The Morality of Whistle-blowing

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When Should an Employee Blow the Whistle?

Last July was the fifth year anniversary of the enactment of the Dodd-Frank Financial Reform Act, which has transformed the legal landscape for whistleblowers. The law owes its impact to strong anti-retaliation provisions, effective financial incentives to employees who come forward and federal agencies that have embraced their roles as whistleblower advocates.

It seems a good time to evaluate whether the program is a good idea. After all, some have criticized the award of 10%-30% as a “bounty hunter’s fee.” Harsh words for a program that is designed to protect investors and creditors from the kinds of financial frauds that littered the landscape in the early 2000s.

Dodd-Frank expanded the Sarbanes-Oxley’s Act anti-retaliation provision. In 2002, SOX was passed in response to corporate scandals, and it included an anti-retaliation provision to protect the likes of Enron Corp. whistleblower Sherron Watkins. The statute also doubled the time period for initiating a claim from 90 days to 180 days. Dodd-Frank further bolstered SOX’s anti-retaliation provisions by barring mandatory pre-dispute arbitration of SOX claims. Finally, Dodd-Frank provides a jury trial to plaintiffs bringing SOX retaliation claims in federal court.

Let’s look at the ethics of whistle-blowing. A broad view of whistle-blowing is the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action. This definition includes whistle-blowers who use internal channels (e.g., a hot line or ombudsperson) or external channels (e.g., the external auditors or the SEC) to blow the whistle.

There are four elements of the whistle-blowing process: the whistleblower, the whistle-blowing act or complaint, the party to whom the complaint is made, and the organization against which the complaint is lodged. The act might be labeled as one of “dissidence,” somewhat analogous to civil disobedience. It may be seen as disloyal by some but in the public interest by others.

Given that the act of whistle-blowing is a personal choice, the key to whether an individual will blow the whistle on wrongdoing is whether the whistle-blower perceives organizational policies are designed to encourage moral autonomy, individual responsibility, and organizational support for whistle-blowers.

Whistle-blowers are a rare breed. Most shy away from going out on a limb given the potential retaliatory dangers at the end of the tunnel. Who can blame them? Corporations more often than not do not support whistle-blowers and the stigma in the workplace is real. The 2013 National Business Ethics Survey found that 46 percent of employees did not blow the whistle for fear of retaliation while 21 percent that reported misconduct said they faced some form of retribution.
Looking at whistle-blowing from a philosophical point of view, researchers have posed the question of whether workplace whistle-blowing is a right, and thus allows for responsible behavior, or whether it is an imposed corporate duty thus resulting in liability of workers. If an organization institutes an internal whistle-blowing policy it is because it perceives moral autonomy to be weak. When businesses then implement the policy, it leads to the conclusion that moral autonomy is strong, and employees are expected to blow the whistle. Therefore, if employees do not blow the whistle in accordance with corporate policy they then become liable for not doing so, rendering the policy a tool that controls employee behavior. Responsibility for misdeeds then shifts from the organization to the individual and employees are further stripped of the right to moral autonomy.

The morality of whistle-blowing might be viewed from the perspective that corporations have a moral obligation not to harm. De George identifies five criteria when whistle-blowing is morally permitted. Briefly, (1) the firm's actions will do serious and considerable harm to others; (2) the whistle-blowing act is justifiable once the employee reports it to her immediate supervisor and makes her moral concerns known; (3) absent any action by the supervisor, the employee should take the matter all the way up to the board, if necessary; (4) documented evidence must exist that would convince a reasonable and impartial observer that one's views of the situation is correct and that serious harm may occur; and (5) the employee must reasonably believe that going public will create the necessary change to protect the public and is worth the risk to oneself.

De George’s criteria establish the foundation for moral behavior to occur when contemplating whistle-blowing. He rejects the position that external whistle-blowing is always morally justifiable, and also rejects the position that external whistle-blowing is never morally justifiable. Basically his position is that the whistleblower should have a moral motivation to engage in the act (i.e., to expose unnecessary harm, and illegal or immoral actions).

What whistleblowers hope and believe their speaking out will achieve, is the correction of what they perceive as an organizational wrongdoing (e.g., fraudulent financial statements). Not everyone who perceives a wrongdoing, acts upon that perception. In fact, only 42 percent stated they were ready to blow the whistle.

Ethics and morality go hand in hand. If you face an ethical crisis in the workplace, consider first whether real harm may be done to others if you don’t do everything in your power to correct the situation. Then, commit to acting ethically. No one is obligated to take actions that might harm one’s own interests. However, our moral obligation to society does obligate us to right a wrong when we see one that has occurred.

