EDUCATING THE WHISTLE-BLOWER

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Recent events in corporate America and Time Magazine’s celebration of three women “whistle-blowers” raise profound ethical questions about the relationship between internal organizational actions and individuals with the potential for external disclosure of misdeeds. What makes the relationship between an organization as a whole and its individual members so ethically opaque and problematic? If the concept of “organizational ethics” (like the older notion of “business ethics”) is not to become the latest addition to a list of popular oxymorons, then it is necessary to more fully explore the nature of the connections between an organization and individuals which comprise it, between the leviathan and the self. Moreover, it is incumbent on academics, educators and professionals to question the relevance of traditional ethical theorizing and the very practical concerns raised by this uneasy tension between our social and personal lives, between one’s corporate identity and self-identity.

As examples of this, consider our moral ambivalence about these two questions: Could whistle-blowing be a moral duty? And, are whistle-blowers “moral heroes?” It is important to recognize the extent to which traditional moral theories fail to adequately equip one to address these questions, and it is also important for us to think about ways in which education in ethics follows suit. It does so by neglecting the worth of communicating with students about some of the irreconcilable conflicts between competing duties and unfavorable consequences that arise in practical everyday decision-making, not just in theoretical abstractions or case-study hypotheticals.

Education in ethical theory is important, and in many colleges and universities it remains part of the general education requirements for every undergraduate student. A study of ethical theories certainly pro-
vides the foundation for reasonable and systematic analyses of principles on which we base our behavior and justifications for our choices. A focus on theories of ethics is educational in that it prompts us into asking deeper questions about human nature, the good life, justice, meaning and purpose. The traditional ethics course is important in this regard, since it gives educators the opportunity to guide students toward “a moment of transcendence” in which they are exposed to the deeper problems of human existence. Moreover, many if not all of our ethical decisions have underlying theoretical assumptions that influence our choices. However, an education in ethics which specializes in theoretical considerations alone should be seen as inadequate in at least two ways: one having to do with the nature of theory, and the other having to do with the nature of persons.

First, an approach to ethics education which relies too heavily on theoretical content ignores the insight and admonition of Aristotle, that the subject matter of ethics does not admit of scientific exactness nor mathematical certainty. Aristotle was (to a much higher degree than 19th and 20th century philosophers) skeptical of attempts to ground ethical reasoning on a theoretical foundation of general principles or universalizable concepts. As Albert Jonsen and Stephen Toulmin point out in their book, *The Abuse of Casuistry*, Aristotle argues forcefully that “resolving moral problems does not call for appeals to theory but for practical wisdom.”

Second, and related to this first point, an approach to ethics education should consider persons (not theories) in their socio-historical context and must (if our theorizing is to be practical, which is to say, relevant) analyze moral decision-making, human nature and fulfillment within the context of one’s daily life. Applying analytical, ahistorical ethical concepts to complex situations involving embodied, historically and socio-culturally embedded human beings is perhaps less truly educational than we might wish to acknowledge.

Bringing these two points together, we must recognize that ethics education often proceeds from the assumption that individuals make decisions with far more information, power and freedom than actually exists. Individual actors are immersed within a web of other demands and responsibilities, ranging from the personal to the civic. What kind of duty, if any, warrants the kind of risk to career, family, and community that often occurs in difficult ethical dilemmas? Let’s return to the example of whistle-blowing: As organizations become more complex, powerful and multi-agent, the potential for harm to society grows. This makes neces-
sary a sense of responsibility that exceeds the scope of any particular organization. The limits of regulation and law for correction of organizational transgressions thus make education about and for whistle-blowing necessary. Perhaps the best treatment of the topic of whistle-blowing in an upper-level ethics textbook occurs in *Ethical Issues in the Professional Life*, edited by Joan Callahan. But a glance of the most popular textbooks of introductory ethics courses reveals little or no treatment of the issue of whistle-blowing, and suggests that very little if any coverage of this topic is being given in most undergraduate ethics courses.

