power dynamics of a relationship. Importantly, the responsibility of both parties in maintaining the relationship may differ if the relationship is asymmetrical. If one party is vulnerable due to being highly dependent on the other, then the dominating party has a responsibility to protect the vulnerable party (van de Poel & Royakkers, 2011).

Drawing on the framework of care ethics, I begin by examining the relationship between Apple and its customers to show that the relationship is asymmetrical, with Apple's customers being in a vulnerable position. I then show how Apple addresses this asymmetrical relationship. I show that Apple practices care by separately demonstrating its usage of three sub-elements of care: attentiveness, responsibility, and competence.

Analysis

Through its response to the FBI and federal government, Apple illustrates how it practices care ethics by demonstrating attentiveness, responsibility, and competence in the care that it provides to its customers. Furthermore, Apple has an asymmetrical relationship with its customers, so Apple carries a higher burden in ensuring that the relationship with its customers is

maintained. By demonstrating how Apple practices three out of four of the elements of care identified by Tronto, it follows that Apple's actions are adherent to the framework of care ethics, and it upholds its responsibility to its customers. In the following argument, I will first show how Apple's relationship with its customers is asymmetrical and then separately show how Apple practices the elements of attentiveness, responsibility, and competence in their response to the FBI's requests for aid.

Asymmetrical Relationship

Due to customers' extreme dependence on Apple, the relationship between Apple and its customers is highly asymmetrical. In the modern age, it is almost impossible to conduct daily life without phone usage. Hence, customers must use a phone. Customers store a trove of information on their phones, information that they expect to remain private. As Tim Cook, Apple CEO at the time, notes:

There's financial information. There's your conversations, there's business secrets.

There's an enormous long list of things that there's probably more information about you on here [referring to a phone] than exists in your home, right. Which makes it a lot more valuable to all the bad guys out there. (Gibbs & Grossman, 2016)

Customers are extremely dependent on Apple to keep this information protected. If financial information is released, then this could negatively affect someone's relationships, reputations, or even put their safety at risk. Similarly, releasing private conversations could affect their relationships or their safety. Releasing business secrets has an obvious negative impact on a company and likely would have legal implications for the individuals involved. As Cook notes, "there's probably more information about you" on your phone than at home. However, unlike information at home, customers are not able to secure information on their phone themselves and

are in a vulnerable state. Hence, customers must depend on Apple to secure their information, so the relationship is asymmetrical, with Apple being in a position of authority. Due to this position, Apple has a responsibility to practice care in its relationship with its customers.

Attentiveness

Apple shows care ethics through its acts of attentiveness, or recognizing the needs of others. In its message to customers regarding the FBI's requests, Cook writes "customers expect Apple and other technology companies to do everything in our power to protect their personal information, and at Apple we are deeply committed to safeguarding their data" (Cook, 2016). Note that Apple pays attention to what its customers expect out of their relationship. An expectation of customers in their relationship with Apple is that Apple protects their personal information. Additionally, Apple notes that it is not unique in this regard, that other technology companies must also provide this protection to their customers. Hence, Apple understands the need to protect customer data in order to maintain a healthy relationship with its customers. This understanding shows attentiveness as Apple is acutely aware of the needs of its customers. Furthermore, Apple does not only recognize the need to protect customer data, it further recognizes what this data actually is, writing that customers should "feel confident that their most private personal information—financial records and credit card information, health information, location data, calendars, personal and political beliefs, family photographs, information about their children—will be safe and secure" ("Apple Inc.'s Motion", 2016). Here, Apple breaks down the need for protecting customer data into exactly what the customers expect to have protected. While "personal information" is a rather broad category, Apple breaks it down into specifics, demonstrating that it understands exactly what must be protected to provide care to its customers. This recognition is paramount to care, as it shows detailed attentiveness to

the needs of its customers. While Apple identifies the need of protecting customer data, this identification only establishes the first element of care, attentiveness.

