Top of Form

In the late 1960s American automobiles were losing market share to smaller Japanese imports. Lee Iacocca, then CEO of the Ford Motor Company, wanted a 1971 model to meet the competition. He reportedly ordered that Ford produce a car for 1971 that weighed less than 2,000 pounds and that would be priced at less than $2,000. That meant that the car had to be designed and produced in 25 months rather than the usual 43 months for a new car line. The resulting car was the Pinto.[1](javascript:findAnchor('ch12fn01')) Because of the accelerated production schedule, the Pinto was not tested for rear-end impact until after it was produced. There was no National Highway Traffic Safety Administration rear-end impact standard at the time. Ford engineers knew that testing for rear-end impact is a standard safety procedure. The car was tested after production, and it failed the test, meaning that it fell below the state of the art for cars of that size. The design of the car placed the fuel tank such that if the car was hit from the rear at a speed above 20 miles per hour, it would be punctured by a bolt from the bumper and could possibly burst into flame. Ford did a study and determined that if a baffle (estimated at costing between $6.65 and $11) were placed between the bumper and the gas tank, the Pinto would be comparable to other cars of its class with respect to the danger of fire from rear-end impact. A company cost-benefit analysis that weighed the cost of adding the baffle against the estimated cost of suits resulting from “excess” accidental deaths and injuries indicated that it would cost the company less not to insert the baffle than to insert it. For whatever reason, the company did not change the design from 1971 to 1978. Nor did the company offer its customers the option of purchasing the baffle.

Between 1976 and 1977 alone, Pintos suffered thirteen fiery rear-end collisions, which was more than double the number for comparable-size cars. As it turned out, suits brought against Ford and the amount it had to pay (estimated at more than $50 million) far exceeded what it saved ($20.9 million) by not correcting the defect—not to mention the cost of bad publicity.

Nonetheless, despite reports of fires in the Pinto, the car sold well through 1978, when it was finally recalled to have the baffle inserted. When the State of Oregon, because of safety concerns, sold its fleet of Pintos at public auction, the cars went for as much as $1,800 each. Obviously, buyers discounted the danger, weighing it against the cost of what was considered adequate transportation at a good price.

Ford’s actions with respect to the Pinto have been widely criticized. Harley Copp, a former Ford executive and engineer, was critical of the Pinto from the start. He left the company and voiced his criticism, which was taken up by Ralph Nader and others.[2](javascript:findAnchor('ch12fn02'))

Of course, the Ford engineers were not instructed to make an unsafe car, nor did Ford management set out to do so. That the Pinto was arguably below the state of the art may have been a result of the accelerated production schedule. That the defect was not corrected after the initial production year was the result of a business decision.

Was anyone at Ford at fault? Did anyone at Ford have an obligation to make known to the public the facts that Ford knew but did not make public? If so, who? Why?

Blowing the Whistle

We have seen that corporations have a moral obligation not to harm. This obligation falls on the corporation as such, and internally it falls primarily on those who manage the corporation. Yet other members of the corporation—for instance, engineers and assembly-line workers—are not morally allowed to take part in any immoral activity. Hence, they may not morally take part in any activity that they know will cause harm, including producing products that they know will cause harm. Do they further have a moral obligation to prevent harm, if they are able to do so?

As a general rule, people have a moral obligation to prevent serious harm to others if they are able to do so and can do so with little cost to themselves. As the cost increases, the obligation decreases. If we can save another’s life only at the expense of our own life, we are not morally obliged to do so, and giving up our life for another is usually considered an act of heroic virtue. What is the obligation as an employee to prevent his or her company from harming others? The question is a complicated one and leads us to a consideration of what has become known as *whistle blowing*.[3](javascript:findAnchor('ch12fn03'))

Kinds of Whistle Blowing

*Whistle blowing* is a term used for a wide range of activities that are dissimilar from a moral point of view. Sometimes the term refers to disclosures made by employees to executives in a firm, perhaps concerning improper conduct of fellow employees or superiors who are cheating on expense accounts, or are engaging in petty or grand theft. Students are sometimes said to “blow the whistle” on fellow students whom they see cheating on exams. In these cases, whistle blowing amounts to reporting improper activities to an appropriate person. This can be called *internal whistle blowing*, for the disclosure or allegation of inappropriate conduct is made to someone within the organization or system. Generally, one believes an investigation will follow and a sanction will be imposed. In the classroom situation, if the students are on the honor system, they have agreed to report cheating and are morally obliged to do so. If they are not on the honor system, such reporting may be morally permissible but is not usually required. A similar analysis applies on the job as well.

Someone who reports sexual harassment is also sometimes said to blow the whistle on the offender; this is often because simply speaking to the person has no effect. In this case, the charge is about an offense not against the organization or system, but against oneself; the whistle blowing might be called personal, as opposed to impersonal whistle blowing, in which the potential or actual injury is to others or to the organization rather than to oneself. *Personal whistle blowing* is, in general, morally permitted but not morally required, unless other aspects of the case show that there is immediate danger to others.

