

Palantir's software and ICE

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Abstract

Palantir is a data analytics company that came under internal and external scrutiny after their software that they sold to Immigrations and Customs Enforcement directly resulted in the arrests of many undocumented migrants which subjected them to inhumane treatment. Their company was able to sell their software because of policy vacuums and conceptual muddles that enable government departments to share data with one another with little restrictions. Their actions can be viewed as unethical through the lenses of the framework justice as fairness but have a great deal of tension when examined through the ethical frameworks of utilitarianism and virtue ethics.

Introduction

In recent years, there have been numerous cases of employees raising ethical concerns about a new technology being developed within their company. For example, Google has had a host of ethical dilemmas raised by employees including Project Maven (Shane and Wakabayashi, 2018), Google Bard (Alba and Love, 2023), and a censored search engine for China (Conger and Wakabayashi, 2018). Google is not the only company to have employees raise ethical concerns about a project they were developing though. Microsoft (Lillington, 2019), Meta (Wayt, 2021), and Amazon (Vincent, 2018) have also all had employees raise ethical concerns within their respective companies.

Although many of the above examples led to positive change within those companies, not all ethical concerns raised by employees are taken into consideration or acted upon by their employers. One company that has had employees worry about the ethical dimensions of a project that was not heeded by their employer is Palantir and their work with Immigrations and Customs

Enforcement (ICE). ICE has come under an abundance of criticism since the Trump administration for separating migrant families and placing them in cruel and inhumane conditions while they await to be deported (Domingo-Garcia, 2019).

This instance with Palantir deserves further investigation to help see the complexity of the factors that went into the employer's decision to deploy the technology despite protests from some of their employees. To further investigate these factors, Palantir's technology and the context of the ethical concerns will be examined, the relevant conceptual muddles or policy vacuums that complicate the issue will be explored, and the ethical frameworks of utilitarianism and virtue ethics will be applied to determine whether Palantir's technology was ethically permissible; and the tensions between what the ethical frameworks have to say about this topic will be explored as well.

Background

Palantir, co-founded by Alex Karp and Peter Thiel, is a data analytics software company that sells data mining software to other companies and government agencies (Bursztynsky, 2020). Data analytics is the act of "...using data, techniques and tools that identify patterns and trends, which in turn generate actionable insights that support informed decision-making" (*What is Data Analytics - The Ultimate Guide*, n.d.). Meanwhile, data mining is "...a process of compiling multitudes of information from disparate sources to show patterns and relationships" (MacMillan and Dwoskin, 2019).

The ethical controversies surrounding Palantir were brought to public attention after Google backed out of its government contract for Project Maven in 2019 and Alex Karp

criticized them for doing so while simultaneously renewing an ICE contract for forty-two million dollars (MacMillan and Dwoskin, 2019). The products and services Palantir provide to ICE are an Integrated Case Management system (ICM), FALCON, and FALCON Tipline. Their ICM is software that "... allows [ICE] to store and assign data collected from a vast surveillance network to files on various persons or organizations" (Ongweso, 2019). Their ICM is further explained by *The Intercept* where they say,

"The system provides its users access to intelligence platforms maintained by the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Federal Bureau of Investigation, and an array of other federal and private law enforcement entities. It can provide ICE agents access to information on a subject's schooling, family relationships, employment information, phone records, immigration history, foreign exchange program status, personal connections, biometric traits, criminal records, and home and work addresses (Woodman, 2023, para. 3)."

The FALCON software "is a series of software tools that also help collect, file, and analyze data for connections, which are then visualized and mapped out..." (Ongweso, 2019). The FALCON Tipline software "...consolidates data from tips to be used for 'link analysis' and planning future operations" (Ongweso, 2019). In layman's terms, Palantir is providing ICE with software that browses a multitude of different databases to make finding connections easier among them, which in turn allows ICE to track immigrants and asylum seekers more efficient, quicker, and in a larger scale. When this is considered with the inhumane and cruel treatment ICE puts detainees under, it was only a matter of time before employees brought up ethical concerns to their employer.

There was a host of debates within Palantir after their contract with ICE started getting scrutinized by the public. On one occasion, more than 200 employees who were disturbed by what they were contributing to signed a letter to Alex Karp (MacMillan and Dwoskin, 2019).