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To Tell or Not to Tell? The Ethical Dilemma of the Would-Be Whistleblower

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Despite the growing emphasis placed on the responsible conduct of research, little attention has been devoted to the question of what an individual should do upon discovering research misconduct. This article takes seriously the dilemma of a would-be whistleblower. It identifies ethical considerations that can be taken into account in moral decision-making about reporting research misconduct. It also offers rough guidelines about the moral significance of each consideration in the decision-making process based on the facts of the case in question. The article, therefore, offers tools for a would-be whistleblower to use to arrive at a defensible resolution to a difficult dilemma.

Keywords: ethical decision-making, misconduct, reporting, whistleblowing

INTRODUCTION

Recent years have seen a growing emphasis placed on the responsible conduct of scientific research. This emphasis has led to the development of numerous guidelines concerning authorship practices, data management, intellectual property, collaboration among researchers, and more. Significantly less attention, however, has been devoted to the question of what an individual should do upon discovering that another researcher is acting in proscribed ways.

One might be tempted to take as obvious a claim like the following:

If an individual justifiably believes that research misconduct is occurring or has occurred, that individual shall report the misconduct to an appropriate third party in an appropriate way.

Before proceeding, a few clarifications are in order. By specifying that an individual's belief must be justifiable, this claim only refers to cases in which...
the individual has a solid evidentiary base for his belief that misconduct is taking place. Cases in which an individual merely suspects misconduct should be handled differently than those in which that individual holds a high degree of certainty that misconduct has occurred. Research misconduct has been defined by the U.S. Department of Health and Human Services (DHHS) as “fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results” (42 CFR 93). It is also worth noting that the claim takes the strong view that reporting research misconduct is morally required, as opposed to the weaker view that reporting is morally permissible. Finally, by specifying that the reporting would take place in an appropriate manner, the scope of the claim is limited to those reports that are made in accordance with institutional policies and ethical guidelines.

This type of reporting has been referred to as “whistleblowing.” A number of definitions of whistleblowing have been offered by scholars, most of which can be found in the literature on business ethics. One carefully considered definition describes whistleblowing as “a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing” (Jubb, 1999). This definition captures clearly the traditional use of the term in business contexts. In the context of research, however, the concept of whistleblowing seems to be understood a bit more broadly, so that it is not limited to public disclosures brought to an external entity. In what follows, I will use the term to refer to internal as well as external reporting to include situations in which a wrong-doer’s supervisor or department chair is notified of a researcher’s misconduct. This broader understanding may be an appropriate translation of the definition for the academic research context given the organizational and power structure differences between business and academia.

The idea that there may be a moral requirement to report research misconduct is not novel. The Committee on Science, Engineering, and Public Policy has taken a position consistent with the above claim, stating that “someone who has witnessed misconduct has an unmistakable obligation to act” (COSEPUP, 2009). A similar requirement can be inferred from articles 1 and 10 in the IEEE Code of Ethics, which state that its members agree “to disclose promptly factors that might endanger the public or the environment” and “to assist colleagues and co-workers in their professional development and to support them in following this code of ethics” (IEEE, 2006). In addition, a 2000 survey showed that 29% of institutional research integrity policies submitted to the Office of Research Integrity require employees to report suspected misconduct.
The Ethical Dilemma of the Would-Be Whistleblower

(CPHS Consulting, 2000). Finally, some scholars have also argued that there are circumstances under which reporting wrongdoing is morally required in business contexts (Davis, 1996; DeGeorge, 2006). Their arguments may apply similarly in the context of research.

Despite these guidelines, data suggest that research misconduct often goes unreported. (Titus, 2008). One recent study conservatively estimated that 2,325 incidents of misconduct were observed in one year among research funded by National Institutes of Health extramural grants. In contrast, 24 investigations are conducted by the Office of Research Integrity (ORI) annually. The authors note that some of the discrepancy may be explained by lack of evidence, internal investigations, and duplicate reports of misconduct. However, they conclude that the survey results portray “an alarming picture of under-reporting” (Titus, 2008). This finding raises challenging questions in light of the observations above. Are would-be whistleblowers who choose not to report misconduct acting immorally? Or could there be good moral reasons against blowing the whistle in some situations? The question at hand, then, is the following: In a situation in which a would-be whistleblower justifiably believes that research misconduct is occurring or has occurred, is she morally required to report the misconduct to an appropriate third party in an appropriate way?

In the following sections, some ethical considerations related to reporting research misconduct are identified. The extent to which these considerations are legitimate and the weight that they should have in moral decision-making about blowing the whistle are explored. By recognizing legitimate moral reasons for and against reporting misconduct, this effort facilitates complete ethical analysis of these difficult decisions. The article’s final section provides some rough and necessarily inconclusive guidance for making such decisions. The analysis offered cannot, in and of itself, solve the would-be whistleblower’s ethical dilemma, but may be able to provide some insight into the problem.