Because workers have a right not to be sexually harassed, they should have a means by which to report such harassment if simply speaking to the harasser proves ineffective. Similarly, workers who have other rights violated should also have channels through which to get their legitimate complaints heard and acted on. Acts of personal whistle blowing are usually within the organization. But if serious enough, the whistle blower who gets no satisfaction internally might have to report to someone outside. Only a shortsighted firm would force external whistle blowing; a well-managed firm would be so structured as to take care of such cases internally. This is in the best interests not only of the firm but also of the workers and their morale.

Whistle blowing sometimes refers to government employees who divulge to a governmental regulatory or investigative bureau unethical practices in their division or office and/or to employees within a firm that has government contracts who report fraud against the government. It sometimes refers to reporting such things as cost overruns to Congressional committees or to the media. (The former, even if done by government officials, is still considered external whistle blowing, because one goes outside one’s own division or office to alert someone in another part of the government system.) Sometimes whistle blowing refers to leaks by government employees to the media. We can call all these kinds of disclosure *governmental whistle blowing*.

This sort of whistle blowing is different from private-sector whistle blowing, which is by employees on their employers. The obligations one has to one’s government are considerably different from obligations to a nongovernmental employer. The reason is that government employees are related to their government both as citizens and as employees and the harm done by governmental employees may have effects not only on the particular division in which they are employed but also on the government and country as a whole. The law recognizes this difference, and the U. S. Congress has passed special legislation governing and protecting certain kinds of governmental whistle blowers.[4](javascript:findAnchor('ch12fn04')) The laws do not protect those who break the law by revealing classified information, but they protect from dismissal those who reveal waste, overspending, or illegal or corrupt activity within the government bureaucracy. The legislation has been enforced only sporadically, and those who have blown the whistle have usually not fared well in terms of promotion or career advancement, even if they have kept their jobs. No administration has yet signaled that such people, if they have the best interests of the country at heart, are to be rewarded and made examples to be emulated.

We shall restrict our initial discussion to a specific sort of whistle blowing—namely, *nongovernmental, impersonal, external whistle blowing*. We shall be concerned with (1) employees of profit-making firms, who, for moral reasons, in the hope and expectation that a product will be made safe, or a practice changed, (2) make public information about a product or practice of the firm that owing to faulty design, the use of inferior materials, or the failure to follow safety or other regular procedures or state of the art standards (3) threatens to produce serious harm to the public in general, to employees, or to individual users of a product. We shall restrict our analysis to this type of whistle blowing because, in the first place, the conditions that justify whistle blowing vary according to the type of case at issue. Second, financial harm can be considerably different from bodily harm. An immoral practice that increases the cost of a product by a slight margin may do serious harm to no individual, even if the total amount when summed adds up to a large amount, or profit. (Such cases can be handled differently from cases that threaten bodily harm.) Third, both internal and personal whistle blowing cause problems for a firm, which are for the most part restricted to those within the firm. External, impersonal whistle blowing is of concern to the general public, because it is people or the general public rather than the firm that are threatened with harm.

As a paradigm, we shall take a set of fairly clear-cut cases—namely, those in which serious bodily harm, including possible death, threatens either the users of a product or innocent bystanders because of a firm’s practice, the design of its product, or the action of some person or persons within the firm. (Many of the famous whistle-blowing cases are instances of such situations.[5](javascript:findAnchor('ch12fn05'))) We shall assume clear cases where serious, preventable harm will result unless a company makes changes in its product or practice.

Cases that are less clear are probably more numerous and pose problems that are difficult to solve—for example, how serious is *serious*, and how does one tell whether a given situation is serious? We choose not to resolve such issues here, but rather to construct a model embodying a number of distinctions that will enable us to clarify the moral status of whistle blowing, which may, in turn, provide a basis for working out guidelines for more complex cases.

Finally, the only motivation for whistle blowing we shall consider here is moral motivation. Those who blow the whistle for revenge, and so on, are not our concern in this discussion.

Corporations are complex entities. Sometimes those at the top do not want to know in detail the difficulties encountered by those below them. They wish lower management to handle these difficulties as best they can. On the other hand, those in lower management frequently present only good news to those above them, even if those at the top do want to be told about difficulties. Sometimes lower management hopes that things will be straightened out without letting their superiors know that anything has gone wrong. For instance, sometimes a production schedule is drawn up that many employees along the line know cannot be achieved. The manager at each level has cut off a few days of the production time actually needed, to make his or her projection look good to those above. Because this happens at each level, the final projection is weeks, if not months, off the mark. When difficulties develop in actual production, each level is further squeezed and is tempted to cut corners in order not to fall too far behind the overall schedule. The cuts may consist of not correcting defects in a design, or of allowing a defective part to go through, even though a department head and the workers in that department know that this will cause trouble for the consumer. Sometimes a defective part will be annoying; sometimes it will be dangerous. If dangerous, external whistle blowing may be morally mandatory.

Producing goods that are known to be defective or that will break down after a short period of time is sometimes justified by producers, who point out that the product is warrantied and that it will be repaired for consumers free of charge. They claim it is better to have the product available for the Christmas market, for the new-model season for cars, or for some other target date, even if it must later be recalled and fixed, rather than have the product delayed beyond the target date.

