

TOPIC 10

DOES BLOWING THE WHISTLE VIOLATE COMPANY LOYALTY?



Introduction

As Sarah N. Lynch's brief article "*Wells Fargo complaints show flaws in federal whistleblower program*" below makes clear, it is rarely desirable to get into the position of being a whistleblower. When the whistleblower discovers something amiss in the workplace, whether big or small, this will undoubtedly arise in his or her consciousness as a felt experience of disturbance that the situation or elements of the situation are not in harmony with their own value orientation. Obviously, it is rarely, if ever, a fun experience to find yourself in the position of a whistleblower.

Some of the disturbing wrongdoings in the workplace might be not much more than the kind of minor moral violations that Susan Heathfield points to in her Codes of Ethics article in Topic 5, like pilfering supplies or lying to get time off. But the wrongdoing could also be more subtle and pervasive, like the corporate culture pressure at Wells Fargo to cross-sell that was coming down heavily on workers in the guise of legitimate company policy. Feeling that what appears to be broad company policy is contrary to her personal morality can create a deep moral conflict for the whistleblower. Read the stories of the people who lost their jobs at Wells Fargo when they blew the whistle internally and you will see what I mean. So, how should the conflict facing the whistleblower be understood? Let's look at three different perspectives.

The idea of whistleblowing is connected to the idea of company loyalty, if there is such a thing as company loyalty at all. **Sissela Bok** describes a traditional view of whistleblowing

that reflects the inherent conflict faced by the whistleblower. The conflict arises because there is a bond of loyalty with the company you work for, according to Bok; yet we also have a duty to the unsuspecting public as part of the social contract. Hence, there occurs a conflict of loyalties, with the whistleblower caught in the middle. For this reason, Bok presents a moral and practical response that a potential whistleblower, caught in such a moral conflict, should take before she or he actually blows the whistle. One should do the least damaging thing first.

Robert Larmer, in the second required article below, criticizes Bok's view and also introduces Ron Duska's view, and then presents his own view of the relation between whistleblowing and company loyalty. There are some tricky but interesting and sort of fun arguments in Larmer's article for determining where you stand about whistleblowing. Here is a quick look.

Larmer brings up philosopher **Ron Duska**. Duska argues that there is no bond of loyalty between employer and employee because only persons can have loyalty relations, and since businesses are not persons but merely instruments for making money (like Friedman's view), there is no bond of loyalty between employer and employee to be damaged by whistleblowing. Larmer thinks Duska is wrong about this. What is his argument for why he thinks Duska is wrong?

Larmer now criticizes Bok's view. He thinks Bok is right that there is a bond of loyalty between employer and employee, but he disagrees with Bok about how this bond of loyalty should be understood and acted upon. Rather than meaning merely acting in harmony with the other's best interest, as Bok understands loyalty, Larmer thinks that loyalty can lead to sometimes acting *against* what the other person thinks is in his or her best interest, especially if they are acting immorally, since acting immorally can never be in one's best interest, even if the person mistakenly thinks that their immoral actions are in their best interest, according to Larmer.

This leads Larmer to the conclusion that whistleblowing is not acting *against* the other's best interest (if the company is, indeed, acting immorally), but really is acting *in harmony with* their best interest--since acting immorally can never be in a person or company's best interest--and thus there is no moral conflict as Bok imagines it. This, of course, presumes that the company is, in fact, acting immorally.

What do you think about that idea that acting immorally can never be in a person's best interest? How about that little lie I tell when my girlfriend asks about her new haircut? I *feel* it is in my best interest, but I guess Larmer would rat me out, like a Duty Ethics person demanding I tell the truth *always*. On the other hand, if you believed that internal whistleblowing would lead to a cover up by management and your termination, maybe—like those unfortunate whistleblowers at Wells Fargo who used the internal hotline and got fired—you *should* go public first, or not at all. What do you think?

Whichever version of whistleblowing and company loyalty you subscribe to, it is rarely in anyone's best interest to find themselves in the position of the whistleblower—unless it is for tax fraud or a company ripping-off the federal government, in which case the whistleblower will get a percentage of the funds collected. Some whistleblowers have made a bundle. But most get bundled and tossed in the river of no return, as Sarah Lynch's article makes clear.

[Sarah N. Lynch](#)

Wells Fargo complaints show flaws in federal whistleblower program¹



Sarah Lynch

Former Wells Fargo Bank general manager Claudia Ponce de Leon filed a whistleblower complaint in December 2011 with federal labor regulators, alleging she was fired for telling superiors about employees opening unauthorized accounts.

Nearly five years later, she has not been interviewed by investigators at the Labor Department's Occupational Safety and Health Administration (OSHA), said her attorney Yosef Peretz.