CONSEQUENCES FOR THE WHISTLEBLOWER

There is plentiful anecdotal evidence that blowing the whistle can bring about negative consequences for the whistleblower (e.g., Shuchman, 2000; Couzin, 2006), but generalizable data on such consequences within the research context is scarce. In one study, 31% of whistleblowers reported that they experienced no negative effects from blowing the whistle. Other whistleblowers reported being fired (12%) or not having their contracts renewed (12%). They claimed to have been denied salary increases (12%), promotions (7%), and tenure (9%) as a result of reporting research misconduct. Forty percent of respondents maintained that they were subjected to counter allegations and 25% reported being ostracized because of their actions (Lubalin, 1995). One might suspect that the prevalence of repercussions for the whistleblower found in this study indicates that many of the accusations of misconduct were unjustifiable.
However, the study also found little difference in the prevalence of negative consequences for those whistleblowers whose allegations were supported by investigation (68%) and those whose were not (74%) (Lubalin, 1995). Even in cases where the report of misconduct was supported by investigation, then, whistleblowers may suffer negative consequences as a result of their choice to report.

To evaluate the moral significance of such consequences, the would-be whistleblower must take into account: a) the severity of the possible consequences, b) the probability that they will occur, and c) whether they are reversible or ameliorable. Consequences that are very detrimental to the whistleblower's well-being weigh more in the ethical calculus than those that are less serious. The data above demonstrate that the consequences experienced by whistleblowers can dramatically affect their careers, and so can play a significant role in the ethical evaluation of the decision to blow the whistle. Secondly, the more likely it is that certain consequences will come about, the more they weigh in moral decision-making. While any one of the outcomes identified by the study above is relatively unlikely to occur, the fact that 69% of whistleblowers experienced negative effects from reporting research misconduct indicates that, as a whole, the probability that negative consequences will occur is high. A final variable relevant in determining the moral significance of potential consequences is the extent to which those consequences can be reversed or ameliorated. While some researchers may be able to find another job or be proved innocent of counter-allegations, others’ careers may be irreparably damaged because of their choice to blow the whistle. In the extreme, whistleblowers may be blacklisted through an informal agreement among their colleagues making it impossible for them to reenter their field and have a successful career (Kuhar, 2008). The possibility that such negative consequences would be irreversible indicates that they may be ethically weighty. Accurately estimating the severity, likelihood, and reversibility of the consequences that could be faced by a whistleblower is no small challenge. Specific facts of the case at hand are vital to such estimates. Nonetheless, the consequences to the would-be whistleblower have great potential significance in moral decision-making about reporting research misconduct.

It should be noted that there are regulations intended to protect whistleblowers from the type of consequences identified above. DHHS regulations require that institutions receiving federal funding, “take all reasonable and practical steps to protect the positions and reputations of good faith complainants, witnesses and committee members and protect them from retaliation by respondents and other institutional members” (42 CFR 93.300(d)). Further, when whistleblowing takes place in an optimal manner, negative consequences may be avoided or minimized (Gunsalus, 1998). When such protections are in place and when strategies for reducing negative consequences can be implemented, a would-be whistleblower must take these factors into account.
when evaluating the severity and probability of the possible consequences. It is worth noting, however, that the effectiveness of such protections may be difficult to assess ahead of time and that stated policies and institutional practices may be two different things.

Individuals who choose not to report research misconduct may avoid some of the above repercussions. This does not mean, however, that that choice is without its own negative consequences. Would-be whistleblowers may feel that a failure to report would compromise their integrity. Empirical data is needed to demonstrate whether such psychological consequences could actually occur as a result of the decision not to blow the whistle, but human experience suggests that such consequences are at least possible. Further, if a researcher does not report misconduct but it is later revealed through another source, the choice not to report could implicate the researcher who chose not to report. In evaluating net consequences for the researcher, therefore, such risks and costs of failing to blow the whistle should be taken into account.

Finally, the possible negative consequences of reporting misconduct for the whistleblower herself must be compared with other relevant ethical considerations. It seems clear that it would be inappropriate for a researcher to prioritize her own well-being to the exclusion of all other considerations. At the opposite extreme, however, it would also be inappropriate for a researcher to entirely neglect the consequences that a decision to report could have for her life and career. A balance must be sought between legitimate self-interest and appropriate self-sacrifice. It is not possible to define a single level of risk of negative consequences that a would-be whistleblower should tolerate in the hopes of achieving the goods of reporting misconduct. Conclusions in this area are highly contingent on the facts of the situation at hand. A middle ground in which an individual demonstrates adequate but not overwhelming regard for her own well-being will need to be found on a case-by-case basis.