The Washington Post further explained the internal rife by saying,

“Many of Palantir’s 2,500 employees have debated the ICE contracts in town hall meetings, office hallways, Slack channels and email threads, according to current and former employees, who spoke on the condition of anonymity because the company bound them to confidentiality agreements. Palantir employees have taken both sides of the issue: Immigrant employees have written heartfelt letters sharing why they are opposed to the ICE contracts, while at least one former ICE official who now works at Palantir has defended them, according to a current engineer at the company. Employees who support the ICE partnership believe Palantir has helped the agency do more good than bad, including supporting missions to apprehend dangerous criminals, according to two current employees. But others have felt deflated by what they see as management’s lack of receptivity to their concerns, two former employees said. A company with a mission to ‘work for the common good,’ according to recent job listings, increasingly feels to some workers like a tool for Trump’s political agenda. ‘There’s a version of the story where they are the good guys,’ one former employee said. ‘Everyone wants to protect service members from IEDs. Everyone wants to prevent human trafficking. Not everyone can get behind working for ICE to help deport immigrants’” (MacMillan and Dwoskin, 2019, para. 16-18).

The quote from *The Washington Post* shows the nuance in the ethical concerns from Palantir’s employees. To preface, there can be many conclusions drawn from their thoughts;

however, this paper explores just one avenue. One ethical question that can be raised from one side of the argument is that some employees detest supporting the inhumane operations of ICE, which begs the question if the company is doing the right thing or not by supporting ICE, a governmental department that is directly harming innocent people through their software with the idea of apprehending so called criminals. The other side acknowledges ICE's problems but mentions how ICE is apprehending some dangerous criminals with the aid of their software. This results with the main ethical question being debated that whether putting many innocent migrants in harm's way is worth it to apprehend migrants who are guilty of dangerous crimes.

According to the *U.S. Customs and Border Protection*, around 57% of noncitizen arrests from 2017 through 2023 have been for "Illegal Entry, Re-Entry" (*Criminal noncitizen statistics fiscal year 2023*, n.d.). The 43% of other arrests were for dangerous crimes. This statistic gives context to what the employees were arguing about, which can be summed up as this: Is arresting 57% of people who committed a victimless crime and submitting them to cruel and unusual punishment worth it for the other 43% of arrests who committed a crime with a victim? This question raised by the employees forgoes considering whether any person deserves cruel and unusual punishment along with the ethical debates between rehabilitation versus retribution as a way to reform criminals. It also does not include the context of why some of the immigrants came to the United States, which in many circumstances was to avoid poverty and violence (Gamboa et al., 2018). The information about the debates between employees at Palantir that were released to the press did not include important considerations surrounding the context of the migrants.

The ethical concerns the employees did have that were reported on were disregarded as Palantir's CEO, Alex Karp, was noted saying,

“...the government should be responsible for answering difficult questions about how technologies may be used to surveil citizens. ‘I do not believe that these questions should be decided in Silicon Valley by a number of engineers at large platform companies,’ Karp said in the interview” (MacMillan and Dwoskin, 2019, para. 11-12).

With Karp’s attitude towards the ethical debates the employees were having, little was done by Palantir to address what was happening. It can be seen today, in 2023, that Palantir still contributes to ethical controversies by being a front runner for handling England’s NHS patient data with a seven-year contract worth 480 million pounds (Craig, 2023). A direct result from the ICE controversy led to the largest immigration raid in a decade, where ICE arrested 680 people across different food processing plants in Mississippi assisted by Palantir’s software (Ongweso, 2019).

Maria Domingo Garcia, a Guatemalan immigrant who worked at one the food processing plants that was raided, wrote about the aftermath from these raids by discussing how she was taken from her family on her kids’ first day back to school, not allowed to continue nursing her new-born baby, and submitted to inhumane treatment at the detention center she was held at (Domingo-Garcia, 2019). To conclude, Palantir’s inaction regarding their employees’ ethical concerns led to many people, like Maria, being directly impacted by their software, which is still used today, along with their services still being offered for large sums of money.