When the product is so defective as to be dangerous, the situation from a moral point of view is much more serious than when only convenience is at stake. If the danger is such that people are likely to die from the defect, then clearly it should be repaired before being sold. As in the Pinto case, there have been instances when a company, knowing that its product was dangerous, did a cost-benefit analysis. The managers of the company determined how many people were likely to be killed and what the cost to the company would be if a certain percentage of the deceased persons’ families successfully sued the company. They then compared this figure with the cost of repairing the defect, or of repairing it immediately rather than at a later date, through a recall. They also estimated the cost to the company if they were not only sued but also fined. If the loss from immediate repair substantially exceeded the probable cost of suits and fines, they continued production.

Such a cost-benefit analysis might seem, at first glance, to resemble a utilitarian calculation. However, a utilitarian calculation would not fail to consider the effect on all parties. The cost-benefit analysis is made exclusively from the standpoint of the company. How much, we have to ask, is a human life worth? If a defective part will probably cause fifty or sixty deaths, can we simply calculate the probability of a certain number of people suing and then weigh that cost against the cost of replacing the part? An adequate moral utilitarian calculation would include the deaths and the injuries, as well as the inconvenience for all the purchasers, and weigh these factors against the dollars saved. The equation is not difficult to solve. We know that we all have a moral obligation not to harm others, when we can prevent it. In such cases, the equation of deaths to dollars is an equation that, from a moral point of view, will always balance out in favor of lives saved. This realization often provides the moral motivation for whistle blowers.

A variety of corporate activities have led people to disclose publicly the internal actions of their companies. In some cases, companies were dumping toxic wastes into a water supply, knowing that it would harm the people who lived near the supply. In other cases, papers were signed by employees certifying that a dangerous defect had been repaired, when in fact no repairs had been made. In the Bay Area Rapid Transit case, three engineers saw a dangerous defect in the system. When their warnings were systematically ignored, and they were told to keep quiet, they felt it was their moral duty to make the danger known to the public.[6](javascript:findAnchor('ch12fn06'))

Whistle blowers usually fare very poorly at the hands of their company, as we mentioned before. Most are fired. In some instances, they have been blackballed in the whole industry. If they are not fired, they are frequently shunted aside at promotion time and treated as pariahs. Those who consider making a firm’s wrongdoings public must therefore be aware that they may be fired, ostracized, and condemned by others. They may ruin their chances of future promotion and security, and they also may make themselves a target for revenge. Only rarely have companies praised and promoted such people. This is not surprising, because the whistle blower forces the company to do what it did not want to do, even if, morally, it was the right action. This is scandalous. And it is ironic that those guilty of endangering the lives of others—even of indirectly killing them—frequently get promoted by their companies for increasing profits.

Because the consequences for the whistle blower are often so disastrous, such action is not to be undertaken lightly. Moreover, whistle blowing may, in some cases, be morally justifiable without being morally mandatory. The position we shall develop is a moderate one that falls between the two extremes: that whistle blowing is always morally justifiable and that it is never morally justifiable.

Whistle Blowing as Morally Prohibited

Whistle blowing can be defined in such a way that it is always morally permissible or always morally obligatory. Initially, however, we can plausibly consider as morally neutral the act of an employee making public a firm’s internal operations, practices, or policies that affect the safety of a product. In some cases whistle blowing may be morally prohibited, in some cases it may be morally permissible, and in others it may be morally mandatory.

Each of the two extreme positions on whistle blowing, although mistaken, is instructive. The view that whistle blowing is always morally prohibited is the more widely held view. It is held not only by most managers, but also by most employees. There is a strong tradition within American mores against “ratting,” or telling on others. We find this to be true of children, in and out of school, and in folk wisdom: “Don’t wash your dirty linen in public.” There is ample evidence that when someone does blow the whistle on his or her company—even for moral reasons, and with positive results for the public—he or she is generally ostracized, not only by the management of the firm but also by fellow employees. The whistle blower is perceived as a traitor, as someone who has damaged the firm—the working family—to which he or she belongs. In so doing, he or she has hurt and offended most of those within the firm.

Rarely are whistle blowers honored as heroes by their fellow workers. A possible explanation might be that, by this action, the whistle blower has implied that fellow workers who did not blow the whistle are guilty of immorality, complicity in the wrongdoings of the company, or cowardice. The whistle blower did what the others were obliged to do but failed to do. His or her presence is therefore a constant reminder of their moral failure. Such a scenario may describe some situations, but whatever the scenario, the evidence is overwhelming that the whistle blower is not considered a hero by most fellow workers.

How can we justify this feeling of most workers and managers that an employee ought not blow the whistle on the firm for which he or she works? Are they not operating under a double standard if they themselves wish to be preserved from injury caused by other firms, even if the means of achieving that protection is the result of someone in another firm blowing the whistle?