If we assume that a) whistle-blowing gets very little coverage in most ethics courses, and that b) this is a bad thing and ought to be remedied, then the remaining question is how this might best be done. Perhaps surprisingly to some, this is not a difficult issue to approach, even in the most theoretically-based ethics courses. This is because whistle-blowing represents an interesting boundary or limiting scenario to most ethical theories: A measure of the adequacy of any theory is not only the extent to which that theory accounts for specific phenomena in its field, but also the degree to which that theory can address counter-examples; likewise a measure of the fitness of a theory of ethics is not only the extent to which that theory describes and prescribes human behavior, but also the degree to which that theory can handle equally persuasive but conflicting normative claims. Situations in which the possibility of whistle-blowing exists, especially as a means of protecting some public or common interest, typically turn on conflicting loyalties of the actor(s). Exploring these conflicting loyalties from the various standpoints of traditional ethical theories can provide students not only with interesting examples of theoretical differences but with a practical foundation from which to consider ethical conflicts that may, and often do, arise in the practical “real world.”

Ambivalence concerning the act of whistle-blowing, discussed above, can be seen from a practical standpoint as rooted in emotional, psychological and rational recognition of conflicting loyalties, not to various theoretical ethical systems but to our significant relationships. Recognition of an opportunity to blow the whistle is not typically an option that would arise in the ordinary course of human relations apart from a sense of duties, loyalties, and commitments. The occasion to report an instance(s) of wrongdoing is presented to the moral agent in whom there are divided commitments, each equally compelling and morally significant.
Many authors have analyzed the tension between conflicting loyalties that seem constitutive of situations in which whistle-blowing is an option. Sissela Bok has proposed three categories or types of conflicting loyalties. First, the conflict between public interests of various sorts. Potential whistle-blowers usually give careful consideration to the extent to which the public interest will be preserved or promoted by their coming forward. In many cases, whistle-blowers are motivated in part by the perceived threat or potential harm to others. Hence loyalties between self and others come into conflict, as the commitment to one’s own career and family is brought into tension with concern for other persons or the general public.

Second, Bok points to the conflict between loyalty to institutions and colleagues. As human beings, we form relationships and feel committed not only to individual persons but to institutions as well. Whether that institution be as small as a family-owned business or as large as the federal government, our loyalty, commitment and emotional ties to institutions of which we are part can be very strong. Recognition of this deep sense of loyalty to institutions could be, at least in part, justification for government codes of ethics to demand that public servants place loyalty to the highest moral principles above loyalty to persons, party or government. Following through on this demand however can be quite another matter, requiring not only rational deliberation and perseverance, but perhaps most of all, moral courage.

Third and somewhat underlying the other two, Bok asserts that whistle-blowing has a deeply troubling personal aspect to it that is reflected in the recognition and fear of retaliation. The act of whistle-blowing often pits the solitary individual against other groups: the company, the industry, the government, even one’s own family. Regardless of the strength of the moral urge to blow the whistle, the potential whistle-blower recognizes that retaliation is almost certain and that it can have devastating consequences. Often these consequences are negative not only for that individual, but for that person’s family and close associates, sometimes even for the entire organization in question. Moreover, these negative consequences can be profoundly damaging in a variety of ways, psychologically and otherwise. Given this recognition and fear of the consequences of whistle-blowing, how realistic are we to expect an individual to fulfill a duty to blow the whistle on unethical or even illegal behavior? Moreover, as educators in ethics, what are we doing to prepare students to confront the challenges that whistle-blowing can present?
From a theoretical point of view, justification for our expectation of a person to blow the whistle, that is to say for a duty to blow the whistle, can perhaps be grounded (and most easily discussed with students) on deontological principles. Most ethics textbooks appear to introduce the principles of deontology through the work of Immanuel Kant. The concept of “duty” itself is central to the deontological framework. However, it is not clear that Kant would insist that all situations involving the possible revelation of an alleged wrongdoing would justify external public disclosure; what is clear from Kant is an insistence on truth telling and the “good will” of the moral agent. Nevertheless, it would seem contrary to deontological principles to suggest that one could will (as a universal law) that a person who has knowledge of intentional wrongdoing by another person (or organization) should keep that knowledge to oneself indefinitely. Regardless of the internal versus external distinction (relative to the institution) of whistle-blowing, it seems consistent with deontology that persons should report bona fide instances of intentional wrongdoing to appropriate stakeholders or to the general public, as the situation may warrant.