Conceptual Muddles/Policy Vacuums

James Moor defined conceptual muddles and policy vacuums in his influential article titled, “What is Computer Ethics?” where he said,

“A typical problem in Computer Ethics arises because there is a policy vacuum about how computer technology should be used. Computers provide us with new capabilities and these in turn give us new choices for action. Often, either no policies for conduct in these situations exist or existing policies seem inadequate. A central task of Computer Ethics is to determine what we should do in such cases, that is, formulate policies to guide our actions... One difficulty is that along with a policy vacuum there is often a conceptual vacuum. Although a problem in Computer Ethics may seem clear initially, a little reflection reveals a conceptual muddle. What is needed in such cases is an analysis that provides a coherent conceptual framework within which to formulate a policy for action” (Moor 1985, p. 266).

Conceptual muddles and policy vacuums are important to examine in the case of Palantir because once they are identified and ethically examined, society can then determine how to fix those issues so companies like Palantir can no longer exploit a new technology for profit that harms many innocent people.

Alex Karp has made it clear that the government should be the ones regulating what companies like Palantir can and cannot do with data. This supports the policy vacuum that they are using to support ICE. Anil Kalhan, a law professor at Drexel, goes on to say that,

“Data sharing between federal agencies is often not governed by concrete legal regulations...’Legislation after 9/11 authorized and encouraged information sharing within the executive branch... There is general authorization, and the scope and limits and constraints upon that authorization have not really been spelled out” (Woodman, 2023, para. 18).

The answer to the policy vacuum Palantir is using would be to enact legislation that prevents or regulates information sharing between branches of government. This is supported by Jacinta Gonzalez, Mijente's Field Director, who says,

“... [it's] about demanding different policies from our federal, state and local governments, and about holding private corporations to task in terms of how they're aiding and abetting this type of behavior. For us, that's why it's about targeting some of these corporations like Palantir and why we think the workers that work at these companies should be internally organizing to demand justice and to demand that these contracts be cut” (Ongweso 2019, para. 15).

Demanding different policies will be difficult without first investigating what the conceptual muddles are that are involved in this situation. The conceptual muddles complicate the enactment of policy because in many instances they examine the context of the issue which leads to broader ideological debates in society.

For example, one conceptual muddle preventing proper legislation in the case of Palantir is the question of what protections and affordances should the government give to undocumented migrants? This muddle applies to this situation because if the nation could agree and enact legislation that afforded more rights to migrants, then much of what Palantir is doing would be rendered useless.

Another muddle that can be seen in the case of Palantir is the question of should corporations assist the government in collecting vast amounts of data? This leads to a broader muddle of should people's data be bought and sold as a commodity, and should consumers have more agency in how their data is used? These are complex questions that society still has not

answered, which makes the policy vacuum that Palantir is using possible and complicates analyzing what must be done. These issues lead to an infinite loop of the need to create policy, but first the need to clear up the muddles that prohibit proper legislation, which needs broader policy reforms that need conceptual muddles to be answered ad infinitum. The way to break this loop could be the answer to solving the vacuum and muddles that allow Palantir to conduct their business; however, this is outside the scope of this essay and deserves further academic inquiry.

Ethical Examination

Utilitarianism

Utilitarianism is an ethical framework that can be explained by Herman Tavani where he says,

“Utilitarians argue that the outcome or consequences for the greatest number of individuals, or the majority, in a given society is paramount in moral deliberation.

According to the utilitarian theory, an individual act (X) or a social policy (Y) is morally permissible if the consequences that result from (X) or (Y) produce the greatest amount of good for the greatest number of persons affected by the act or policy. Utilitarians stress the ‘social utility’ or social usefulness of particular actions and policies by focusing on the consequences that result from those actions and policies” (Tavani 2023, p. 53).

Applying an ethical framework to any situation will have a great deal of nuance, and using utilitarianism to examine Palantir is no different. One side of the argument could use utilitarianism to state that the software Palantir provides to ICE is unethical because it is directly contributing to undocumented migrants being arrested and detained in inhospitable conditions

decreasing social utility for them. Of those being arrested, more than half of them just for being undocumented, which is a victimless crime. Therefore, some utilitarians could argue that Palantir's software that is provided to ICE is unethical because it is not distributing social utility to the greatest amount of people, especially within the group of undocumented migrants.