The most plausible, and most commonly stated, rationale for not blowing the whistle is given in terms of loyalty. When people join a company, it is claimed, they become part of an organization composed of fellow employees. They are not simply automatons filling positions. They are people with feelings, who are engaged in a joint enterprise. In accepting employment, employees at every level owe something to the employing firm as well as to those with whom they work. Employees owe not only a certain amount of work but also a certain positive attitude toward that work and to their fellow workers. Without such a positive attitude (which we can characterize roughly as loyalty), a worker is either indifferent or disaffected. An indifferent or disaffected worker is clearly not a team player and typically contributes only enough work to keep from being fired. Given the chance, such a worker would gladly leave the firm for a job with another company. Such employees lack loyalty to their employer.[7](javascript:findAnchor('ch12fn07'))

Now, if the indifferent or disaffected worker were to blow the whistle on his or her employer, one might doubt that he or she did so from noble or moral motives. One might be mistaken in assuming ignoble motives, but the natural tendency would be to see the whistle blowing as stemming from the worker’s indifference or disaffection. Therefore, it is unlikely that those workers who feel a sense of obligation or loyalty to the firm will look kindly on the whistle blower or the whistle blowing.

This leaves us to consider the loyal worker. What is the basis of this loyalty, and to what extent is it owed the company or employer? In one view, loyalty is based appropriately on gratitude. The firm or employer, after all, gives the worker a job, which is no small consideration in a society in which 4 percent unemployment is considered normal and in which unemployment for some groups in the society has recently reached 18 percent. To be disloyal to your employer is to bite the hand that feeds you—hardly an admirable or praise-worthy action. But even if the worker feels no gratitude, both the worker and the employer profit from their mutual contract, because if workers are to be more than cogs in an impersonal machine, they come to see the company as their company. Workers, in any event, have a stake in the firm for which they work. The stake is appropriately translated into positive concern for the firm, if not full identification with it—a concern that is in part what people mean by *loyalty*.

But even if we concede that an employee appropriately feels loyalty to a firm or to those within it, we cannot agree that such loyalty involves or demands that a worker engage in immoral activities for the firm. Nor need we admit that loyalty is always the overriding consideration in an employee’s actions. The flaw in the argument of those who claim that whistle blowing is always immoral is that they make loyalty to a firm the worker’s highest obligation and consider it to be always overriding. Nor do they consider the possibility that an employee might blow the whistle out of loyalty to the firm, if the employee believes that those engaged in the endangering process are in fact harming the company, even if inadvertently.

On the other hand, those who argue that whistle blowing is always at least morally permissible typically approach such acts from the point of view of the right of free speech. Workers do not give up the right of free speech—a civil right—by taking employment. They usually make no pledge of loyalty; and any claim that employers make regarding an employee’s obligation to be loyal to their firm is wishful thinking, or self-serving ideological hogwash that they try to foist on naive employees. There is no obligation of employee loyalty, either as a result of a contract or as an implied condition of employment. But there is the right of free speech.

The right of free speech, of course, is a limited right. One is not free to yell “fire” in a crowded theater when there is no fire. One is legally prohibited from making libelous statements. But one is not prevented from making true statements, whether they be about one’s employer or about others. American citizens freely criticize their government and their elected leaders. It would be strange if they did not have a similar right to criticize their employers. Moreover, the argument continues, if the actions of their employers, or of some members of the firm, are morally suspect, or if actions of the firm may in some way damage consumers, workers, or innocent bystanders, or if these actions threaten the interests of shareholders or of other interested parties, then workers clearly have the right to speak out in whatever way, and in whatever forum, they desire. By doing so, they violate no commitment to loyalty because there is no such commitment; they are simply exercising their right to free speech. It may be imprudent at times to speak out, and they may suffer from the often unjust reactions of others, but whistle blowing, or speaking out about a company’s practices, is not immoral; it is always a morally defensible act.

This extreme position has much to recommend it. But it is extreme because it makes the right of free speech always overriding, and it fails to consider the harm done to one’s firm or fellow workers by the usual kind of whistle blowing. In denying any obligation of loyalty, it implicitly denies any consideration of the harm that one’s actions may do to those with whom one is associated, and fails to consider whether there are morally preferable alternatives—or perhaps even morally required alternatives.

Each of the two positions we have described as extreme suffers from the same defect. Each makes absolute one aspect of a complex situation and fails to consider the conflict of obligations, rights, and responsibilities that usually arise in the conditions that lead to whistle blowing. If neither loyalty nor the right to free speech is always overriding, and if neither always determines the morality of a case, it is sometimes possible for loyalty to be overriding, sometimes for the right of free speech to be overriding—and it is possible, therefore, that at times neither be overriding, and that both may give way to some other consideration. This suggests that sometimes whistle blowing may be immoral—as when loyalty is overriding—and that sometimes it is morally justified—as when the right to free speech is overriding.

