

# Whistle-Blowing and Morality

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**ABSTRACT.** Whistle-blowing is generally considered from the viewpoint of professional morality. Morality rejects the idea of choice and the interests of the professional as immoral. Yet the dreadful retaliations against the messengers of the truth make it necessary for morality to leave a way out of whistle-blowing. This is why it forges rights (sometimes called duties) to trump the duty to the public prescribed by professional codes. This serves to hide the obvious fact that whether to blow the whistle is indeed a choice, not a matter of objective duty. One should also notice that if it fails to achieve anything then blowing the whistle was the wrong decision (or maybe the right decision that nobody would want to make). There is nevertheless a tendency to judge it based on the motivation of the whistle blower. In a way, whistle blowers should strive to act like saints. Yet, it is logically impossible to hold both whistle-blowing as mandatory and whistle-blowers as heroes or saints. Moreover, this tends to value the great deeds of a few over the lives of the many, which is incompatible with the basic assumptions of morality. But consistency is not a main feature of professional morality.

**KEY WORDS:** business ethics, code of ethics, duty, engineering ethics, moral luck, moral obligation

## Introduction

Whistle-blowing is the act, for an employee (or former employee), of disclosing what he believes to be unethical or illegal behavior to higher management (internal whistle-blowing) or to an external authority or the public (external whistle-blowing). Its status is debated: as Rothschild and Miethe (1999) note, “some see [whistle blowers] as traitorous violators of organizational loyalty norms; others see them as heroic defenders of values considered to be more important than company loyalty (e.g., the public health, truth-in-advertising, environmental respect).” Since “those who raise

ethical issues are treated as disturbed or morally suspect” (Alford, 2007), Near and Miceli (1996) ask “are whistle blowers really crackpots?”. On the other hand, to Rothschild and Miethe (1999), whistle-blowing is a “new form of worker resistance” relevant to the “unending battle between labor and management to control the workplace.” Grant (2002) calls whistle blowers “saints of secular culture.” Edward Morgan Forster famously said “If I had to choose between betraying my country and betraying my friend, I hope I should have the guts to betray my country;” It seems that whistle-blowing is the choice between betraying one’s company and one’s humanity.

In order to study whistle-blowing from an ethics viewpoint, one obviously needs to know what is meant by ‘ethics.’ Some treat ‘ethics’ and ‘morality’ as synonymous. Others consider morality as a special form of ethics:

the word ‘morality’ has by now taken on a more distinctive content, and I am going to suggest that morality should be understood as a particular development of the ethical, one that has a special significance in modern Western culture. It peculiarly emphasizes certain ethical notions rather than others, developing in particular a certain notion of obligation, and it has some peculiar presuppositions. In view of these features it is also, I believe, something we should treat with a special skepticism. (Williams, 1985, p. 6)

Whereas “ethical life itself is important, but it can see that things other than itself are important” (Williams, 1985, p. 184), morality tends to claim control over everything. To Nietzsche (1888), “morality is the best of all devices for leading mankind by the nose.” I shall follow Williams in using ‘ethics’ broadly and ‘morality’ narrowly and I shall ask, taking whistle-blowing as an example, to what extent professional ethics is in fact professional morality.

## Whistle-blowing and codes of morality

In the case of engineering, authors typically mention that the first canon of the code of the National Society of Professional Engineering (duty to the public) should trump the fourth canon (duty to the employer): “the health, safety, and welfare of the public are to be placed first” (Harris et al., 2005, p. 183). (I shall take it for granted that human lives are indeed more important than obedience – especially to people who feel otherwise.) Consequently, whistle-blowing is mandatory: “it is permissible to whistleblow when the following conditions have been met. Under these conditions there is also an obligation to whistleblow” (Martin and Schinzinger, 2005, p. 174).