CONSEQUENCES FOR OTHERS

Reporting research misconduct has the potential to bring about good consequences for society at large. Blowing the whistle on ongoing research misconduct could stop the problematic behavior from continuing. Reporting previous incidents of misconduct could allow those incidents to be redressed to the extent possible. Investigations resulting from the reporting of ongoing or previous misconduct could uncover additional incidents of misconduct. In addition, consistent reporting of research misconduct could create a deterrent to prevent future misconduct from taking place. By reducing and redressing research misconduct, the choice to blow the whistle may protect people from harm by preserving the accuracy of the research record and may promote the fair and efficient use of research resources.
To evaluate the weight of these consequences, a would-be whistleblower must take into account the type of research that is being compromised by the misconduct. The results of some research projects have the potential to impact people’s health or safety. Misconduct that occurs in the context of this type of research can lead to human morbidity or mortality, effects that may be serious and irreversible. The possible consequences of falsifying data in clinical research intended to determine an optimal cancer treatment, for example, are likely to have greater moral significance than the consequences of fabricating data in a study assessing consumer preferences about food coloring. In addition to physical harm, research misconduct will almost certainly bring about a loss of societal resources. The conduct of research requires monetary support from federal, state, or private sources. It involves time and intellectual energy on the part of researchers and support staff as well as physical space and appropriate equipment. If research findings are not valid as a result of research misconduct, these valuable resources are wasted. The consequences of the choice to report such misconduct, and thereby minimize such waste, are therefore more significant when the research is highly resource-intensive. As with consequences for the whistleblower, the more serious, more likely, and less ameliorable the possible harm or inefficiency brought about by the misconduct for society as a whole, the weightier the moral reasons to blow the whistle.

An accurate evaluation of the moral weight of the possible consequences of reporting misconduct must also take into account whether the choice to report will be effective at reducing or redressing scientific misconduct. Evidence suggests that only a small fraction of reports of misconduct made internally were passed on to the ORI (Titus, 2008). While some of these reports may have been unsubstantiated by internal investigation, the numbers suggest that institutions may not always review and manage such reports appropriately. If reporting is unlikely to bring about the positive consequences of blowing the whistle, the ethical case for doing so is that much less compelling. Empirical evidence in this area is limited, but Near and Miceli have used available data to develop a set of propositions postulating when whistleblowing is likely to be effective. They suggest, among other conditions, that whistleblowing is more likely to be effective: when the whistleblower is credible, in a position of power, and reveals his identity; when the individual receiving the complaint is credible, in a position of power, and is supportive of the whistleblower; when the wrong-doer lacks credibility and power; when there is good evidence of the wrongdoing; and when the institutional environment discourages wrong-doing and encourages whistleblowing (Near and Miceli, 1995). Each of these factors has the potential to affect the outcome of the choice to report misconduct. Therefore, when some or all of these conditions are present, there may be stronger moral reasons in favor of reporting misconduct; in such cases, blowing the whistle is more likely to be effective, making the possible good consequences for society more likely to come about.
Another consequence to be considered is the effect that reporting misconduct may have on the public’s trust in the research enterprise. The role that whistleblowing may play in undermining or maintaining the public’s trust in research has not been definitively established and cannot easily be predicted. Trust in research is difficult to measure and is influenced by many variables that cannot easily be controlled for. On one hand, it could be argued that that routine reporting of misconduct would improve the public’s trust in the research enterprise by increasing its confidence that the work is being adequately monitored. On the other hand, numerous reports of misconduct could instead undermine that trust by highlighting the wrongdoing that takes place in research. The fallout from the revelations of the Tuskegee Syphilis Study is a paradigm example of public mistrust coming from reporting misconduct. Until empirical data on this subject is available, it is impossible to know how this ethical consideration should be used in decision-making about blowing the whistle.

The impact that the choice to report misconduct may have on the would-be whistleblower’s dependents may also play a role in the ethical analysis of such decisions. As noted above, whistleblowers can experience serious retaliation as a consequence of the decision to blow the whistle, including losing their jobs, being denied promotions or raises, suffering damage to their professional reputations, and being blacklisted from future opportunities. Reporting misconduct could, therefore, significantly affect a researcher’s ability to provide for his family’s needs, particularly when a would-be whistleblower is his family’s sole income earner and when his other employment prospects are minimal. In such cases, that individual’s familial duties may weigh heavily against reporting misconduct. One could argue that a researcher voluntarily accepts this risk by choosing to become part of the research enterprise and, as a result, this risk should be discounted in the moral calculus. However, research misconduct is not so prevalent that the risks of whistleblowing are (or should be) routinely considered and implicitly (or explicitly) accepted by the decision to take a job in research.

A final group of consequences to be taken into account by a would-be whistleblower includes consequences for the wrong-doer and for the institution that the wrong-doer is a part of. Investigating research misconduct can be time consuming and expensive for all parties involved. Allegations of misconduct may also affect the reputations of both the wrongdoer and the institution, potentially ruining a researcher’s career and undermining the public’s respect for the particular institution as well as in the research endeavor in general. If the allegations are not kept confidential, these consequences may come about regardless of whether the allegations are supported by investigation. In order to understand how these consequences could affect moral decision-making about whistleblowing, a would-be whistle-blower would consider their severity, likelihood, and reversibility. However, one could argue that these consequences
should be discounted (completely or to some degree) in the moral calculus because they may be deserved by a wrong-doer or by an institution that allows misconduct to take place. It would be tangential to develop an in-depth discussion of this question here, but there may be good reasons to take such a position if the evidence of the misconduct is compelling enough.

