

Personal, Professional, and Institutional Obligations

WHISTLEBLOWING I*

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Written by a prominent authority on applied ethics, this selection discusses the moral conflicts involved in employees "going public" with information about misconduct in their own organizations. Bok sees the problem of whistleblowing essentially in terms of clashes between personal and group loyalties and public interests.

"Whistleblowing" is a new label generated by our increased awareness of the ethical conflicts encountered at work. Whistleblowers sound an alarm from within the very organization in which they work, aiming to spotlight neglect or abuses that threaten the public interest.

The stakes in whistleblowing are high. Take the nurse who alleges that physicians enrich themselves in her hospital through unnecessary surgery; the engineer who discloses safety defects in the braking systems of a fleet of new rapid-transit vehicles; the Defense Department official who alerts Congress to military graft and overspending: All know that they pose a threat to those whom they denounce and that their own careers may be at risk..

Moral Conflicts

Moral conflicts on several levels confront anyone who is wondering whether to speak out about abuses or risks or serious neglect. In the first place, he must try to decide whether, other things being equal, speaking out is in fact in the public interest. This choice is often made more complicated by factual uncertainties: Who is responsible for the abuse or neglect? How great is the threat? And how likely is it that speaking out will precipitate changes for the better?

In the second place, a would-be whistleblower must weigh his responsibility to serve the public interest against the responsibility he owes to his colleagues and the institution in which he works. While the professional ethic requires collegial loyalty, the codes of ethics often stress responsibility to the public over and above duties to colleagues and clients. Thus the United States Code of Ethics for Government Servants asks them to "expose corruption wherever uncovered" and to "put loyalty to the highest moral principles and to country above loyalty to persons, party, or government." Similarly, the largest professional engineering association requires members to speak out against abuses threatening the safety, health, and welfare of the public.[†]

* References have been deleted without indication.

[†] For the Code of Ethics of the National Society of Professional Engineering, see Appendix II in this book.

A third conflict for would-be whistle-blowers is personal in nature and cuts across the first two: Even in cases where they have concluded that the facts warrant speaking out, and that their duty to do so overrides loyalties to colleagues and institutions, they often have reason to fear the results of carrying out such a duty. However strong this duty may seem in theory, they know that, in practice, retaliation is likely. As a result, their careers and their ability to support themselves and their families may be unjustly impaired. A government handbook issued during the Nixon era recommends reassigning “undesirables” to places so remote that they would prefer to resign. Whistleblowers may also be downgraded or given work without responsibility or work for which they are not qualified; or else they may be given many more tasks than they can possibly perform. Another risk is that an outspoken civil servant may be ordered to undergo a psychiatric fitness-for-duty examination, declared unfit for service, and “separated” as well as discredited from the point of view of any allegations he may be making. Outright firing, finally, is the most direct institutional response to whistleblowers.

Add to the conflicts confronting individual whistleblowers the claim to self-policing that many professions make, and professional responsibility is at issue in still another way. For an appeal to the public goes against everything that “self-policing” stands for. The question for the different professions, then, is how to resolve, insofar as it is possible, the conflict between professional loyalty and professional responsibility toward the outside world. The same conflicts arise to some extent in all groups, but professional groups often have special cohesion and claim special dignity and privileges.

The plight of whistleblowers has come to be documented by the press and described in a number of books. Evidence of the hardships imposed on those who chose to act in the public interest has combined with a heightened awareness of professional malfeasance and corruption to produce a shift toward greater public support of whistleblowers. Public service law firms and consumer groups have taken up their cause; institutional reforms and legislation have been proposed to combat illegitimate reprisals.

Given the indispensable services performed by so many whistleblowers, strong support is often merited. But the new climate of acceptance makes it easy to overlook the dangers of whistleblowing: of uses in error or in malice; of work and reputations unjustly lost for those falsely accused; of privacy invaded and trust undermined. There comes a level of internal prying and mutual suspicion at which no institution can function. And it is a fact that the disappointed, the incompetent, the malicious, and the paranoid all too often leap to accusations in public. Worst of all, ideological persecution throughout the world traditionally relies on insiders willing to inform on their colleagues or even on their family members, often through staged public denunciations or press campaigns.

No society can count itself immune from such dangers. But neither can it risk silencing those with a legitimate reason to blow the whistle. How then can we distinguish between different instances of whistleblowing? A society that fails to protect the right to speak out even on the part of those whose warnings turn out to be spurious obviously opens the door to political repression. But from the moral point of view there are important differences between the aims, messages, and methods of dissenters from within.