### *A dreadful obligation*

Alford (2007) notes that “theirs is an act of considerable consequence, especially when one considers that among fired whistle blowers, most will lose their homes and ultimately, their marriages;” Rothschild and Miethe (1999) indeed found that over half the whistle blowers they interviewed had family problems. That Gunsalus (1998) wrote an article entitled “How to blow the whistle and still have a career afterwards” is significant. Rothschild and Miethe found that two-thirds of whistle blowers “lost their job or were forced to retire” and “were blacklisted from getting another job in their field.” Consequently, two-thirds of them also had severe financial problems. They also found that 84% suffered from “severe depression or anxiety” and over two-thirds of them also had “declining physical health.” A whistle blower mentioned by Oliver (2003) “estimates that his legal costs have exceeded \$130,000.” Alford (2007) sees suffering as an essential part of whistle-blowing: “the whistle blower is defined by the retaliation he or she receives. No retaliation, and the whistle blower is just a responsible employee doing her job to protect the company’s interest.” If “often the protest is most effective if one has already resigned from the organization” (Harris et al., 2005, p. 206) then one can only choose between a total self-sacrifice and a partial and pointless self-sacrifice.

How can one make any of this mandatory?<sup>1</sup>

## *Duality of engineering ethics*

Engineering ethics classes and textbooks are based on case studies asking ‘what should an engineer do in this situation?’. Since “technological, scientific, humanistic, and social issues are all mixed together” (Williams, 2003), the answer typically mixes the ethical and the non-ethical: engineering ethics is then the finding of a creative solution incorporating concerns of many kinds.

On the other hand, codes of conduct are morality – “many of the standard provisions of engineering codes are simply specific applications of common morality to the engineering profession” (Harris et al., 2005, p. 52). Codes are obligations, duties. They require a very sharp distinction between the ethical and the non-ethical. There are two separate questions: ‘what should a professional do, from an ethical point of view?’ (i.e., ‘what are his duties?’) and ‘what should a professional do, from a non-ethical point of view?’ (e.g., technical concerns). The first question is supposed to trump the second. The whole issue of whistle-blowing is then framed in terms of obligations (or absence thereof).

### *Morality and the self*

The following three statements are obviously true, but their relative importance is debated.

- (1) I exist.
- (2) Others exist.
- (3) I am not someone else.

Morality stresses 2 (e.g., duty to the population) and undermines 1 and 3 as much as possible. For instance, Harris et al. (2005) take self-interest as one of the “impediments to responsible action” (p. 37). Rejection of 3 is obvious in the universalization at the core of Kant’s categorical imperative and in the utilitarian view that my welfare is on a par with that of others – “utilitarianism does not take seriously the distinction between persons” (Rawls, 1971, p. 24). In other words, the fact that it is me and not someone else we are talking about should not be brought into the picture (or rather should be taken out of the picture): “there is a tendency to associate

professionalism with setting aside personal values in order to be objective and to meet shared standards of the profession” (Martin, 2002).

Codes embody this view: they pile up duties for professionals without acknowledging that professionals are individuals, rather than mere vectors for duty. It is then clear that the question of whistle-blowing is just a matter of comparing duty toward the public to duty toward the employer. But this view relies on a bias in favor of alienation: it assumes that I do not exist, that I do not count, or that I am someone else. So the employee must account for the interests of the public and of the company only – thinking of oneself is selfish, i.e., wrong. “In any deliberative contest between a moral obligation and some other consideration, the moral obligation will always win out, according to the morality system.” (Chappell, 2006). For instance, Fleddermann (1999) never mentions possible harm to the employee: to him whistle-blowing is determined wholly on external criteria. Likewise, to DeGeorge (2005) the difference between possible and mandatory whistle-blowing is independent of the employee. The whistle blower is part of the implementation, not part of the decision.<sup>2</sup>

One may decide to reject codes of morality so that whistle-blowing is optional. But this is difficult since “the fact that a given agent would prefer not to be in [the morality] system or bound by its rules will not excuse him” (Williams, 1985, p. 177). Alternatively, one may abide by the “mandatory requirements expressed in codes of ethics” (Martin, 2002) and make whistle-blowing a moral obligation. A third option is to change the meaning of ‘obligation’ so that whistle-blowing is a moral obligation without being obligatory. We will now examine this paradoxical view.

## Freedom by means of obligation

### *Armchair heroes*

“Blame is the characteristic reaction of the morality system” (Williams, 1985, p. 177). But if one wishes to blame as immoral an employee who remained silent instead of alerting the public on a potential danger one must first make sure that one would have acted differently. (It is always easier to be a hero in an armchair than on the battlefield.) Of course, this

may be difficult, even if it is attempted in good faith. Let us try to simulate whistle-blowing in order to have some idea of the kind of heroes we are.