In some ways we already recognize and uphold this duty; for example, in some professional codes of ethics there are stipulations that demand an individual to blow the whistle in specific circumstances. Teachers, social workers and other professionals are obligated to report even the suspicion of abuse to appropriate authorities. In the health care field, professionals such as nurses are required to report instances of medical errors, whether or not any potential harm or negative consequences may follow from the error. In positions of government, both the federal government of the United States and some individual states require employees to report cases of fraud and abuse; in fact, government whistle-blowers enjoy the greatest protections from retaliations compared to most other professions.

Additionally, our legal system recognizes instances in which blowing the whistle is considered as a duty. In many states, laws provide sanctions for “failure to report a crime” and other similar charges, which make no reasonable sense without the presumption that one has a duty to report such cases. Though the terminology may differ, e.g. in some states “failure to report a felony,” and in other states, “misprision,” a deontological perspective provides the best principles on which to support this demand on citizenry as a fundamental duty.

Furthermore, corporate codes of ethics in some businesses obligate employees to blow the whistle, internally of course, when sufficient rea-
sons support a suspicion of intentional wrongdoing. Some courses in Business Ethics, both at the undergraduate and graduate levels, attempt to educate a new generation of management to have a greater sense of appreciation for the disclosure of wrongdoing by a fellow employee; others argue that an employee’s moral responsibility to blow the whistle is much more limited. A variety of reporting mechanisms and procedures are practiced across businesses, but again the concept of a duty to report is best justified on deontological grounds.

These are only three examples of whistle-blowing conceived as a duty or as morally obligatory, but these three types of whistle-blowing adequately illustrate scenarios in which there is a presumed duty, a moral and sometimes legal obligation to blow the whistle. There are other examples, of course, from both professional codes of ethics and in case studies; the recent controversial decision by the American Bar Association notwithstanding. It remains to be seen how the recent changes adopted by the American Bar Association will impact the practice of law and influence attorney — client relationships. This presumed duty to blow the whistle is most forcefully justified, theoretically speaking, on the grounds of deontological ethics. There must be limits, however, to this presumed duty; in these types of situations deontological theory alone seems to be of little assistance: for example, must one blow the whistle on any intentional misconduct, no matter how trivial? What separates the “trivial” from the non-trivial cases? In the practical world, quite often it is left to the moral agent to decide. What are we doing, as educators in ethics, to equip students with intellectual tools to guide them in these difficult situations? These issues are indeed difficult to address theoretically, based on principles alone, but case studies of these types of situations can also serve as touchstones of critical reflection, self-evaluation and dialogue with students, and cases are excellent pedagogical tools for motivating students to apply ethical theory to everyday practices.

From a utilitarian standpoint the act of whistle-blowing can be seen as the result of calculations of various projected consequences, and the impact of those possible consequences on the loyalties which are in conflict. In his work, Principles of Morals and Legislation, Jeremy Bentham argues that human beings are, by nature, utilitarian. Our natural utilitarian method of reasoning about moral decisions involves seven different considerations, which collectively constitute a highly sophisticated hedonic calculus. Six of the seven factors are: intensity, duration, certainty, propinquity, purity, and fecundity; each of these factors could be considered from an egoistical standpoint. In fact, Bentham seems to
place much emphasis on the individual, referring to the “community” as a “fictitious body.” But the seventh category, extent, is meant to measure the degree to which our moral decisions impact other people. It is therefore consistent with utilitarian calculations to consider the well-being of others as a heavily weighted factor in determining a course of action.

Although Bentham might well argue the negative effects of whistle-blowing outweigh the rewards to the individual disclosing the information, Bentham’s hedonic calculus does provide a context in which to consider the impact of non-disclosure upon one’s fellow human beings. Furthermore, even though contemporary utilitarians have abandoned Bentham’s criterion of “happiness” as the foundation of the system in favor of the more complicated but elegant “preference satisfaction,” familiarity with Bentham’s categories are still useful for critical reflection into the relevant factors which guide our moral decision-making.