Her complaint claiming retaliation by Wells Fargo for reporting potential misconduct is one of several dozens filed against the bank over the last 14 years, Reuters has found.

Their existence shows U.S. government regulators are still not meeting targets set by law -- a problem that was also flagged in a critical internal report issued in September 2015.

In late September, Reuters identified Ponce de Leon and at least four other former Wells Fargo employees who reported to OSHA between 2009 and 2014 that they were fired for raising concerns about the opening of unauthorized accounts and credit cards....

"It's absolutely outrageous that whistleblowers contacted OSHA as early as 2009 about potential fraud at Wells Fargo, and yet these government bureaucrats failed to do their job," said Sen. David Vitter, a Louisiana Republican who has been looking into how Wells Fargo's sales practices have impacted small business owners.

Darrell Whitman - a former OSHA investigator in the San Francisco office from 2010-2015 - was assigned to three of the five cases examined by Reuters from former Wells Fargo employees alleging retaliation for reporting improper sales tactics. Whitman said he only briefly dealt with Ponce de Leon's 2011 case before it was transferred to another investigator, and he was instructed to close the two 2010 cases because they were slated to be transferred to a federal court.

Whitman alleges he was fired for raising concerns about the agency's mishandling of whistleblower complaints, and Kamlet says she was fired for supporting his accounts and for raising concerns about a particular case she was investigating.

Whitman has since filed a whistleblower complaint of his own with the Office of Special Counsel, an office that investigates retaliation against federal employees.

His complaint is still pending.

¹ Lynch, Sarah N. "Wells Fargo complaints show flaws in federal whistleblower program." Reuters October 13, 2016. <http://www.reuters.com/article/us-wells-fargo-accounts-whistleblower-idUSKCN12D2M0>

Sissela Bok

Whistleblowing and Professional Responsibility²

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.



Dr. Sissela Bok

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.

A third conflict for would-be whistleblowers 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.

² Bok, Sissela. "Whistleblowing and Professional Responsibility." *New York University Education Quarterly*, vol. 11, Summer 1980, pp. 2-7.

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 public 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, whistleblowing 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 whistleblowing, 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 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 pleasure, too— righteous or malicious—in laying bare the secrets of co-workers and in setting the record straight at last. Colleagues 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 clear-cut cases as benchmarks, 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....

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 whistleblower, 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 the 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 inequities 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 offset 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^{10P}: 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.

Robert A. Larmer

Whistleblowing and Employee Loyalty³

Whistleblowing by an employee is the act of complaining, either within the corporation or publicly, about a corporation's unethical practices. Such an act raises important questions concerning the loyalties and duties of employees. Traditionally, the employee has been viewed as an agent who acts on behalf of a principal, i.e., the employer, and as possessing duties of loyalty and confidentiality. Whistleblowing, at least at first blush, seems a violation of these duties and it is scarcely surprising that in many instances employers and fellow employees argue that it is an act of disloyalty and hence morally wrong.



Dr. Robert Larmer

It is this issue of the relation between whistleblowing and employee loyalty that I want to address. What I will call the standard view is that employees possess *prima facie* duties of loyalty and confidentiality to their employers and that whistleblowing cannot be justified except on the basis of a higher duty to the public good. Against this standard view, [Ronald Duska](#) has recently argued that employees do not have even a *prima facie* duty of loyalty to their employers and that whistleblowing needs, therefore, no moral justification. I am going to criticize both views. My suggestion is that both misunderstand the relation between loyalty and whistleblowing. In their place I will propose a third more adequate view.

Duska's view is more radical in that it suggests that there can be no issue of whistleblowing and employee loyalty, since the employee has no duty to be loyal to his employer. His reason for suggesting that the employee owes the employer, at least the corporate employer, no loyalty is that companies are not the kinds of things which are proper objects of loyalty. His argument in support of this rests upon two key claims. The first is that loyalty, properly understood, implies a reciprocal relationship and is only appropriate in the context of a mutual surrendering of self-interest. He writes,

“It is important to recognize that in any relationship which demands loyalty the relationship works both ways and involves mutual enrichment. Loyalty is incompatible with self-interest, because it is something that necessarily requires that we go beyond self-interest. My loyalty to my friend, for example, requires I put aside my interests some of the time.... Loyalty

³ Larmer, Robert A. “Whistleblowing and Employee Loyalty.” *Journal of Business Ethics*, vol. 11, 1992, pp. 125-128.

depends on ties that demand self-sacrifice with no expectation of reward, e.g., the ties of loyalty that bind a family together.”