On whom does the onus of justification rest? Should we assume that whistle blowing is generally morally justifiable, and require that anyone who claims that a given act of whistle blowing is immoral make out that case? Or should we assume that whistle blowing is generally immoral, and require moral justification for those acts that are morally permissible or obligatory? Tradition has placed the onus on those who justify whistle blowing, the common assumption being that it is morally prohibited. We have already noted the general attitude of most workers to whistle blowing, and their negative reaction to the whistle blower. Moreover, unless we are to indict most workers as moral cowards, the relatively rare incidence of whistle blowing indicates that most workers do not feel it is their moral obligation to blow the whistle. Although these considerations do not by themselves show that workers feel it is immoral to blow the whistle, they at least tend to put the onus on those who would claim it is morally obligatory. Finally, the literature on whistle blowing has developed in such a way that those who justify it have assumed the need to do so.

That whistle blowing needs justification makes sense, moreover, if it is seen as an instance of disobedience to the corporation or organization. Frequently, whistle blowers are in fact told by their superiors to mind their own business. To blow the whistle is to go beyond what they are paid to do, and to fly in the face of orders given by a legitimate superior within the firm or organization. Disobedience typically requires justification if it is to be considered moral—whether it is a case of civil disobedience, disobedience to the corporation, or a child’s disobedience to his or her parents. Under the appropriate conditions, obedience is the expected and required moral way to act. Disobedience may be morally justified, but if it is, the onus is on the disobedient person or his or her spokesperson to make out the case.

To admit that whistle blowing is often an instance of disobedience to the corporation and that at least sometimes one (i.e., the corporation) is owed obedience leads us to the conclusion that at least sometimes whistle blowing is morally wrong. That it is sometimes morally wrong seems the general consensus in American society, and there is no reason to challenge the consensus. But sometimes whistle blowing is morally permissible, and sometimes is even morally obligatory; therefore, it is appropriate to accept the onus of spelling out and justifying the conditions for each.

Whistle Blowing as Morally Permitted

The kind of whistle blowing we are considering involves an employee somehow going public, revealing information or concerns about his or her firm in the hope that the firm will change its product, action, policy, or whatever it is that the whistle blower feels will harm, or has harmed others, and needs to be rectified. We can assume that when one blows the whistle, it is not with the consent of the firm, but against its wishes. It is thus a form of disloyalty and disobedience to the corporation. Whistle blowing of this type, we can further assume, does injury to a firm. It results in either adverse publicity or in an investigation of some sort, or both. If we adopt the principle that one ought not to do harm without sufficient reason, then, if the act of whistle blowing is to be morally permissible, some good must be achieved to outweigh the harm that will be done.

There are five conditions that, if satisfied, change the moral status of whistle blowing. If the first three are satisfied, the act of whistle blowing will be morally justifiable and permissible. If the additional two are satisfied, the act of whistle blowing will be morally obligatory.

Whistle blowing is morally permissible if

1. The firm, through its product or policy, will do serious and considerable harm to employees or to the public, whether in the person of the user of its product, an innocent bystander, or the general public.

Because whistle blowing causes harm to the firm, this harm must be offset by at least an equal amount of good if the act is to be permissible. We have specified that the potential or actual harm to others must be serious and considerable. That requirement may be considered by some to be both too strong and too vague. Why specify “serious and considerable” instead of saying, “involve more harm than the harm that the whistle blowing will produce for the firm”? Moreover, how serious is “serious”? And how considerable is “considerable”?

There are several reasons for stating that the potential harm must be serious and considerable. First, if the harm is not serious and considerable, if an action will do only slight damage to the public or to the user of a product, the justification for whistle blowing will be at least problematic. We will not have a clear case. To assess the harm done to the firm is difficult; but though the harm may be rather vague, it is also rather sure. If the harm threatened by a product is slight or not certain, it might not be greater than the harm done to the firm. After all, a great many products involve some risk. Even with a well-constructed hammer, one can smash one’s finger. There is some risk in operating any automobile because no automobile is completely safe. There is always a trade-off between safety and cost. It is not immoral not to make the safest automobile possible, for instance, and a great many factors enter into deciding just how safe a car should be. An employee might see that a car can be made slightly safer by modifying a part and might suggest that modification; but not making the modification is not usually grounds for blowing the whistle. If serious harm is not threatened, then the slight harm that is done, say by the use of a product, can be corrected after the product is marketed (e.g., as a result of customer complaint). Our society has a great many ways of handling minor defects, and these are at least arguably better than resorting to whistle blowing.

To this consideration should be added a second. Whistle blowing is frequently, and appropriately, considered an unusual occurrence—a heroic act. If the practice of blowing the whistle for relatively minor harm were to become a common occurrence, its effectiveness would be diminished. When serious harm is threatened, whistle blowers are listened to by the news media, for instance, because the harm is news. But relatively minor harm to the public is not news. If many minor charges or concerns were voiced to the media, the public would soon not react as it is now expected to react to such disclosures. This would also be the case if complaints about all sorts of perceived or anticipated minor harm were reported to government agencies, although most people would expect that government agencies would act first on the serious cases and only later on claims of relatively minor harm.