**PROFESSIONAL DUTIES**

Professional duties could support a requirement to report research misconduct. Some scholars have argued that researchers are accountable to society in a way that other individuals are not. “Because researchers are professionals who have received training, education, and benefits from society, they have an implicit contract with society” and, therefore, may have duties to protect the public when they are in a position to do so (Shrader-Frechette, 1994, p. 24). On this view, researchers are obligated to be good stewards of research resources, to act ethically, and to role-model appropriate behavior. This obligation may be based on demands of reciprocity for opportunities offered by society, possession of knowledge that has the potential to offer benefit to society, or on an informal contract a researcher implicitly agrees to when she joins the research community. Alternatively, Davis (1995) has argued that none of these explanations are valid: that being a scientist, in and of itself, does not generate any “special moral responsibilities,” particularly with respect to blowing the whistle on misconduct. Instead, he notes that, in some cases, scientists and groups of scientists have taken on ethical responsibilities in the form of codes of ethics. Davis argues that these codes represent conventions of different disciplines that derive not from the nature of those disciplines, in and of themselves, but from “what scientists (at their rational best) want” (Davis, 1995, p. 68). In other words, scientists who have established such codes of ethics have voluntarily taken on professional obligations.

Professional duties may also be generated by the fact that research is a primarily self-regulating enterprise. The Committee on Science, Engineering, and Public Policy notes that, “Self-regulation ensures that decisions about professional conduct will be made by experienced and qualified peers. But for self-regulation to work, researchers must be willing to alert others when they suspect that a colleague has violated professional standards or disciplinary practices” (COSEPUP, 2009, p. 19). In other words, because researchers are entrusted with the privilege of setting and enforcing their own standards, they have a moral responsibility to do so. This responsibility is generated as a result of one’s membership in a profession and exists independently of the other considerations associated with the choice to report or not to report. Regardless of which of these several methods of grounding professional duties the reader prefers, it is likely that professional obligations to colleagues and to society would strongly support reporting research misconduct under most circumstances.
DUTIES OF LOYALTY

Another set of ethical considerations that must be taken into account by a would-be whistleblower when deciding whether to report research misconduct are that individual's duties of loyalty. Most of the scholarship on whistleblowing and loyalty can be found in the literature on business ethics, but similar ethical considerations are relevant in the context of research. First, an individual may have duties to the institution she is employed by. Whether the potential whistle-blower works as a researcher or lab technician or is a student enrolled at that institution, that individual has some duty of loyalty to that institution by virtue of the fact that he or she is a part of it. Secondly, the potential whistle-blower may have duties of loyalty to particular individuals within the institution. Professional relationships are of great significance in research, and the duties generated by those relationships cannot be taken lightly. This is particularly important in the context of the mentor–mentee relationship.

On the most obvious interpretation of loyalty-based duties, a researcher’s duty of loyalty to an individual or institution would constitute a moral reason not to blow the whistle on that individual or institution. The relationship the researcher has with the individual or institution, at least in some cases, generates an obligation for that researcher to have allegiance to that entity. Such allegiance requires the researcher to prioritize the good of that individual or institution to a greater extent than she would if the relationship did not exist. On this view, blowing the whistle would be a betrayal of the individual or institution and, therefore, a violation of the duties of loyalty created by the relationship because it puts the interests of others over the well-being of the individual or institution in question.

Some authors, however, have argued that blowing the whistle is actually consistent with duties of loyalty. Acting loyally does not require an individual to be faithful to and supportive of the object of one’s loyalty regardless of what that individual or institution chooses to do. According to this view, “while loyalty requires a certain degree of tolerance of shortcomings, it does not require absolute or complete tolerance” (Corvino, 2002). In other words, there are limits on what the duty of loyalty can demand of a researcher. If this is the case, blowing the whistle may not be a violation of duties of loyalty because those duties might not extend to something as serious as research misconduct. Duties of loyalty, one could argue, only go so far, and decisions that fall outside of that area do not violate those duties because they are beyond loyalty’s purview. This approach, however, seems problematic because it requires a definition of exactly “how far” duties of loyalty extend. Finding such a definition would be challenging. Instead, limits of loyalty could be more clearly understood as the point at which countervailing ethical concerns outweigh duties of loyalty so that the all-things-considered correct moral judgment would be to not fulfill those duties. An in-depth defense of this position cannot be
laid out here, but it provides at least some grounds for skepticism about the claim that reporting an individual or institution for research misconduct could be consistent with a researcher's duties of loyalty to that individual or institution.