Responsibility

Apple's response to the FBI also shows it recognizes its responsibility in establishing care for its customers. In the letter to customers, Cook writes "for many years, we have used encryption to protect our customers' personal data because we believe it's the only way to keep their information safe. We have even put that data out of our own reach ..." (Cook, 2016). To address the needs of its customers and to protect private information, Apple uses encryption, a process of encoding data so only select parties can access the data. This use of encryption shows that Apple is willing to take care of the needs of its customers. Beyond implementing encryption, Apple even excludes itself from being able to access customer data, showing that it recognizes no one is above the customer need for privacy. Furthermore, Apple's fervor to fight a legal battle against the federal government shows its willingness to take care of the needs of its customers. In its motion to vacate the order, Apple writes "the Court should vacate the order and deny the government's motion to compel" ("Apple Inc.'s Motion", 2016). While some companies may simply submit themselves to the will of the federal government, Apple is willing to undergo considerable legal expense to address the needs of its customers.

Apple's efforts in fighting the FBI show that it recognizes its responsibility in caring for the needs of its customers. However, some may argue that Apple's actions have little to do with it responding to the needs of its customers, but instead solely reside in Apple's desire for profits. Notably, Jonathan Thompson, executive director of the National Sheriffs' Association, declares that Apple's stance puts "profit over safety" and that it "has nothing to do with privacy. It's all about money and their [Apple's] brand" (Smythe et al, 2017). However, such an argument fails

to account for the considerable support given to Apple by the technology community at large, even from independent, non-profit organizations. For example, in an amicus brief submitted to the court, the Electronic Privacy Information Center (EPIC), an independent nonprofit research center, along with an additional eight consumer privacy organizations, writes “consumers demand such [data] protections, and Apple has responded by creating strong digital locks that are designed to keep all others, even Apple, from accessing the contents of a smartphone” and that if Apple complied with the FBI’s request, then “consumers will suffer” (“Corrected Brief”, 2016). EPIC also notes that Apple has responded to the needs of consumers by encrypting their data with “strong digital locks” that keep out all other parties (“Corrected Brief”, 2016). Hence, EPIC underscores how encryption of consumer data is important to privacy and how consumers expect that their data is protected. This demand for data protections, as recognized by EPIC, further underscores that Apple understands its relationship with customers as it knows data must be protected. Additionally, EPIC writes that “consumers will suffer” if Apple complied with the FBI, not that Apple would suffer. Apple is thus not taking such actions for its own brand and profits; it is taking such actions to lessen the suffering of its consumers, showing how it seeks to care for them.

Competence

The last attribute of care that Apple demonstrates in its refusal to comply with the FBI’s request is competence, which is the ability to provide successful care. As shown above, Apple provides care by first recognizing the need to protect customer data and then by acting upon this need by encrypting customer data. Importantly, to provide successful care, the implementation of encryption must be secure. In its motion to vacate, Apple writes that the request to build a backdoor “provides an avenue for criminals and foreign agents to access millions of iPhones”

and “once the floodgates open, they cannot be closed, and the device security that Apple has worked so tirelessly to achieve will be unwound” (“Apple Inc.’s Motion”, 2016). First, note that Apple recognizes the greater implications of the case at hand. By complying with this singular government request, Apple knows that the technology it would have created would negatively impact its level of care, with “millions of iPhones” being able to be compromised. Thus, Apple provides successful care by recognizing what actions would negatively impact the care it has already provided and explicitly choosing to not take those actions. Apple further notes the negative impact this request has on its care by realizing this decision is irreversible: “once the floodgates open, they cannot be closed” (“Apple Inc.’s Motion”, 2016). It would be impossible for Apple to provide successful care if it complies with the FBI’s request, as device security would never be able to be regained. Hence, in order to even have the opportunity to provide successful care to its customers, Apple must reject the FBI’s request. Any other action would permanently alter Apple’s relationship with its customers.

Conclusion

In refusing to aid the FBI in unlocking an iPhone from a terrorist, Apple demonstrates how it practices care ethics. The relationship between Apple and its customers is asymmetrical, with customers being vulnerable as they must rely on Apple to protect their private data. Hence, Apple has a duty to protect customer data in order to maintain this relationship. Apple responds to this duty by demonstrating three sub-elements of care: attentiveness, responsibility, and competence. Through its efforts in maintaining a healthy relationship with its customers, Apple, as a company, practices care ethics.

Modern day technology companies are responsible for storing and protecting an enormous amount of data. Through this case study of how Apple sought to uphold the

relationship with its customers when deciding to reject the FBI's request for private customer information, we can move beyond questions only concerning privacy and security. Thus, we gain a model for companies to act when facing user privacy issues that maintains customer trust and relationships.

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