There is a third consideration. Every time an employee has a concern about possible harm to the public from a product or practice we cannot assume that he or she makes a correct assessment, nor can we assume that every claim of harm is morally motivated. To sift out the claims and concerns of the disaffected worker from the genuine claims and concerns of the morally motivated employee is a practical problem. It may be claimed that this problem has nothing to do with the moral permissibility of the act of whistle blowing; but whistle blowing is a practical matter. If viewed as a technique for changing policy or actions, it will be justified only if effective. It can be trivialized. If it is, then one might plausibly claim that little harm is done to the firm, and hence the act is permitted. But if trivialized, it loses its point. If whistle blowing is to be considered a serious act with serious consequences, it should be reserved for disclosing potentially serious harm and will be morally justifiable in those cases.

*Serious* is admittedly a vague term. Is an increase in probable automobile deaths from 2 in 100,000 to 15 in 100,000 over a one-year period serious? Although there may be legitimate debate on this issue, it is clear that matters that threaten death are prima facie serious. If the threatened harm is that a product may cost a few pennies more than otherwise, or if the threatened harm is that a part or product may cause minor inconvenience, that harm—even if multiplied by thousands or millions of instances—does not match the seriousness of death to the user or the innocent bystander.

The harm threatened by unsafe tires—for example, sold as premium quality but blowing out at 60 or 70 mph—is serious, for such tires can easily lead to death. The dumping of metal drums of toxic waste into a river, where the drums will rust, leak, and cause cancer or other serious ills to those who drink the river water or otherwise use it, threatens serious harm. The use of substandard concrete in a building, such that the building is likely to collapse and kill people, poses a serious threat to people. Failure to X-ray pipe fittings, as required in building a nuclear plant, is a failure that might lead to nuclear leaks; this may involve serious harm, for it endangers the health and lives of many.

The notion of *serious* harm might be expanded to include serious financial harm, as well as kinds of harm other than death and serious threats to health and body. But as we noted earlier, we shall restrict ourselves here to products and practices that produce or threaten serious harm or danger to life and health. The difference between producing harm and threatening serious danger is not significant for the kinds of cases we are considering.

1. Once employees identify a serious threat to the user of a product or to the general public, they should report it to their immediate superior and make their moral concern known. Unless they do so, the act of whistle blowing is not clearly justifiable.

Why not? Why is not the weighing of harm sufficient? The answer has already been given in part. Whistle blowing is a practice that, to be effective, cannot be routinely used. There are other reasons as well. First, reporting one’s concerns is the most direct, and usually the quickest, way of producing the change the whistle blower desires. The normal assumption is that most firms do not want to cause death or injury and do not willingly and knowingly set out to harm the users of their products in this way. If there are life-threatening defects, the normal assumption is, and should be, that the firm will be interested in correcting them, if not for moral reasons, at least for prudent reasons—viz., to avoid suits, bad publicity, and adverse consumer reaction. If serious harm is threatened and an employee can prevent it by reporting it, he or she has the obligation to report it. The argument from loyalty also supports the requirement that the firm be given the chance to rectify its action, procedure, or policy before it is charged in public. In addition, because whistle blowing does harm to the firm, harm in general is minimized if the firm is informed of the problem and allowed to correct it. Less harm is done to the firm in this way, and if the harm to the public or the users is also averted, this procedure produces the least harm, on the whole.

The condition that one report one’s concern to one’s immediate superior presupposes a hierarchical structure. Although firms are usually so structured, they need not be. In a company of equals, one would report one’s concerns internally, as appropriate.

Several objections may be raised to this condition. Suppose one knows that one’s immediate superior already knows of the defect and the danger. In this case reporting it to the superior would be redundant, and condition 2 would be satisfied. But one should not presume without good reason that one’s superior does know. What may be clear to one individual may not be clear to another. Moreover, the assessment of risk is often a complicated matter. What appears as unacceptable risk to a person on one level may appear as legitimate to a person on a higher level, who may see a larger picture and know of offsetting compensations and the like.

Would not reporting one’s concern effectively preclude the possibility of anonymous whistle blowing and so put one in jeopardy? This might be the case, and a person should weigh this consideration before blowing the whistle. We will discuss this matter later in this chapter. If the reporting is done tactfully, moreover, the voicing of one’s concerns might, if the problem is apparent to others, indicate a desire to operate within the firm, and so make one less likely to be the person assumed to have blown the whistle anonymously.

By reporting his or her concern to the immediate superior or other appropriate person, the employee preserves and observes the regular practices of firms, which on the whole promote their order and efficiency; this fulfills the employee’s obligation of minimizing harm, and it precludes precipitous whistle blowing.

1. If one’s immediate superior does nothing effective about the concern or complaint, the employee should exhaust the internal procedures and possibilities within the firm. This usually will involve taking the matter up the managerial ladder and, if necessary—and possible—to the board of directors.

To exhaust the internal procedures and possibilities is the key requirement here. In a hierarchically structured firm, this means going up the chain of command. But the employee may do so either with or without the permission of those at each level of the hierarchy. What constitutes exhausting the internal procedures? This is often a matter of judgment. But because going public with one’s concern is more serious both for oneself and for the firm, going up the chain of command is the preferable route to take in most circumstances. This third condition is of course satisfied if, for some reason, it is truly impossible to go beyond any particular level.

