# Whistleblowing and Loyalty

A **whistleblower** is an employee who reveals information about unethical and/or illegal behavior of her employer to the public. A few well-known cases of whistleblowing (or at least alleged whistleblowing) include the following:

* In 1972, Peter Buxtun (an employee of the U.S. Public Health Service) leaked information about the **Tuskegee Syphilis Experiment,** in which researchers had failed to provide numerous African American males with adequate treatment. This led to major changes in the way medical research was carried out, both in the U.S., and around the world.
* In 1971, Daniel Ellsburg leaked the **Pentagon Papers,** which contained detailed information about the Vietnam War, and how the government’s claims about the progress of the war were inaccurate. This contributed to the eventual U.S., withdrawal from Vietnam. A year later, the FBI agent Mark Felt provided newspapers about President Nixon’s role in the **Watergate** affair (which involved breaking into Democratic Party offices to steal information). Nixon resigned soon after.
* In the late 1970s and early 1980s, General Electric employees filed lawsuits or alerted journalists to problems related to the safety of nuclear power plants and GE’s overbilling of the Department of Defense for its work on bombers.
* In 1997, a security guard at UBS (a major international bank based in Switzerland) discovered that UBS was destroying financial records related to Holocaust victims, in order to avoid having to pay their descendants back. A year later, this led to Swiss banks (including UBS) paying over $1 billion.
* More recent incidents include “Bunny” Greenhouse’s whistleblowing over the military awarding “no bid” contracts to Haliburton in 2005, numerous finance/insurance employees before/after the financial crisis of 2008, and **Edward Snowden,** a CIA contractor who leaked large amounts of classified data regarding U.S. intelligence gathering. There may have been a whistleblower involved in the leak of the **Panama Papers,** which exposed the secret (and often, untaxed) holdings of large numbers of affluent individuals and organizations. The prime minister of Iceland was forced to resign in April 2016 in response to these revelations, and a number of other prominent politicians (in a variety of countries) have come under considerable pressure as well.
* In the 2019-2020 Coronavirus cases, there have been a variety of (attempted) whistle-blowers. In particular, a number of individuals tried to raise alarms about the virus, even when told not to by government agencies. In Wuhan, China a doctor named Li Wenliang raised early warnings about the disease to his colleagues (he eventually died from it). In Seattle, Washington, a research group led by Helen Chu began testing patients sick with flu systems for Coronavirus (even after the government prohibited this), and found a number of cases, which they reported. (Note: As I’m writing, these stories are still developing!).

Many of these cases have been highly controversial, with some people feeling strongly that the whistle blowers “did the right thing,” and that the government ought to protect them from any retaliation. Others (especially those “implicated” in the leak) have argued that the whistleblowing was morally wrong, as it inappropriately exposed private data, which may have a bad effect on the organization, the people who work for it, and even society as whole. In this lecture, we’ll take a look at some different accounts of what exactly whistleblowing *is,* and how we should think about its ethics.

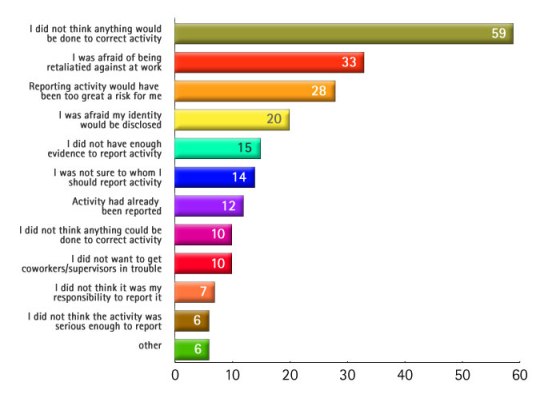


Figure Reasons why employees refrained from reporting illegal or wasteful activities. From Source: U.S. Merit Systems Protection Board, Whistleblowing in the Federal Government: An Update, 1993.

## Bok on the Moral Complications of Whisteblowing

In “Whistleblowing and Professional Responsibility,” Sissela Bok argues that each and every act of whistleblowing involves three separate “elements”: dissent, breach of loyalty, and accusation. Each of these three elements places unique demands on potential whistleblowers in order to make sure their actions are genuinely justified.