Nature of Whistleblowing

Three elements, each jarring, and triply jarring when conjoined, lend acts of whistleblowing special urgency and bitterness:

dissent, breach of loyalty, and accusation. Like all dissent, whistleblowing makes public a disagreement with an authority or a majority view. But whereas dissent can concern all forms of disagreement with, for instance, religious dogma or government policy or court decisions, whistle-blowing has the narrower aim of shedding light on negligence or abuse, or alerting to a risk, and of assigning responsibility for this risk.

Would-be whistleblowers confront the conflict inherent in all dissent: between conforming and sticking their necks out. The more repressive the authority they challenge, the greater the personal risk they take in speaking out. At exceptional times, as in times of war, even ordinarily tolerant authorities may come to regard dissent as unacceptable and even disloyal.

Furthermore, the whistleblower hopes to stop the game; but since he is neither referee nor coach, and since he blows the whistle on his own team, his act is seen as a violation of loyalty. In holding his position, he has assumed certain obligations to his colleagues and clients. He may even have subscribed to a loyalty oath or a promise of confidentiality. Loyalty to colleagues and to clients comes to be pitted against loyalty to the public interest, to those who may be injured unless the revelation is made.

Not only is loyalty violated in whistle-blowing, hierarchy as well is often opposed, since the whistleblower is not only a colleague but a subordinate. Though aware of the risks inherent in such disobedience, he often hopes to keep his job. At times, however, he plans his alarm to coincide with leaving the institution. If he is highly placed, or joined by others, resigning in protest may effectively direct public attention to the wrongdoing at issue. Still another alternative, often chosen by those who wish to be safe from retaliation, is to leave the institution quietly, to secure another post, and then to blow the whistle. In this way, it is possible to speak with the authority and knowledge of an insider without having the vulnerability of that position.

It is the element of accusation, of calling a “foul,” that arouses the strongest reactions on the part of the hierarchy. The accusation may be of neglect, of willfully concealed dangers, or of outright abuse on the part of colleagues or superiors. It singles out specific persons or groups as responsible for threats to the public interest. If no one could be held responsible — as in the case of an impending avalanche — the warning would not constitute whistleblowing.

The accusation of the whistleblower, moreover, concerns a present or an imminent threat. Past errors or misdeeds occasion such an alarm only if they still affect current practices. And risks far in the future lack the immediacy needed to make the alarm a compelling one, as well as the close connection to particular individuals that would justify actual accusations. Thus an alarm can be sounded about safety defects in a rapid-transit system that threaten or will shortly threaten passengers, but the revelation of safety defects in a system no longer in use, while of historical interest, would not constitute whistleblowing. Nor would the revelation of potential problems in a system not yet fully designed and far from implemented.

Not only immediacy, but also specificity, is needed for there to be an alarm capable of pinpointing responsibility. A concrete risk must be at issue rather than a vague

foreboding or a somber prediction. The act of whistleblowing differs in this respect from the lamentation or the dire prophecy. An immediate and specific threat would normally be acted upon by those at risk. The whistleblower assumes that his message will alert listeners to something they do not know, or whose significance they have not grasped because it has been kept secret.

The desire for openness inheres in the temptation to reveal any secret, sometimes joined to an urge for self-aggrandizement and publicity and the hope for revenge for past slights or injustices. There can be plea sure, too — righteous or malicious — in laying bare the secrets of co-workers and in setting the record straight at last. Col leagues of the whistleblower often suspect his motives: they may regard him as a crank, as publicity-hungry, wrong about the facts, eager for scandal and discord, and driven to indiscretion by his personal biases and shortcomings.

For whistleblowing to be effective, it must arouse its audience. Inarticulate whistleblowers are likely to fail from the outset. When they are greeted by apathy, their message dissipates. When they are greeted by disbelief, they elicit no response at all. And when the audience is not free to receive or to act on the information — when censorship or fear of retribution stifles response — then the message rebounds to injure the whistleblower. Whistleblowing also requires the possibility of concerted public response: The idea of whistleblowing in an anarchy is therefore merely quixotic.

Such characteristics of whistleblowing and strategic considerations for achieving an impact are common to the noblest warnings, the most vicious personal attacks, and the delusions of the paranoid. How can one distinguish the many acts of sounding an alarm that are genuinely in the public interest from all the petty, biased, or lurid revelations that pervade our querulous and gossip-ridden society? Can we draw distinctions between different whistleblowers, different messages, different methods?

