

Whistleblowing and Employee Loyalty

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ABSTRACT. Discussions of whistleblowing and employee loyalty usually assume either that the concept of loyalty is irrelevant to the issue or, more commonly, that whistleblowing involves a moral choice in which the loyalty that an employee owes an employer comes to be pitted against the employee's responsibility to serve public interest. I argue that both these views are mistaken and propose a third view which sees whistleblowing as entirely compatible with employee loyalty.

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.¹

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.² 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 we go beyond self-interest. My loyalty to my friend, for example, requires I put aside my interests some of the time. . . . Loyalty depends on ties that demand self-sacrifice with no expectation of reward, e.g., the ties of loyalty that bind a family together.³

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

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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 given the instrument a moral status it does not deserve . . .⁴

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 facie* 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.⁵

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."⁶ 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.⁷

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.⁸ 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 behaviour.

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 placed 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.

Notes

¹ The definition I have proposed applies most directly to the relation between privately owned companies aiming to realize a profit and their employees. Obviously, issues of whistleblowing arise in other contexts, e.g., governmental organizations or charitable agencies, and deserve careful thought. I do not propose, in this paper, to discuss whistleblowing in these other contexts, but I think my development of the concept of whistleblowing as positive demonstration of loyalty can easily be applied and will prove useful.

² Duska, R.: 1985, 'Whistleblowing and Employee Loyalty', in J. R. Desjardins and J. J. McCall, eds., *Contemporary Issues in Business Ethics* (Wadsworth, Belmont, California), pp. 295–300.

³ Duska, p. 297.

⁴ Duska, p. 298.

⁵ Bok, S.: 1983, 'Whistleblowing and Professional Responsibility', in T. L. Beauchamp and N. E. Bowie, eds., *Ethical Theory and Business*, 2nd ed. (Prentice-Hall Inc., Englewood Cliffs, New Jersey), pp. 261–269, p. 263.

⁶ Bok, pp. 261–2, emphasis added.

⁷ Near, J. P. and P. Miceli: 1985, 'Organizational Dissidence: The Case of Whistle-Blowing', *Journal of Business Ethics* 4, pp. 1–16, p. 10.

⁸ As Near and Miceli note 'The whistle-blower may provide valuable information helpful in improving organizational effectiveness . . . the prevalence of illegal activity in organizations is associated with declining organizational performance' (p. 1).

The general point is that the structure of the world is such that it is not in a company's long-term interests to act immorally. Sooner or later a company which flouts morality and legality will suffer.

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