Several objections may once again be raised. There may not be time enough to follow the bureaucratic procedures of a given firm; the threatened harm may have been done before the procedures are exhausted. If, moreover, one goes up the chain to the top and nothing is done by anyone, then a great deal of time will have been wasted. Once again, prudence and judgement should be used. The internal possibilities may sometimes be exhausted quickly, by a few phone calls or visits. But it should not simply be assumed that no one at any level within the firm will do anything. If there are truly no possibilities of internal remedy, then the third condition is satisfied.

As we mentioned, the point of the three conditions is essentially that whistle blowing is morally permissible if the harm threatened is serious and if internal remedies have been attempted in good faith without a satisfactory result. In these circumstances, an employee is morally justified in attempting to avert what he or she sees as serious harm by any means that may be effective, including blowing the whistle.

We can pass over as not immediately germane the questions of whether in nonserious matters there is an obligation to report one’s moral concerns to one’s superiors and whether a person fulfills this obligation once he or she has reported them to the appropriate party.

These three steps can be taken as an analysis of the moral obligation to bring the matter before the attention of those who can prevent it. We noted earlier that everyone has the moral obligation to prevent serious harm to others when they can do so at little cost to themselves. Since one’s own good is as important as the good of another, there is no general obligation to sacrifice oneself for another. To do so is generally agreed to go beyond the call of duty. As the cost to oneself grows, the obligation generally diminishes, unless the threatened harm is very great. Once again one must use one’s judgment to decide how to weigh the harm to oneself as opposed to the serious harm to others. Yet the general rule applies in the case of serious harm threatened to others by one’s own company, and if one can present that harm one has the obligation to do so and to take what steps one can. Hence we can argue that employees have the general obligation to report the threatened harm they perceive to their superiors and to go as high up in the company as they can to prevent it. The obligation to do so sets the stage for the obligation to externally blow the whistle.

If these three steps have been taken, and if the company does not take any action to prevent the harm, then one has exhausted the internal remedies. Having exhausted them is sufficient justification for the employee to turn to external whistle blowing. The employee, by using all available internal mechanisms, has satisfied any legitimate claim of loyalty to the company and has provided the company an opportunity to prevent the harm without publicity, and so without damage to its reputation. From an ethical point of view, the employee who has taken these three steps without successful remedy is permitted to go outside the company and blow the whistle externally in order to prevent the threatened harm.

Whistle Blowing as Morally Required

To say that external whistle blowing under these conditions is morally permitted does not impose any obligation on an employee to externally blow the whistle. Unless two other conditions are met, the employee does not have a moral obligation to blow the whistle. To blow the whistle when there is no moral requirement to do so, and if done from moral motives (i.e., concern for one’s fellow humans) and at risk to oneself, is to commit a supererogatory act. It is an act that deserves moral praise. But failure to so act deserves no moral blame. In such a case, the whistle blower might be considered a moral hero. Sometimes he or she is so considered, and sometimes not. If an employee’s claim or concern turns out to be ill-founded, his or her subjective moral state may be as praiseworthy as if the claim were well-founded, but the person will rarely receive much praise for his or her action.

For there to be an obligation to blow the whistle, two conditions must be met, in addition to the foregoing three.

1. The whistle blower must have, or have accessible, documented evidence that would convince a reasonable, impartial observer that one’s view of the situation is correct, and that the company’s product or practice poses a serious and likely danger to the public or to the user of the product.

Employees do not have an obligation to put themselves at serious risk without some compensating advantage to be gained. Unless they have documented evidence that would convince a reasonable, impartial observer, their charges or claims if made public would be based essentially on their word. Such grounds may be sufficient for a subjective feeling of certitude about the charges, but they are not usually sufficient for others to act on the claims. For instance, a newspaper is unlikely to print a story based simply on someone’s undocumented assertion.

Several difficulties emerge. Should it not be the responsibility of the media or the appropriate regulatory agency or government bureau to carry out an investigation based on someone’s complaint? It is reasonable for them to do so, providing they have some evidence in support of the complaint or claim. The damage has not yet been done, and the harm will not, in all likelihood, be done to the complaining party. If the action is criminal, then an investigation by a law-enforcing agency is appropriate. But the charges made by whistle blowers are often not criminal charges. And we do not expect newspapers or government agencies to carry out investigations whenever anyone claims that possible harm will be done by a product or practice. Unless harm is imminent, and very serious (e.g., a bomb threat), it is appropriate to act on evidence that substantiates a claim. The usual procedure, once an investigation is started or a complaint followed up, is to contact the party charged.

One does not have a moral obligation to blow the whistle simply because of a hunch, guess, or personal assessment of possible danger, if supporting evidence and documentation are not available. One may, of course, have the obligation to attempt to get evidence if the harm is serious. But if it is unavailable—or unavailable without using illegal or immoral means—then a person does not have the obligation to blow the whistle.

1. The employee must have good reasons to believe that by going public the necessary changes will be brought about. The chance of being successful must be worth the risk one takes and the danger to which one is exposed.