Sell your house, your cars, and all your other belongings; then send the money to starving Africans. You will thus lose everything and save more lives than any whistle blower ever saved. Everyone can do this (there is no need to be in a special place at a special time as in the case of whistle-blowing), yet nobody actually does this. I do not and neither do you. We must then acknowledge that if we have to choose between our little problems and the lives of others, we choose ourselves. Claiming that those who can save lives have an obligation to do so, even at a great personal cost, is a lie: it is setting for others a rule that we do not follow ourselves.

### *Duty manufacturing*

But wait, my case is different: I have a reason not to do any of this, I have overriding duties. “The obligation [to whistleblow] is *prima facie* and in some situations can be overridden by other moral considerations” (Martin and Schinzinger, 2005, p. 174). In other words, whistle-blowing is always mandatory except when it is not. Thanks to this concept of non-obligatory obligation, one can say that there is a moral obligation without acting upon it – all the moral superiority, none of the adverse consequences. In order to make the whistle-blowing obligation optional, one must first generate such overriding moral considerations.

One cannot say ‘I do not want to sacrifice my career’ to cancel the moral obligation of whistle-blowing: “obligations have a moral stringency, which means that breaking them attracts blame. The only thing that can be counted on to cancel this, within the economy of morality, is that the rival action should represent another and more stringent obligation” (Williams, 1985, p. 180). For instance, one may say that “personal obligations to family, as well as rights to pursue one’s career, militate against whistleblowing” (Martin and Schinzinger, 2005, p. 175). In other words, instead of saying ‘I do not want to sacrifice my career’ one says ‘I have a duty (e.g., to my family) not to sacrifice my career.’ Paradoxically, one’s freedom comes from limiting one’s freedom.

This is plainly bad faith: this trick aims at making my personal interests look like a duty. Somehow this highly contrived and intellectually dishonest procedure seems more acceptable than saying ‘I do not want to sacrifice my career.’ As Williams (1985) points out, “it is a mistake of morality to try to make everything into obligations” (p. 180).

To Martin and Schinzinger (2005), whistle-blowing is mandatory but “may become supererogatory – more than one’s basic moral obligations” if the consequences would be too harsh (p. 175). This concept of ‘mandatory but supererogatory’ is – from a logical viewpoint – worse than ‘separate but equal’ (and of no use to someone looking for guidance in good faith).

#### *The whistle-blower is condemned to be free*

While this is actually a decision (I decide to invoke this or that ‘duty’ and I decide that it trumps my duty to the population), it is presented as an objective external duty, which I cannot override. If I acknowledged that this is really a decision of mine I could not hide under the sheets and pretend that I am obeying some external rule: I would have to make a decision explicitly, and as a corollary I would have to accept the consequences: “man is condemned to be free; because once thrown into the world, he is responsible for everything he does” (Sartre, 1943). Morality is the business of forging rights (to a career) and duties (to one’s family), concealing (from oneself?)<sup>3</sup> that one is actually making decisions.

Authors tend to look for ways to avoid whistle-blowing, i.e., for policies that would make it unnecessary. This is both necessary and pointless. Necessary because whistle-blowing is not a satisfactory solution. Pointless because when one faces a choice, ‘it would be better if I did not have to make such a choice’ is no answer. Likewise, discussions of whistle-blowing often focus on a whole procedure, of which whistle-blowing is only the last step, e.g., Harris et al. (2005), Martin and Schinzinger (2005). But this bureaucratic approach does little to help one make a choice. If everything else fails, the question of whether to speak up (i.e., the need to make a decision) remains, untouched by the whole process.

#### *Morality abhors a vacuum*

One may retort that the concept of *prima facie* duty (i.e., a duty that can be overridden at will) may have weaknesses but is nevertheless better than no concept at all, i.e., better than saying that this is a pure decision for which one cannot rely on any rule.

Imagine that an unknown disease kills a large fraction of the population of a village untouched by civilization (be it deep in Amazonia or in medieval Europe). Some may make up an explanation for the epidemic (e.g., divine wrath) while others will acknowledge that they do not know. Should one back the liars and the deluded or should one side with the ones who can actually solve the problem? (Indeed, a necessary condition for finding the solution is awareness that one does not already have it.) While this by no means shows that the absence of answer is intrinsically superior, it brings back to the fore the actual criterion: truth. An answer is better than none only if it is true, otherwise it is a source of potentially damaging delusion.