We clearly can, in a number of cases. Whistleblowing may be starkly inappropriate when in malice or error, or when it lays bare legitimately private matters having to do, for instance, with political belief or sexual life. It can, just as clearly, be the only way to shed light on an ongoing unjust practice such as drugging political prisoners or subjecting them to electroshock treatment. It can be the last resort for alerting the public to an impending disaster. Taking such clearcut cases as bench marks, and reflecting on what it is about them that weighs so heavily for or against speaking out, we can work our way toward the admittedly more complex cases in which whistleblowing is not so clearly the right or wrong choice, or where different points of view exist regarding its legitimacy — cases where there are moral reasons both for concealment and for disclosure and where judgments conflict. Consider the following cases:

1. As a construction inspector for a federal agency, John Samuels (not his real name) had personal knowledge of shoddy and deficient construction practices by private contractors. He knew his superiors received free vacations and entertainment, had their homes remodeled and found jobs for their relatives — all courtesy of a private contractor. These superiors later approved a multimillion no-bid contract with the same “generous” firm. Samuels also had evidence that other firms were hiring nonunion laborers at a low wage while receiving substantially higher payments from the government for labor costs. A former superior, unaware of an office dicta- phone, had incautiously instructed Samuels on how to accept bribes

- for overlooking sub-par performance. As he prepared to volunteer this information to various members of Congress, he became tense and uneasy. His family was scared and the fears were valid. It might cost Samuels thousands of dollars to protect his job. Those who had freely provided Samuels with information would probably recant or withdraw their friendship. A number of people might object to his using a Dictaphone to gather information. His agency would start covering up and vent its collective wrath upon him. As for reporters and writers, they would gather for a few days, then move on to the next story. He would be left without a job, with fewer friends, with massive battles looming, and without the financial means of fighting them. Samuels decided to remain silent.
2. Engineers of Company "A" prepared plans and specifications for machinery to be used in a manufacturing process and Company "A" turned them over to Company "B" for production. The engineers of Company "B," in reviewing the plans and specifications, came to the conclusion that they included certain miscalculations and technical deficiencies of a nature that the final product might be unsuitable for the purposes of the ultimate users, and that the equipment, if built according to the original plans and specifications, might endanger the lives of persons in proximity to it. The engineers of Company "B" called the matter to the attention of appropriate officials of their employer who, in turn, advised Company "A." Company "A" replied that its engineers felt that the design and specifications for the equipment were adequate and safe and that Company "B" should proceed to build the equipment as designed and specified. The officials of Company "B" instructed its engineers to proceed with the work.
 3. A recently hired assistant director of admissions in a state university begins to wonder whether transcripts of some applicants accurately reflect their accomplishments. He knows that it matters to many in the university community, including alumni, that the football team continue its winning tradition. He has heard rumors that surrogates may be available to take tests for a fee, signing the names of designated applicants for admission, and that some of the transcripts may have been altered. But he has no hard facts. When he brings the question up with the director of admissions, he is told that the rumors are unfounded and asked not to inquire further into the matter.

Individual Moral Choice

What questions might those who consider sounding an alarm in public ask themselves? How might they articulate the problem they see and weigh its injustice before deciding whether or not to reveal it? How can they best try to make sure their choice is the right one? In thinking about these questions it helps to keep in mind the three elements mentioned earlier: dissent, breach of loyalty, and accusation. They impose certain requirements — of accuracy and judgment in dissent; of exploring alternative ways to cope with improprieties that minimize the breach of loyalty; and of fairness in accusation. For each, careful articulation and testing of arguments are needed to limit error and bias.

Dissent by whistleblowers, first of all, is expressly claimed to be intended to benefit the public. It carries with it, as a result, an obligation to consider the nature of this benefit and to consider also the possible harm that may come from speaking out: harm to persons or institutions and, ultimately, to the public interest itself. Whistleblowers must, therefore, begin by making every effort to consider the effects of speaking out versus those of remaining silent. They must assure themselves of the accuracy of their reports, checking and rechecking the facts before speaking out; specify the degree to which there is genuine impropriety; consider how imminent is the threat they see, how serious, and how closely linked to those accused of neglect and abuse.

If the facts warrant whistleblowing, how can the second element — breach of loyalty — be minimized? The most important question here is whether the existing avenues for change within the organization have been explored. It is a waste of time for the public as well as harmful to the institution to sound the loudest alarm first. Whistleblowing has to remain a last alternative because of its destructive side effects:

It must be chosen only when other alternatives have been considered and rejected. They may be rejected if they simply do not apply to the problem at hand, or when there is not time to go through routine channels, or when the institution is so corrupt or coercive that steps will be taken to silence the whistleblower should he try the regular channels first.