Other utilitarians could counter this argument by stating that Palantir's software is ethical because for the undocumented migrants it finds who did commit violent crimes benefits society as a whole; therefore, those who were arrested for a victimless crime are the price to pay for generating greater social utility for the broader society.

Virtue Ethics

Virtue ethics is another ethical framework that can examine Palantir's software that can be defined as,

“...virtue [ethics] directs, modulates, and integrates the enactment of a person's individual moral virtues, adjusting their habitual expression to the unique moral demands of each situation. A fully virtuous person, then, is never blindly or reactively courageous or benevolent—rather, her virtues are expressed intelligently, in a manner that is both harmonious with her overall character and appropriate to the concrete situation with which she is confronted” (Vallor 2018, p.19).

Vallor also adds to this by saying,

“...virtue ethics treats persons not as atomistic individuals confronting narrowly circumscribed choices, but as beings whose actions are always informed by a particular

social context of concrete roles, relationships, and responsibilities to others” (Vallor 2018, p.33).

Some of the moral virtues that are included in virtue ethics are love, wisdom, justice, patience, and generosity (Hursthouse and Pettigrove, 2022). Like utilitarianism, virtue ethics also provides a nuanced framework to examine an ethical dilemma, such as Palantir working with ICE. It may provide even more consideration for Palantir's software than utilitarianism because it does not follow a specific formula and allows for circumstantial consideration. Like utilitarianism, some virtue ethicists may disagree on whether Palantir's software is ethical or not.

One virtue ethicist would likely say that the software Palantir provided to ICE was unethical because it was a decision fueled by greed that harms innocent people, and this is not a moral virtue. Another virtue ethicist may disagree and say that Palantir's software is ethical because those who have been affected by an undocumented migrant committing a violent crime deserve justice and that they are making their communities safer by arresting them. The first virtue ethicist would likely counter the second by saying that using software to put people in cages is not loving or generous. The arguments would likely continue back and forth with the give and take that virtue ethics allows.

Tension Between Frameworks

Both ethical frameworks that have been examined thus far in the context of Palantir's software being used by ICE can lead to a great deal of nuance and debate between each other and within each framework. This can be helpful and frustrating at the same time as it allows many perspectives to be discussed on the issue while also providing additional considerations that may

go against what one perceives. Both frameworks could permit and prohibit Palantir from selling their software to ICE depending on which line of reasoning one would argue, which does not answer if Palantir's software was ethically permissible or not to sell to ICE.

When this happens, it can be useful to bring in another framework that adds a different perspective to the mix. The ethical framework of justice as fairness may be able to help push the scale in one way or another. John Rawl's theory of justice has two defining principles which are,

“First Principle: Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; Second Principle: Social and economic inequalities are to satisfy two conditions: They are to be attached to offices and positions open to all under conditions of fair equality of opportunity; They are to be to the greatest benefit of the least-advantaged members of society (the difference principle) (JF, 42–43)” (Wenar 2021, 4.3 The Two Principles of Justice as Fairness).

When Rawl's theory of justice as fairness is applied to Palantir's software that was sold to ICE, it can be seen as unethical because the undocumented migrants who are being detained are having their basic liberties stripped and they can be seen as disadvantaged members of society who are not reaping any benefits that should be provided to them.

With the tension between utilitarianism and virtue ethics, the theory of justice as fairness elevates the push and pull between the two theories that leans the scale of Palantir's software as unethical.

Conclusion

Palantir's software that is provided to ICE caused a series of discussions and debates within the company between their employees. Some of the employees were against the decision while others supported it. This debate between employees did not budge CEO Alex Karp who doubled down on Palantir's contract with ICE. Their software used by ICE directly led to many undocumented migrants being detained and forced to endure inhumane conditions in detention centers. The situation got more complex when examining the conceptual muddles and policy vacuums that allow their software and ICE to thrive. When their actions are examined through the ethical frameworks of utilitarianism and virtue ethics, it can be hard to decide if their actions are ethical or not as both theories allow a great deal of debate within themselves and each other. The tension between the two theories can be elevated by additional ethical frameworks such as justice as fairness, which helps one see that their actions were unethical.

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