Elliston and Martin: Whistleblowing

Elliston: Whistleblowing and Anonymity

- With Michalos and Poff we’ve been looking at general considerations about the **moral independence** of employees.

  In particular, the failure of the LAA (at least as Michalos reconstructs it) seems to suggest that a certain kind of excuse – “I was just doing my job”; “I just work here” – isn’t really sufficient to deny moral responsibility.

- Now, we come to a figure that we have already had occasion to mention, someone who at least *pro tem*, puts other loyalties ahead of loyalty to her employer. Namely, the **whistle-blower**...
In short order, we will be looking Michael Martin’s views about whether and to what extent whistleblowing can be shown to be morally obligatory. But, recall our earlier discussion about rights-talk (e.g., Hohfeld’s classifications): If something can be construed as obligatory, it must also be permissible.

This is one way of looking at what Elliston is up to:

- Is the practice of whistleblowing (at least) permissible?
- If so, is the practice of anonymous whistleblowing (at least) permissible?

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**What is Whistleblowing?**

- **Elliston:** What exactly do we mean by whistleblowing? How do we recognize it when we see it? In answering such questions he makes a number of fairly basic distinctions. We needn’t look at all of them in great detail (they are in the book, after all). But some highlights include:

  a) **Whistleblowing is a (misleading) metaphor**

  - In sports, e.g., a referee blows her whistle when she spots some misconduct; game play comes to a stop. This suggests that whistleblowing is a single, discrete action. But, at least in a business context, whistleblowing isn’t like that. In fact, it is normally a (rather protracted) series of actions. It is a process.
b) Specifically, whistle-blowing is a process of communication

- What is communicated is some sort of information about actual or potential harm. (Re: safety, corruption, abuses, neglect)

- The source of this information is normally someone internal to an organization—an organization that (normally) exists to realize some set of interests other than detecting and reporting on harms…

  (Recall Bishop’s distinction between goals and constraints)

Cui malo?

- The actual or potential harm that is communicated about is normally harm that would be suffered by third parties, not the whistle-blower herself, nor, necessarily the organization of which she is a part.

- Of course, someone internal to an organization may point out potential harms to that organization to others in the organization (e.g., “our profitability is going to suffer unless we do something about those loose cannons in marketing”).

  We might also describe that as whistle-blowing, but it isn’t the most morally interesting case.
So, if whistle-blowing is a process of communication, how is the information communicated supposed to be received by the organization and/or received by the third parties?

To put that in somewhat high-falutin’ philosophical terminology, what sort of speech act characterizes whistleblowing…?

Whistle-blowing as Speech Act

- **Elliston**: The information conveyed in whistleblowing is not offered just as neutral information. I.e., the sort of information conveyed by an ordinary declarative sentence (“It so happens that our baby food line contains one part per thousand of radioactive isotopes.”)

  In speech-act theory jargon, whistleblowing is not primarily a assertive speech act—an utterance intended to simply communicate a proposition.

- Instead, whistleblowing usually involves an implicit injunction to do or not do something, it is a kind of imperative. (“Our products are consumed by infants all across the country! We need to do something!”)
- **Elliston**: Whistleblowing shares this feature with all cases of the more general phenomenon of issuing a *warning*. But whistleblowing typically carries with it the extra burden of *ascribing responsibility* – it involves an *accusation*.

- So, given the characterization of whistleblower as someone internal to an organization, whistleblowing also typically involves some *conflict of duties/loyalties*.

  As a member of the organization (e.g., the company) you have various duties (duties to realize the interests of the organization, duties of loyalty both to the organization as a whole, to your immediate superior, and to your fellow employees).

  Whistleblowing, on the other hand, depends on a recognition of *other* duties; duties to the third parties and/or duties to the public.

- **Also**: Unlike a referee or a traffic cop, the whistleblower typically lacks the *authority* within the organization to bring about whatever changes her whistleblowing might require.

  The whistleblower may or not bear part of the responsibility for whatever wrongdoing has taken place, but also, by definition, she doesn’t have the power to rectify or prevent that wrongdoing herself (otherwise she would presumably just do so).

  “*Their plight is typically that of the powerless*” (170): Whistleblowers have much to fear for (their jobs, their future employability) and few defenses.
Can Anonymous Whistleblowing Be Justified?

- There are some fairly strong moral intuitions against anonymous whistleblowing:
  
  It's “bad manners” – anonymous whistleblowing is like snitching, and nobody likes a snitch.*
  
  It's a potential barrier to the truth.
  
  It's potentially self-defeating.
  
  * Why? The intuitive answer probably has to do with loyalty; loyalty to the group and its interests. Anonymity can be seen as a threat to trust, group cohesiveness, group solidarity.