This line of thinking has been taken further by scholars who have argued that a duty of loyalty not only permits whistleblowing, but actually requires it (Corvino, 2002; Vanderckhove and Commers, 2004). On this view, a duty of loyalty requires an individual “to make a deliberation whether or not her acts are a contribution to the explicit mission, values and goals of the organization she is loyal to” (Vandekerckhove and Commers, 2004). In many cases, serious research misconduct is at odds with the values and goals of a researcher or research institution. Blowing the whistle on such misconduct may further those goals and values and may, therefore, be required by a duty of loyalty. Others have argued against this position, on grounds that it relies on a novel definition of loyalty that is not defensible. In order for a duty of loyalty to require whistleblowing, the concept of loyalty would have to include a) the idea that loyalty involves seeking good for the object of the loyalty and b) the idea that that obligation extends to cover the moral good of that object (Varelius, 2009). Because neither of these elements are included in standard understandings of loyalty, scholars have argued, the above arguments are unsound. This rebuttal is persuasive. The Oxford English Dictionary defines ‘loyalty’ as “faithful adherence to one’s promise, oath, word of honour, etc.” (OED, 1989). In the Merriam-Webster Collegiate Dictionary, ‘loyal’ is defined as “unswerving in allegiance,” “faithful to a private person to whom fidelity is due,” and “faithful to a cause, ideal custom, institution, or product” (Merriam-Webster Collegiate Dictionary, 2004). The above argument, therefore, depends on an implausibly liberal interpretation of “faithful adherence” or “unswerving allegiance” that incorporates the idea of furthering the moral good of an entity. As a result, duties of loyalty to an individual or institution are unlikely to constitute moral reasons for blowing the whistle on that individual or institution.

There is, nonetheless, at least one situation in which duties of loyalty could support whistleblowing. A researcher who discovers a coworker perpetrating research misconduct within his own institution may have loyalty-based duties to that institution to report that discovery to appropriate members of the institution. This would be particularly true in an institution that has a policy or code of conduct that requires reporting of observed misconduct.

How much moral weight should be put on duties of loyalty by a would-be whistleblower trying to decide whether to report research misconduct? With respect to duties of loyalty to an institution, the answer is likely to be dependent on several variables. An individual may have stronger duties of loyalty to an institution if he serves in a leadership capacity in that institution. The type of role the individual plays in the institution could also affect duties of loyalty: a tenured faculty member may have stronger duties of loyalty than a lab tech
would have. Those duties may also be weightier if the individual has been affiliated with the institution for a long period of time. With respect to duties of loyalty to one’s colleagues, the strength of such duties may depend on the type of relationship that exists between the would-be whistleblower and the wrong-doer. In particular, the mentor-mentee relationship generates weighty duties of loyalty. In other professional contexts, relationships with close collaborators may generate stronger duties of loyalty than to colleagues who simply work in the same environment. In addition, the longer a relationship has been established, the weightier such duties of loyalty would be.

It could be argued that the strength of a duty of loyalty is negated or greatly diminished when the object of that loyalty acts in a harmful or immoral way. However, there is nothing in the definitions above to suggest that loyalty is conditional in this way. Such an approach would be an ad hoc move. Demonstrating allegiance to one’s spouse and demonstrating allegiance to one’s gang leader are both examples of loyalty. The fact that acting out of such allegiance is likely to produce desirable outcomes in one case but not the other does not make one but not the other an instance of loyalty. Rather than suggesting that an individual cannot have duties of loyalty when the object of that loyalty acts immorally, it would be more defensible to argue that, once all of the ethical considerations are taken into account, acting loyally would be the overall wrong thing to do in some cases. That is, negative consequences, concerns about individual integrity, and other duties should be taken into account as competing ethical considerations that constitute separate moral reasons not to act loyally rather than diminishing the importance of the duty of loyalty itself.

**OTHER DUTIES**

In addition to consequentialist, professional, and loyalty-based considerations, there may be at least a general, prima facie duty to intervene when one becomes aware of wrongdoing. In other words, reporting misconduct may just be the “right thing to do” in some cases. This duty is not one that derives from the individual’s role as a researcher but instead exists for any person who becomes aware of wrongdoing. This kind of general obligation could be grounded in the idea that an individual who knows about wrongdoing but fails to report it may become complicit in that wrongdoing by allowing it to continue. As a result, that person bears responsibility for the misconduct and its downstream effects just as the perpetrators of the misconduct do.