* **Dissent.** By definition, whistleblowers are “dissenters,” who disagree with policies, actions, or plans of their organization. By its very nature, this sort of dissent risks causing harm. Among other things, it undermines the trust of both “insiders” and “outsiders” in the decision-making of the organization, and may make it more difficult for the organization to make decisions in the future (for example, the press attention to a whistleblower might make an organization overly “risk averse,” which could compromise its long-term wellbeing). And, of course, the whistleblower (and those close to her) is at considerable risk of retaliation. With this in mind, whistleblowers need to make sure their information is *accurate* and *complete--*i.e., they need to take care to avoid “jumping to conclusions” based on subjective “hunches” or “feelings.”
* **Breach of loyalty.** On Bok’s account, whistleblowers must be *members* of the organization whose information they leak. This membership involves loyalties not merely to the owners or management, but to one’s coworkers, customers, and other narrow stakeholders. The whistleblower may even have made explicit or implicit *promises* to various people, which he must now break. While there are cases that justify this (when the risk to the public is sufficiently large, or when the promises were coerced or immoral), Bok argues that breaching loyalty in this way ought to be a “last resort,” and that the whistleblower should try to fix things using internal procedures before bringing it to the attention of outsiders.
* **Accusation.** The final element of whistle-blowing involves the specific allegation that some person/group was behaving in an immoral or illegal way. This is a serious charge, and the whistleblower makes it *publicly*, which means that the accused person will often be negatively affected, even if they end up being “cleared.” Bok argues that this element requires careful consideration by the whistleblower. Among other things, it means that the data released should concern a specific, imminent threat to the public. It should NOT be “character assassination,” based on vague innuendo or on the private habits (however deplorable) of those in question. Finally, where possible, the whistleblower ought to be *open* about their identity, which allows the accused parties some opportunity to defend themselves. The basic idea: whistleblowing is NOT a tool for “getting revenge” on those you don’t like, or for advancing one’s career at the expense of rivals.

Bok concludes that potential whistleblowers need to take special care to avoid *bias*, and to make sure their actions are driven by the “right” motives. This requires seeking outside, objective perspectives on the issue that concerns them; and carefully considering the more general arguments concerning the potential benefits/harms of whistleblowing.

## When is WhistleBlowing Allowed? De George’s “Standard” Account

Much of the current debate on whistleblowing refers back to Richard De George’s discussion of it in his *Business Ethics* (1986) textbook. De George argued that whistleblowing might be *morally prohibited, morally permissible,* or *morally required* depending on a number of rules. In order for whistleblowing to be justified, the answer to the following questions must all be “yes”:

1. **Will the policy or product in question do “serious and considerable harm” to the public?** A serious and considerable harm might involve a dangerous product, deceitful behavior (cheating on taxes), or a policy that would leave people significantly worse off (e.g., use of monopoly power to drive up prices on basic necessities of life). By contrast, the sorts of “minor” harms that characterize day-to-day business (questionable hiring decisions, advertisements that exaggerate, products somewhat more expensive than they ought to be) are not appropriate target for whistleblowing.
2. **Has the potential whistleblower told her concerns to her supervisor?** As a first step, a whistleblower must try to follow the “chain of command,” and report the problem to her potential supervisor. Only if she is “brushed off” should she consider bringing it higher levels.
3. **Has the potential whistleblower used ALL available internal procedures?** If the concern is dismissed by the employee’s supervisor, he must still try to keep it “within the firm,” perhaps by bringing his concern to upper management, human resources, the director of compliance, and so on. This may require that the employee put him/herself at risk (since management often doesn’t like being told that their actions are immoral or illegal). Only if this fails should he consider bringing it to the public.