And in fact optional obligations do not concretely answer the question either: as I already pointed out, they allow one to decide whether to invoke overriding duties. Facultative obligations only provide a hollow and cumbersome framework to hide under the sheets. It does not actually fill the vacuum, it just hides it.

#### **When is whistle-blowing worthy?**

##### *Moral luck*

Overall, it became increasingly clear through the interviews that whistle blowers are in the ultimate no-win situation. By speaking out they face the wrath of managers for being a squealer, but inaction makes them potentially culpable and/or easy scapegoats when and if the misconduct is discovered. In this sense, many whistle blowers can be characterized as reluctant dissenters, moved neither by altruistic nor selfish concerns, but rather by a tide of events over which they feel they have little control. (Rothschild and Miethe, 1999)

What is the difference between someone who knew of wrongdoing and said nothing and someone who did not know of the wrongdoing but who would not have said anything either had he known? The difference is circumstances: one had to make a decision and the other did not have to. Had the circumstances been identical, they would have acted identically. But the circumstances are independent of them, so that praise and blame depend partly on chance (Nagel, 1979; Williams, 1981).

The collapse of the Quebec Bridge in 1907 was due to the “selection of a design concept beyond the technically proven range” (Roddis, 1993). The only reason why the engineer can be blamed for this daring design is that it failed. Christopher Columbus sailing toward the possibility of a continent was far more foolhardy. “The only thing that will justify his choice is success itself” (Williams, 1981, p. 23). The difference between Columbus and the civil engineer is that the latter failed. Blame and praise depend in part on the consequences of our decisions, even though we have no control over them.

#### *The right decision that nobody wants to make*

If a whistle blower succeeds both in having the release of a potentially dangerous product postponed and in keeping his job, then he did make the right decision. Even if the product is released anyway and he loses his job, some will still say that he made the right decision. One of them is Kant (1785), who famously wrote

Even if, by a special disfavor of fortune or by the niggardly provision of a step motherly nature, this [good] will should wholly lack the capacity to carry out its purpose [...] then, like a jewel, it would still shine by itself, as something that has its full worth in itself.

But nobody would want to make this kind of right decision. Everybody would want to be a hero but nobody wants to be a martyr.<sup>4</sup> When someone successfully prevents a catastrophe, we may call him a hero and envy him (even be resentful: ‘he did not do much to deserve this, I would have done just the same.’) On the other hand, we do not envy an employee who lost his job for blowing the whistle

on a product that turned out to be perfectly safe. Instead, we pity him. Pity is paradoxical because it requires that the employee did something right<sup>5</sup> (otherwise we would blame not pity) and that we do not want to be in such a situation, otherwise we would envy not pity. Even if in theory one might consider that the unlucky whistle blower made the right decision, in practice one would not want to make this kind of right decision.

#### *Immaculate whistle-blowing*

When one takes motives to be more important than outcomes, one concludes that what is important is not the public but purity of heart: “whistle-blowing is an activity that should only be entered into with pure motives” (Oliver, 2003), “it is acceptable to blow the whistle to protect the public interest, but not to exact revenge upon fellow employees, supervisors, or your company” (Fleddermann, 1999, p. 90).

But if someone saves my life out of revenge or greed, should I not say ‘thank you’ rather than ‘this was wrong, never do it again’? While one may argue that saving my life for the ‘right’ reasons is better than saving my life for ‘wrong’ reasons, it is quite obvious that saving me is better than not doing so. Making the right decision for the wrong reasons is still making the right decision (Carson et al. (in press) argue similarly). As Mandeville (1997) pointed out, greed and other flaws of character may give better results than virtue. What to think of someone who reflects ‘what I am about to do is wrong because I would save lives for the wrong reasons’ and decides not to act? Should such a twisted morality be praised?

Rewards are such an issue. For example, to Grant (2002), “any indication that reward was anticipated, or in any way entered into the decision to blow the whistle, compromises the ethical quality of the act itself” so that these would not be “genuine instances” of whistle-blowing. Can one reject the idea of rewards, even if they increase the probability that lives will be saved (by motivating potential whistle blowers)? This kind of morality has the peculiar consequence of favoring the great deeds of a few over the lives of the many. At what exact point did the proponents of morality turn Nietzschean?