What weight should an oath or a promise of silence have in the conflict of loyalties? One sworn to silence is doubtless under a stronger obligation because of the oath he has taken. He has bound himself, assumed specific obligations beyond those assumed in merely taking a new position. But even such promises can be overridden when the public interest at issue is strong enough. They can be overridden if they were obtained under duress or through deceit. They can be overridden, too, if they promise something that is in itself wrong or unlawful. The fact that one has promised silence is no excuse for complicity in covering up a crime or a violation of the public's trust.

The third element in whistleblowing — accusation — raises equally serious ethical concerns. They are concerns of fairness to the persons accused of impropriety. Is the message one to which the public is entitled in the first place? Or does it infringe on personal and private matters that one has no right to invade? Here, the very notion of what is in the public's best "interest" is at issue: "Accusations" regarding an official's unusual sexual or religious experiences may well appeal to the public's interest without being information relevant to "the public interest."

Great conflicts arise here. We have witnessed excessive claims to executive privilege and to secrecy by government officials during the Watergate scandal in order to cover up for abuses the public had every right to discover. Conversely, those hoping to profit from prying into private matters have become adept at invoking "the public's right to know." Some even regard such private matters as threats to the public:

they voice their own religious and political prejudices in the language of accusation. Such a danger is never stronger than when the accusation is delivered surreptitiously. The anonymous accusations made during the McCarthy period regarding political beliefs and associations often injured persons who did not even know their accusers or the exact nature of the accusations.

From the public's point of view, accusations that are openly made by identifiable individuals are more likely to be taken seriously. And in fairness to those criticized,

openly accepted responsibility for blowing the whistle should be preferred to the denunciation or the leaked rumor. What is openly stated can more easily be checked, its source's motives challenged, and the underlying information examined. Those under attack may otherwise be hard put to defend themselves against nameless adversaries. Often they do not even know that they are threatened until it is too late to respond. The anonymous denunciation, moreover, common to so many regimes, places the burden of investigation on government agencies that may thereby gain the power of a secret police.

From the point of view of the whistle-blower, on the other hand, the anonymous message is safer in situations where retaliation is likely. But it is also often less likely to be taken seriously. Unless the message is accompanied by indications of how the evidence can be checked, its anonymity, however safe for the source, speaks against it.

During this process of weighing the legitimacy of speaking out, the method used, and the degree of fairness needed, whistleblowers must try to compensate for the strong possibility of bias on their part. They should be scrupulously aware of any motive that might skew their message: a desire for self-defense in a difficult bureaucratic situation, perhaps, or the urge to seek revenge, or inflated expectations regarding the effect their message will have on the situation. (Needless to say, bias affects the silent as well as the outspoken. The motive for holding back important information about abuses and injustice ought to give similar cause for soul-searching.)

Likewise, the possibility of personal gain from sounding the alarm ought to give pause. Once again there is then greater risk of a biased message. Even if the whistleblower regards himself as incorruptible, his profiting from revelations of neglect or abuse will lead others to question his motives and to put less credence in his charges. If, for example, a government employee stands to make large profits from a book exposing the iniquities in his agency, there is danger that he will, perhaps even unconsciously, slant his report in order to cause more of a sensation.

A special problem arises when there is a high risk that the civil servant who speaks out will have to go through costly litigation. Might he not justifiably try to make enough money on his public revelations — say, through books or public speaking — to off set his losses? In so doing he will not strictly speaking have profited from his revelations:

he merely avoids being financially crushed by their sequels. He will nevertheless still be suspected at the time of revelation, and his message will therefore seem more questionable. Reducing bias and error in moral choice often requires consultation, even open debate: methods that force articulation of the moral arguments at stake and challenge privately held assumptions. But acts of whistleblowing present special problems when it comes to open consultation. On the one hand, once the whistleblower sounds his alarm publicly, his arguments will be subjected to open scrutiny: He will have to articulate his reasons for speaking out and substantiate his charges. On the other hand, it will then be too late to retract the alarm or to combat its harmful effects, should his choice to speak out have been ill-advised.

For this reason, the whistleblower owes it to all involved to make sure of two things: that he has sought as much and as objective advice regarding his choice as he can before going public; and that he is aware of the arguments for and against the practice of whistleblowing in general, so that he can see his own choice against as richly detailed and coherently structured a background as possible. Satisfying these two requirements once

again has special problems because of the very nature of whistleblowing: the more corrupt the circumstances, the more dangerous it may be to seek consultation before speaking out. And yet, since the whistleblower himself may have a biased view of the state of affairs, he may choose not to consult others when in fact it would be not only safe but advantageous to do so; he may see corruption and conspiracy where none exists.