The second is that the relation between a company and an employee does not involve any surrender of self-interest on the part of the company since its primary goal is to maximize profit. Indeed; although it is convenient, it is misleading to talk of a company having interests. As Duska comments,

A company is not a person. A company is an instrument, and an instrument with a specific purpose, the making of profit. To treat an instrument as an end in itself, like a person, may not be as bad as treating an end as an instrument, but it does give the instrument a moral status it does not deserve....

Since, then, the relation between a company and an employee does not fulfill the minimal requirement of being a relation between two individuals, much less two reciprocally self-sacrificing individuals, Duska feels it is a mistake to suggest the employee has any duties of loyalty to the company.

This view does not seem adequate, however. First, it is not true that loyalty must be quite so reciprocal as Duska demands. Ideally, of course, one expects that if one is loyal to another person that person will reciprocate in kind. There are, however, many cases where loyalty is not entirely reciprocated, but where we do not feel that it is misplaced. A parent, for example, may remain loyal to an erring teenager, even though the teenager demonstrates no loyalty to the parent. Indeed, part of being a proper parent is to demonstrate loyalty to your children whether or not that loyalty is reciprocated. This is not to suggest any kind of analogy between parents and employees, but rather that it is not nonsense to suppose that loyalty may be appropriate even though it is not reciprocated. Inasmuch as he ignores this possibility, Duska's account of loyalty is flawed.

Second, even if Duska is correct in holding that loyalty is only appropriate between moral agents and that a company is not genuinely a moral agent, the question may still be raised whether an employee owes loyalty to fellow employees or the shareholders of the company. Granted that reference to a company as an individual involves reification and should not be taken too literally, it may nevertheless constitute a legitimate shorthand way of describing relations between genuine moral agents.

Third, it seems wrong to suggest that simply because the primary motive of the employer is economic, considerations of loyalty are irrelevant. An employee's primary motive in working for an employer is generally economic, but no one on that account would argue that it is impossible for her to demonstrate loyalty to the employer, even if it turns out to be misplaced. All that is required is that her primary economic motive be in some degree qualified by considerations of the employer's welfare. Similarly, the fact that an employer's primary motive is economic does not imply that it is not qualified by considerations of the employee's welfare. Given the possibility of mutual qualification of admittedly primary economic motives, it is fallacious to argue that employee loyalty is never appropriate.

In contrast to Duska, the standard view is that loyalty to one's employer is appropriate. According to it, one has an obligation to be loyal to one's employer and, consequently, a *prima*

fade duty to protect the employer's interests. Whistleblowing constitutes, therefore, a violation of duty to one's employer and needs strong justification if it is to be appropriate. Sissela Bok summarizes this view very well when she writes 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.P

The strength of this view is that it recognizes that loyalty is due one's employer. Its weakness is that it tends to conceive of whistleblowing as involving a tragic moral choice, since blowing the whistle is seen not so much as a positive action, but rather the lesser of two evils. Bok again puts the essence of this view very clearly when she writes that "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" and "that [when] their duty [to whistleblow] ... so *overrides loyalties to colleagues and institutions*, they [whistleblowers] often have reason to fear the results of carrying out such a duty." The employee, according to this understanding of whistleblowing, must choose between two acts of betrayal, either her employer or the public interest, each in itself reprehensible. .

Behind this view lies the assumption that to be loyal to someone is to act in a way that accords with what that person believes to be in her best interests. To be loyal to an employer, therefore, is to act in a way which the employer deems to be in his or her best interests. Since employers very rarely approve of whistleblowing and generally feel that it is not in their best interests, it follows that whistleblowing is an act of betrayal on the part of the employee, albeit a betrayal made in the interests of the public good.

Plausible though it initially seems, I think this view of whistleblowing is mistaken and that it embodies a mistaken conception of what constitutes employee loyalty. It ignores the fact that the great majority of corporate whistleblowers... [consider] themselves to be very loyal employees who ... [try] to use 'direct voice' (internal whistleblowing),... [are] rebuffed and punished for this, and then ... [use] 'indirect voice' (external whistleblowing). They... [believe] initially that they... [are] behaving in a loyal manner, helping their employers by calling top management's attention to practices that could eventually get the firm in trouble.

By ignoring the possibility that blowing the whistle may demonstrate greater loyalty than not blowing the whistle, it fails to do justice to the many instances where loyalty to someone constrains us to act in defiance of what that person believes to be in her best interests. I am not, for example, being disloyal to a friend if I refuse to loan her money for an investment I am sure will bring her financial ruin; even if she bitterly reproaches me for denying her what is so obviously a golden opportunity to make a fortune.