If these three conditions are met, it is morally OK for the employee towhistleblow, but she is not required to do so. Whistleblowing is morally required if, in addition to first three criteria, the following two questions can be answered in the affirmative:

1. **Does the whistleblower have access to evidence that would convince an impartial observer that she is correct in her concerns?** In many cases, whistleblowers are justified in their beliefs, but lack access to the evidence that would allow them to convince the public of the need for action. If the whistleblower *does* have this sort of evidence, there is a much stronger incentive to act (especially since public goodwill can help protect the whistleblower from retaliation).
2. **Is there good reason to think that whistleblowing would actually *prevent the harm?*** Another frequent problem of whistleblowers concerns their *powerlessness* when compared to the firms that employ them. For example, merely leaking info to a local paper may not “fix the problem,” and it places the whistleblower at considerable risk. Again, things change when the whistleblower has good reason to think that *she really can make a difference.* For example, if it seems likely that prominent media outlets and/or government regulatory agencies will take action based on the whistleblower’s report, this would be a strong reason to act. Again, meeting this criteria makes it much more difficult for the firm to retaliate against the whistleblower.

On De George’s view, whistleblowing can be permitted *only* in the face of severe risks to the public, and only when the whistleblower has done everything possible from within the firm. Whistleblowing becomes morally obligatory only the employee has reason to think that the whistleblowing will be *successful,* and when the threat of retaliation is correspondingly low.

## Problems with De George’s Account

A number of people have argued that De George (and to some extent, Bok as well) gets the ethics of whistleblowing “wrong.” Here are a few common objections:

**Objection 1: Whistleblowing can be morally justified, even absent a serious and considerable harm.** It’s plausible that many (or even most) instances of whistleblowing don’t live up to De George’s criteria. For example, think of all the whistleblowers who reported illegal or immoral activities *that already happened* (and thus can’t be prevented). Or, consider a whistleblower who is concerned about sexual harassment, insider trading, or some other “internal” company matter that doesn’t directly affect the public. In these cases, it seems plausible that the whistleblower still serves the public, at least in part by making *other* firms aware of the potential costs if they engage in these sorts of bad behaviors.

**Objection 2: De George requires too much (and too little) of the whistleblower.** On the one hand, De George requires that whistleblowers exhaust all “internal procedures,” which (in the real world) can easily lead to their being terminated, and may even lead the firm to conceal the evidence regarding the behavior in question (which will undercut the effectiveness of any whistleblowing). On the other hand, De George claims that whistleblowing isn’t *required* unless the employee has overwhelming reason to think that the revelation will be effective. This seems far too strong a requirement. For example, suppose that you had reason to think your firm was engaged in a *massively* harmful enterprise (e.g., selling illegal chemical weapons to dictators). It seems reasonable that *you ought to try to do something,* even if you realize that your chance of success is relatively small, and even if this likely means losing your job as a result.

**Objection 3: De George (and Bok) assume the employee has moral duties of loyalty to the firm. This is false.** The ethicist **Ronald Duska** famously rejects the “loyalty to the firm vs. the greater good” framework of Bok and De George. He argues that duties of loyalty have no place in the work world: the firm is not your “family,” it is not your “sports team,” or anything of the sort. Instead, employees have a strictly *financial* relationship with the firm, where the sole goal of both parties of profit. While firms (with good reason) often try to convince employees that this is not the case, Duska thinks the case of whistleblowing provides an excellent example of why this way of thinking is so dangerous. Whistleblowers should NOT be concerned about duties of “loyalty” to the firm, but about preventing potential harm to society. While this duty is limited somewhat by the personal risk to whisteblowers (of being fired, etc.), loyalty to the firm plays no role whatsoever.

## Review Questions

1. Choose a famous whistleblower, and give a brief a description of their actions. Now, offer a detailed moral analysis of their actions. For example, were their actions morally OK, or did they do something wrong? If the actions were OK, were these actions morally required, or did they go “above and beyond” the call of duty?
2. In your own words, explain Bok’s or De George’s account of whistleblowing, and give one OBJECTION to this theory. Now, consider how Bok/De George might respond to this objection.
3. What do you think the \*biggest\* reasons are that people don’t “blow the whistle” when they see unethical or illegal conduct? Is a matter of being “loyal” to their employer? Fear of reprisal? Something else? Given these issues, what do you think governments and/or individual organizations might do to make whistleblowing easier?
4. Have you ever witnessed immoral or illegal behavior at the workplace? If so, how did you respond? Looking back, would you do anything differently? Please incorporate relevant class material in your answer.

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