### *Issues with heroism*

The purity of their motives and the hazards they faced leads to the construal of whistle blowers as heroes or as “saints of secular culture” (Grant, 2002). (Would they qualify as *Übermenschen*?) To Alford (2007), “‘The little man who stood up against the big corporation and won’ is a type of folk hero.” But one cannot be a hero just by doing one’s duty: if whistle-blowing is a moral obligation then whistle blowers cannot be heroes. The source of this error is easy to track: in order to incite people to report unethical activities – e.g., Near (1989) wrote an article entitled “Whistle-blowing: Encourage it!” –, one makes whistle blowers heroes and whistle-blowing a moral obligation. These two tactics are logically incompatible: since a hero necessarily goes beyond the call of duty, when one extends moral obligation nearly to infinity it is impossible to do more than what one has to do. Morality leaves no place for praise, only blame can exist when duties are infinite.

On the other hand, if whistle-blowing is “supererogatory” (Bowie and Duska, 1990; Martin, 2002) or “represents an extreme that defies the reasonable expectation of the most prominent versions of ethics” (Grant, 2002), there is room for “saints.” Yet, Grant seems to value this adversity because it creates “saints of secular culture,” thereby making this culture less secular. This view is similar to the common reply to the so-called problem of evil where the existence of evil is deemed good because it leads to certain goods (e.g., there can be no forgiveness without a prior misdeed): losing one’s job, career, house, family, etc. is good because there can be no saint without it. Naturally, there is no need to value evil to consider whistle blowers as praiseworthy, one needs only recognize a limit to obligations. Yet, the bigger the risk, the rarer the whistle blower, and thus the more praiseworthy.

### **Conclusion**

Professional ethics is in fact professional morality. In particular, it leaves no room for choice or the interests of the professional. Yet the dreadful retaliations against the messengers of the truth make it necessary to bring the needs of the whistle blower

back into the picture. To conciliate the necessary public acknowledgment that whistle-blowing is a moral obligation and the deeper interests of the professional, morality forges rights (which it calls duties) that trump the obligations prescribed by codes (e.g., to the public). Morality tries to thereby hide the obvious fact that the choice of speaking up or remaining silent is indeed a choice, not something decided externally: if the employee somehow has a duty not to blow the whistle then he cannot be blamed. Yet, accounting for the interests of the individual directly and calling a decision a decision would be more honest than manufacturing *ad hoc* rights and duties.

One should also notice that whether whistle-blowing is the right decision depends to a great extent on its outcome: if it fails to achieve anything then blowing the whistle was the wrong decision (some would maintain that it was the right decision but it is far from clear that they would want to make such a right decision themselves). Yet there is a tendency to judge it based on the motivation of the whistle blower – saving lives is wrong if one’s heart is not pure. Whistle-blowing is then seen as essentially self-sacrifice. In a way, whistle blowers should strive to act like saints. Yet, being a hero or a saint requires to do more than one’s duty, which is impossible if whistle-blowing is mandatory: heroism and moral obligation are logically incompatible. Moreover, there cannot be saints who act out of impure motives, so that rewarding whistle-blowing would taint motives and bring the saints down from their pedestals. But this means that the great deeds of a few are more valuable than the lives of the many (who may be saved by more wide-spread whistle-blowing). Morality leading to Nietzsche.

In the context of morality, what is deemed right or wrong depends on how the question is framed. For instance it depends on whether we are talking about me or someone else: I am more likely to invoke duty to my family than to grant others such a right. One can also praise deeds as moral but be unwilling to perform them oneself. There is a tendency to construe whistle-blowing as mandatory and whistle blowers as heroes, even though these are logically incompatible. And the rejection of rewards as tainting motives is incompatible with the basic assumptions of morality. Consistency is not a main feature of professional morality.

## Notes

<sup>1</sup> Codes that make whistle-blowing mandatory are like generals that send soldiers get killed: the one giving the order does not suffer any adverse consequences. Telling others to sacrifice themselves is no sacrifice.

<sup>2</sup> One can notice that, put in Kantian terms, this signifies that whistle blowers are a means not an end.

<sup>3</sup> Nietzsche pointed out that “the most common lie is that which one lies to himself; lying to others is relatively an exception.”

<sup>4</sup> Even though it does have advantages: as Schopenhauer noted, “martyrdom is the only way a man can become famous without ability.” Of course, nowadays reality TV offers an alternative.

<sup>5</sup> Actually, it only requires that the employee did something one may have done as well in such a situation.

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