A more adequate definition of being loyal to someone is that loyalty involves acting in accordance with what one has good reason to believe to be in that person's best interests. A key question, of course, is what constitutes a good reason to think that something is in a person's best interests. Very often, but by no means invariably, we accept that a person thinking that something

is in her best interests is a sufficiently good reason to think that it actually is. Other times, especially when we feel that she is being rash, foolish, or misinformed we are prepared, precisely by virtue of being loyal, to act contrary to the person's wishes. It is beyond the scope of this paper to investigate such cases in detail, but three general points can be made.

First, to the degree that an action is genuinely immoral, it is impossible that it is in the agent's best interests. We would not, for example, say that someone who sells child pornography was acting in his own best interests, even if he vigorously protested that there was nothing wrong with such activity. Loyalty does not imply that we have a duty to refrain from reporting the immoral actions of those to whom we are loyal. An employer who is acting immorally is not acting in her own best interests and an employee is not acting disloyally in blowing the whistle. Indeed, the argument can be made that the employee who blows the whistle may be demonstrating greater loyalty than the employee who simply ignores the immoral conduct, inasmuch as she is attempting to prevent her employer from engaging in self-destructive behavior.

Second, loyalty requires that, whenever possible, in trying to resolve a problem we deal directly with the person to whom we are loyal. If, for example, I am loyal to a friend I do not immediately involve a third party when I try to dissuade my friend from involvement in immoral actions. Rather, I approach my friend directly, listen to his perspective on the events in question, and provide an opportunity for him to address the problem in a morally satisfactory way. This implies that, whenever possible, a loyal employee blows the whistle internally. This provides the employer with the opportunity to either demonstrate to the employee that, contrary to first appearances, no genuine wrongdoing had occurred, or, if there is a genuine moral problem, the opportunity to resolve it.

This principle of dealing directly with the person to whom loyalty is due needs to be qualified, however. Loyalty to a person requires that one acts in that person's best interests. Generally, this cannot be done without directly involving the person to whom one is loyal in the decision-making process, but there may arise cases where acting in a person's best interests requires that one act independently and perhaps even against the wishes of the person to whom one is loyal. Such cases will be especially apt to arise when the person to whom one is loyal is either immoral or ignoring the moral consequences of his actions. Thus, for example, loyalty to a friend who deals in hard narcotics would not imply that I speak first to my friend about my decision to inform the police of his activities, if the only effect of my doing so would be to make him more careful in his criminal dealings. Similarly, a loyal employee is under no obligation to speak first to an employer about the employer's immoral actions, if the only response of the employer will be to take care to cover up wrongdoing.

Neither is a loyal employee under obligation to speak first to an employer if it is clear that by doing so she places herself in jeopardy from an employer who will retaliate if given the opportunity. Loyalty amounts to acting in another's best interests and that may mean qualifying what seems to be in one's own interests, but it cannot imply that one take no steps to protect oneself from the immorality of those to whom one is loyal. The reason it cannot is that, as has already been argued, acting immorally can never really be in a person's best interests. It follows, therefore, that one is not acting in a person's best interests if one allows oneself to be treated immorally by

that person. Thus, for example, a father might be loyal to a child even though the child is guilty of stealing from him, but this would not mean that the father should let the child continue to steal. Similarly, an employee may be loyal to an employer even though she , takes steps to protect herself against unfair retaliation by the employer, e.g., by blowing the whistle externally.

Third, loyalty requires that one is concerned with more than considerations of justice. I have been arguing that loyalty cannot require one to ignore immoral or unjust behaviour on the part of those to whom one is loyal, since loyalty amounts to acting in a person's best interests and it can never be in a person's best interests to be allowed to act immorally. Loyalty, however, goes beyond considerations of justice in that, while it is possible to be disinterested and just, it is not possible to be disinterested and loyal. Loyalty implies a desire that the person to whom one is loyal take no moral stumbles, but that if moral stumbles have occurred that the person be restored and not simply ' punished. A loyal friend is not only someone who sticks by you in times of trouble, but someone who tries to help you avoid trouble. This suggests that a loyal employee will have a desire to point out problems and potential problems long before the drastic measures associated with whistleblowing become necessary, but that if whistleblowing does become necessary there remains a desire to help the employer.

In conclusion, although much more could be said on the subject of loyalty, our brief discussion has enabled us to clarify considerably the relation between whistleblowing and employee loyalty. It permits us to steer a course between the Scylla of Duska's view that, since the primary link between employer and employee is economic, the ideal of employee loyalty is an oxymoron, and the Charybdis of the standard view that, since it forces an employee to weigh conflicting duties, whistleblowing inevitably involves some degree of moral tragedy. The solution lies in realizing that to whistleblow for reasons of morality is to act in one's employer's best interests and involves, therefore, no disloyalty.