An argument could also be made that a researcher who conducts research unethically deserves to be stopped and punished. An individual who uses unfair means to achieve personal benefit is not entitled to that benefit. Further, particularly when those actions are taken at the expense of others, punitive measures may be appropriate. The choice to blow the whistle on misconduct, therefore, may uphold principles of justice by helping to bring the wrongdoer his due.
A final type of duties that may be relevant to a would-be whistleblower’s decision-making about reporting research misconduct are those he may have to himself. Each individual has the right and duty to live according to his or her own beliefs and values. If an action (or inaction) will conflict with those beliefs and values, it constitutes a threat to that person’s integrity, which would count as an important ethical reason against that option. This consideration would be particularly important in the ethical calculus if the action compromises values that are central to the individual’s belief system and if those values have been firmly and consistently held over time. However, a would-be whistleblower must be cautious not to focus on this consideration to the exclusion of the many other relevant factors despite its intuitive appeal and often clear-cut guidance.

ALTERNATIVES

Finally, the alternatives (or lack thereof) available to the would-be whistle-blower must be factored into the moral decision-making about reporting misconduct. If an individual is in a position of power within an institution, she may have options for dealing with misconduct that do not involve escalating the situation via whistleblowing. Similarly, if the individual is the wrong-doer’s supervisor or mentor, alternatives such as educational interventions or additional supervision may be able to satisfactorily address the misconduct without reporting it to a higher authority, assuming that the misconduct is not egregious and is properly documented. The existence of such alternatives would constitute good moral reasons against blowing the whistle and could instead place a duty on the individual to take such alternative action.

A researcher without institutional stature may have alternatives as well. If others, particularly others who have more power in the institution, are aware of the misconduct, those individuals may be better situated to report the misconduct. Reporting as a group may also offer an individual researcher some protection from the potential negative consequences of blowing the whistle. Finally, there may be some cases in which misconduct is sufficiently minor and one’s time at an institution is sufficiently short that it would be ethically acceptable for a would-be whistleblower to wait until she has moved on to a new position to report the misconduct. Such an approach could achieve the benefits of blowing the whistle while minimizing the risks of doing so for the researcher.

TO TELL OR NOT TO TELL?

In this article’s first section, readers were asked to consider the statement:

If an individual justifiably believes that research misconduct is occurring or has occurred, that individual shall report the misconduct to an appropriate third party in an appropriate way.
The preceding analysis has raised doubts about its truth. In the above sections, a number of good moral reasons for reporting research misconduct were identified. However, many good moral reasons for not reporting such misconduct were also discussed. These findings suggest that the ethical analysis of the would-be whistleblower's dilemma is not straightforward; there is no universal answer to the question of whether an individual is required to report research misconduct. Instead, the question must be answered on a case-by-case basis, using the specific facts of the situation at hand.

The set of ethical considerations discussed above can be used as a tool to help a would-be whistleblower decide whether to report research misconduct in a particular case. By identifying a broad array of issues, this work may help ensure that all relevant considerations have been taken into account by decision-makers as well as by ethicists commenting on such decisions. It also offers guidelines about when each consideration should be given more or less weight in the ethical analysis. Even so, this discussion does not offer an algorithm for making decisions about reporting misconduct. The considerations identified must be interpreted and applied to the given circumstances in light of the facts of that situation and the people involved. The task of applying these considerations will require insight and thoughtful reflection on the part of the decision-maker. The above discussion separates the various moral reasons into discrete categories and simplifies the process of establishing their moral weight. In reality, those reasons are interrelated and assessing their importance is complex.

Once the relevant ethical considerations have been selected and their relative importance estimated, a decision must be made. The would-be whistleblower must take the various factors into account and arrive at an all-things-considered judgment. The process used in making this judgment cannot be completely and concretely described. It may be best characterized using metaphors in which ethical considerations are ranked or balanced. However, because these considerations may be incommensurate, such metaphors cannot fully explain the decision-making process (Brody, 1988). Instead, it might be most helpful to define the ethically correct judgment in any given case as the one that an “ideal intuitor”—an informed, rational, and uninterested individual—would make in that case (Malek, 2007). Such an approach will be challenging for a would-be whistleblower who finds himself in the thick of a difficult situation. Obtaining perspective and advice from trusted colleagues or mentors could be helpful in working toward this ideal. Consulting an attorney is also advisable because doing so can provide valuable information about the risks one faces and an external perspective on the situation and available evidence.

In spite of the fact that the above discussion does not establish an algorithm that points to a single, concrete answer to the would-be whistleblower's dilemma, it offers tools that can help that individual formulate an informed and thoughtful resolution to the problem.
ACKNOWLEDGMENTS

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Nice Guys Finish Last
Notable Quotes

They deem him their worst enemy who tells them the truth.
Plato

To crush a man utterly ...
one need only give him work of a completely useless and irrational character.
Dostoevsky

Freedom is the right to tell people what they do not want to hear.
Orwell

The world is disgracefully managed, one hardly knows to whom to complain.
Ronald Firbank

Nothing strengthens authority so much as silence.
Charles De Gaulle

This isn’t the age of manners, it’s the age of kicking people in the crotch.
Ken Russell

What a fine comedy this world would be if one did not play a part in it.
Denis Diderot

Laws are like cobwebs, which catch small flies but let wasps and hornets break through.
Jonathan Swift

You can cage the singer but not the song.
Harry Belafonte

Without a remedy there is no right.
Unknown
Nice Guy Finish Last
Class Outline

Who are the Whistle Blowers?