(Note: The converse of the utilitarian justification of professional duties re: privacy)

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P1 – blowing the whistle publicly
P2 – blowing the whistle anonymously
P3 – not blowing the whistle at all

- Perhaps, prima facie, we suppose that P1 is morally preferable to P2, and that P2 is morally preferable to P3.

- But if that's the case, we can still imagine a rule-utilitarian justification for the practice of anonymous whistleblowing: Allowing for anonymous whistleblowing may be justified insofar as it allows for more cases of “effective, warranted, whistleblowing” (172)

  I.e., says Elliston, “anonymity is justified if it increases the number who with good reason blow the whistle” (172)
Anonymity: Considerations Pro

More generally, Elliston concludes, anonymity is justified to the extent that:

i. As the seriousness of the harm increases, the condemnation of anonymity decreases. (Snitching to your mom about your sister)

ii. The greater the probability of unfair retaliation, the weaker the prohibition. (Why should I too suffer at the hands of the bully I snitch on?)

iii. Social relationships: The closer the whistleblower stands to the accused, the stronger the prohibition on anonymity. (Loyalty ought to count for something)

Anonymity: Moral Considerations Contra

a) Fair Play: People have a right to confront their accusers.

(But this can be at least partially rebutted on the grounds that anonymity promotes other values, e.g., public welfare, honesty, accountability)

b) Slippery Slope: What if everyone made anonymous accusations? Time and resources would be wasted on potentially frivolous accusations.

(But is that realistic, considering the real threats faced by whistleblowers? Also, surely some burden lies with those who would prevent people from speaking out: A right to dissent is justifiable.)
Martin: An *Obligation* to Whistleblow?

- Elliston (and others) offer grounds for believing the whistleblowing is permissible, but is it (ever) *obligatory*?

- Some well-known arguments (e.g., De George) suggest that is, at least for certain people in certain circumstances...

1. “Serious and considerable harm to the public” is involved
2. One reports the harm and expresses moral concern to one’s immediate supervisor
3. One exhausts other channels within the corporation
4. One has available “documented evidence that would convince a reasonable, impartial observer that one’s view of the situation is correct.”
5. One has good reasons to believe that by going public the “necessary changes will be brought about” to prevent the harm. (De George in Martin, 27)

*De George*: Permissible when 1-3 are met; obligatory when 1-5 are met.
Personal Life & Professional Duty

- **Martin:** Engineers (and, presumably, other professionals) *do* have a duty to whistleblow (when the relevant conditions are met), but that duty is only ever a *prima facie* duty.

  Professionals’ obligation to whistleblow, says Martin, has to be balanced against “their responsibilities to their family [and] other personal obligations which depend on having an income, and their rights to pursue their careers” (28)

- In short, the duty to whistleblow can’t demand ‘moral heroism’ of the professional. (Compare: Michalos & Poff)

No Heroes?

1. **The Prevent Harm Argument**

   Utilitarianism, e.g., demands strict *impartiality*: One’s family, one’s friends, oneself count for no more (and no less) than others.

   So, self-sacrifice may be morally required.

   **Martin:** The requirement of strict impartiality is “self-demeaning” (29). It violates our general right to autonomy.

   (Cf. Rawls’s objection that U “does not take seriously the distinction between persons”)
2. The Avoid Harm Argument

Professionals (e.g., engineers) have the power to prevent (or cause) harm to “on an unusual scale,” therefore they ought to held to a higher standard of responsibility.

Martin: Within a company, managers typically have a greater degree of control than engineers, so, if anyone ought to bear special responsibility it is them. (True of all/most other professionals?)

But, engineers have greater expertise—they are likely to know better than managers when/how harm is likely.

Martin: It would be fair “to ask engineers to pick up the moral slack” if we offered them legal protection from the consequences of whistleblowing. But, generally, we don’t

3. Professional Status Argument

Engineers (and other professionals) have undertaken special responsibilities set out in a professional code of ethics (e.g., a primary obligation to protect public safety)

Martin: Yes, engineers certainly have to meet the minimum standard set out in their code, but considerations set out in the code (e.g., public safety) are not morally paramount (i.e., categorical, exceptionless)—personal considerations matter too (e.g., duties to spouses & children)
Martin: The Bottom Line

- Yes, whistleblowing (under the right conditions) is morally commendable.

  But there are several virtues that professionals ought to embody in their working lives (incl. virtues of self-direction and teamwork); whistleblowing follows from only one of those virtues (public-spiritedness)

- Unless and until the public does its part by offering whistleblowers special legal protections, such actions, while appropriately motivated by a sense of moral responsibility, are nonetheless supererogatory.