Hence it is beneficial for students to be acquainted with Bentham’s calculus, which opens the possibility of highlighting the role that consideration of the benefits and harms to others can have, especially in the context of blowing the whistle on unethical behavior. For whistle-blowing to be considered a duty, from the utilitarian perspective, is simply to show that the consequences of non-disclosure could have extremely negative effects on the community. For Bentham, those acts which produce the greatest amount of happiness for the greatest number are morally obligatory; it seems justifiable to argue that whistle-blowing can in some situations produce the greatest happiness, or conversely, that it can assist us in averting the negative consequences of a failure to do so.

These same considerations can be used to discuss a duty to blow the whistle from the utilitarian perspective of John Stuart Mill. Discussion of the principle of self-protection and the recognition of a right to interfere with others when their actions compromise the common good are ample starting points for raising the issue. Mill’s treatment of the principle to “do no harm,” when considered in the context of non-disclosure of vital information, presents a framework from which to address whistle-blowing as a duty. There is no reason to suppose that by “harm” we are limited to instances of physical injury; the harm could take a variety of forms, and the possible intensity and extent of the harm would have to be considered as factors in one’s deliberations about whether or not to blow the whistle. The importance placed by Mill on individual liberty notwithstanding, he also insists that the inaction of a person may lead to the harm of others, and that person should be accountable to others for the injury. If one recognizes an obligation to prevent the harm of others
whenever possible, then whistle-blowing as an act of disclosure of possible injury to other individuals or society at large, seems to be at least partially justified on the utilitarian principle of “do no harm.”

Hence, both deontological and utilitarian ethical theories provide substantial grounds for discussing whistle-blowing as a moral duty. From the deontological perspective, it would consist of a duty to disclose the wrongdoing of another person (or organization) in recognition of the obligation to be truthful. From the utilitarian perspective, the duty to blow the whistle would follow from the principle of doing no harm and recognition of the extent to which our actions or inactions have significant consequences for the lives of others.

There may be additional opportunities for discussing whistle-blowing in a standard undergraduate ethics course, directly relatable to coverage of ethical theories. Many universities now have Honor Codes, and most — if not all — academic institutions have a Student Code of Conduct that establishes acceptable parameters of behavior. Many university honor codes require a student to inform the appropriate authorities of any violation of the honor code by other students; from my experience as a member of the Judicial Affairs committee at my institution (which does not have an honor code but does have a code of conduct policy), I can say that students are incredibly reluctant to “rat” on each other. Whether this is due to a sort of libertarian view on their part (to “live and let live”), or whether it is an indication of the enormous influence of peer pressure, students are hesitant and often adamantly opposed to any requirement that they blow the whistle on each other’s activities, even if those activities are unethical, or even worse, illegal.

It is quite possible that this reluctance and opposition to whistle blowing carries over into their adult lives, including their professional and social interactions. Without doubt, sometimes whistle blowers are viewed as villains, but whether or not we regard them as “moral heroes” the decision to report wrong-doing requires an act of moral courage. As professors and educators in the field of ethics, we do students a disservice if we do not address the ethical implications of whistle blowing and the extent to which it can be a moral duty. We must prepare students to fulfill the obligations many of their professional codes of ethics demand — and perhaps which their own moral deliberations may suggest — the disclosure of intentional wrongdoing by others or by an organization, a duty to blow the whistle. This topic should not be reserved for those students who take an applied or professional ethics course. Any traditional ethics course, focused as they typically are on theoretical issues, can still provide
ample opportunity for students to explore and discuss the duty to blow the whistle and situations in which this duty can arise.

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NOTES


4 The Code of Ethics for Government Service, Public Law 96-303, signed into law July 3, 1980, by President Jimmy Carter. This phrase concerning loyalty is repeated in many codes of ethics, especially various levels of government, but even in sports officiating codes.


9 Based on my work with our university Honor Code Committee, including focus-group discussions with students about aspects of the code, I would conjecture that the requirement that students blow the whistle on their colleagues for violations of the code is the primary reason that they ultimately rejected its adoption.