Shuttle Disaster – Challenger

Dr. Roger Boisjoly:
Design engineer with Morton-Thiokol
Steven Agee:
Management Consultant hired by Morton-Thiokol to
review management procedures after the disaster

Police Corruption – England

Officer Gordon Harris:
Police officer

Alieska Oil Pipeline – Joint Venture of BP, ARCO, and EXXON

Chuck Hamel:
Oil Broker
Glenn Plumlee:
Pipeline inspector

Hanford Nuclear Weapons Facility

Ed Bricker:
Nuclear Process Operator
Inez Austin:
Nuclear Engineer

What issues did each Whistle Blower address?

Shuttle Disaster – Challenger

Dr. Roger Boisjoly:
Boisjoly identified design defect in O-Ring Seals and
gave Morton-Thiokol management prior knowledge of
the defect and the attendant risks
Steven Agee:
Agee identified 245 problems with the Booster
Rockets, but Morton-Thiokol hid data, systematically
chose waivers rather than solutions, and suppressed
hazard analysis findings.

Police Corruption – England

Officer Gordon Harris:
Exposed a senior police officer who fabricated
evidence to get a false conviction

Alieska Oil Pipeline – Joint Venture of BP, ARCO, and EXXON
Chuck Hamel:
Glenn Plumlee: Alieska cut corners in pipeline, disconnected air
pollution equipment, and cut corners on water
treatment in Valdez Harbor
Strike unfavorable words from reports, e.g. faulty,
vioation, etc.

Hanford Nuclear Weapons Facility

Ed Bricker: Dusted off old facility and tried to run it from a priority
of production first and safety second
Inez Austin: Asked to write report that it would be safe, but refused
to do so in face of 444 billion gallons of radioactive
and toxic material, aging tanks leaking liquids and
vapors

What tactics did the object of the Whistle Blower use?

Threaten, and warn the Whistle Blower to be very cautious

Followed around within and outside the facility.

Spied upon by colleagues

Colleague was blackmailed

Whistle Blowers sent to psychiatrists to justify finding that Whistle Blower is unfit to work

Undercover agents hired to spy on Whistle Blowers
  Wackenbut Corp. to trick, entrap Whistle Blowers
  Internal phone records searched to identify any insiders calling Whistle Blower
  Telephone call records of Whistle Blower
  Credit Reports

Call Whistle Blowers’ house repeatedly through the night to deprive sleep and rest

Whistle Blowers checks bounce for no apparent reason

Whistle Blowers’ mail intercepted

Whistle Blowers’ FAXes to authorities not going through

Harass the Whistle Blowers’ families with
  Obscene phone calls
  Death threat calls
  Friends abandon them, for fear of losing their own careers
Children harassed

Management keeps the issue alive in all staff meetings to identify others inside who may think like the Whistle Blower

Stealing Whistle Blowers’ trash

**How did these tactics affect the Whistle Blowers?**

Can’t find work in their career field

Live in fear

Must go under cover and steal evidence to support claims

Labeled as a trouble maker, and crazy

Go broke financially

Self doubt appears

Become a non-person

Nothing happens to the “Bad Guys”
  They lie, cheat, steal, and cover up,
  They get promotions/pay raises

Closet Patriots would do “right thing” if they could, but unwilling to take the retribution

**What lessons can we draw from these cases?**

The retribution is so consistent in these cases. IT MUST BE TAUGHT!

  Total ostracism
  Loss of job/career
  Take away any implements for job returning
  Blackballing

Might makes right

  Money is no object
  Throw everything at the Whistle Blower to wear them down, to destroy them.
  Use money to keep the issues from ever getting to court
  Can’t allow lawsuits to proceed because of the precedent that the suits would set

No where to run in the whole world.
Check out the whistle blower information regarding the VA and retaliation


   This is the most recent report on the VA in Phoenix. The woman interviewed is a big part of the problem. Watch this if you have any doubt about the currency of whistle blower retaliation. Use the following link for specific video: http://video.foxnews.com/v/5316537916001/

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Terminated from Employment Definition - The Balance
jobsearch.about.com
Oct 19, 2016 ... There are no laws designated for the sole purpose of protecting the ... a whistleblower, for complaining, for refusing to commit an illegal act, etc.). ... vary on account of the countless state and fe... More »

There are no laws designated for the sole purpose of protecting the wrongfully or unfairly unemployed. However, termination because of discrimination or retaliation is illegal under civil rights law. Some reasons for wrongful termination can include racial or religious discrimination, retaliation or payback, or refusing to commit an illegal act.