Even with some documentation and evidence, a potential whistle blower may not be taken seriously, or may not be able to get the media or government agency to take any action. How far should one go, and how much must one try? The more serious the situation, the greater the effort required. But unless one has a reasonable expectation of success, one is not obliged to put oneself at great risk. Before going public, the potential whistle blower should know who (e.g., government agency, newspaper, columnist, TV reporter) will make use of the evidence, and how it will be handled. The whistle blower should have good reason to expect that the action taken will result in the kind of change or result that he or she believes is morally appropriate.

The foregoing fourth and fifth conditions may seem too permissive to some and too stringent to others. The conditions are too permissive for those who wish everyone to be ready and willing to blow the whistle whenever there is a chance that the public will be harmed. After all, harm to the public is more serious than harm to the whistle blower, and, in the long run, if everyone saw whistle blowing as obligatory, without satisfying the last two conditions, we would all be better off. If the fourth and fifth conditions must be satisfied, then people will only rarely have the moral obligation to blow the whistle.

If, however, whistle blowing were mandatory whenever the first three conditions were satisfied, and if one had the moral obligation to blow the whistle whenever one had a moral doubt or fear about safety, or whenever one disagreed with one’s superiors or colleagues, one would be obliged to go public whenever one did not get one’s way on such issues within a firm. But these conditions are much too strong, for the reasons already given. Other conditions, weaker than those proposed, might be suggested. But any condition that makes whistle blowing mandatory in large numbers of cases may reduce the effectiveness of whistle blowing. If this were the result, and the practice were to become widespread, then it is doubtful that we would all be better off.

Finally, the claim that many people very often have the obligation to blow the whistle goes against the common view of the whistle blower as a moral hero, and against the commonly held feeling that whistle blowing is only rarely morally mandatory. This feeling may be misplaced. But a very strong argument is necessary to show that although the general public is morally mistaken in its view, the moral theoretician is correct in his or her assertion.

A consequence of accepting the fourth and fifth conditions stated is that the stringency of the moral obligation of whistle blowing corresponds with the common feeling of most people on this issue. Those in higher positions and those in professional positions in a firm are more likely to have the obligation to change a firm’s policy or product—even by whistle blowing, if necessary—than are lower-placed employees. Engineers, for instance, are more likely to have access to data and designs than are assembly-line workers. Managers generally have a broader picture and more access to evidence than do nonmanagerial employees. Management has the moral responsibility both to see that the expressed moral concerns of those below them have been adequately considered and that the firm does not knowingly inflict harm on others.

The fourth and fifth conditions will appear too stringent to those who believe that whistle blowing is always a supererogatory act, that it is always moral heroism, and that it is never morally obligatory. They might argue that, although we are not permitted to do what is immoral, we have no general moral obligation to prevent all others from acting immorally. This is what the whistle blower attempts to do. The counter to that, however, is to point out that whistle blowing is an act in which one attempts to prevent harm to a third party. It is not implausible to claim both that we are morally obliged to prevent harm to others at relatively little expense to ourselves, and that we are morally obliged to prevent great harm to a great many others, even at considerable expense to ourselves.

The five conditions outlined can be used by an individual to help decide whether he or she is morally permitted or required to blow the whistle. Third parties can also use these conditions when attempting to evaluate acts of whistle blowing by others, even though third parties may have difficulty determining whether the whistle blowing is morally motivated. It might be possible successfully to blow the whistle anonymously. But anonymous tips or stories seldom get much attention. One can confide in a government agent, or in a reporter, on condition that one’s name not be disclosed. But this approach, too, is frequently ineffective in achieving the results required. To be effective, the source must usually be willing to be identified, to testify publicly, to produce verifiable evidence, and to put himself or herself at risk. As with civil disobedience, what captures the conscience of others is the willingness of the whistle blower to suffer harm for the benefit of others, and for what he or she thinks is right.

Although we have concentrated on a specific type of nongovernmental, impersonal, external whistle blowing that threatens serious physical harm to the public, the analysis provides a model for dealing with other kinds of whistle blowing as well. What should employees do when the harm threatened is not physical but monetary—to customers, suppliers, or the general public? How serious does such threatened harm have to be? What of unjustified cost overruns on government contracts, or tax evasion, or other illegal activities on the part of a company? When is a worker prohibited from blowing the whistle, and when is a worker permitted or required to blow it?

Internal Whistle Blowing

Impersonal external whistle blowing is the most dramatic and publicized kind of whistle blowing. An equally troubling kind is impersonal, internal, nongovernmental whistle blowing. The analysis of the conditions under which the first kind is prohibited, permitted, or mandatory does not automatically apply to the internal kind. If serious harm is threatened to employees, then the first three conditions come into play and the analysis yields an obligation to internally blow the whistle. But in many instances of internal whistle blowing there is no question of going outside the firm because the harm done is not to employees or to the public but to the firm.

Rather than being an act of corporate disloyalty, internal whistle blowing is more often than not an act of corporate loyalty. However, it usually does involve disloyalty or disobedience to one’s immediate superior or disloyalty to one’s fellow workers. If done from moral motives, the intent of such whistle blowing is to stop dishonesty or some immoral practice or act in order to protect the interests and reputation of the company or to increase a company’s profits.

Those in management positions are usually expected to see that those below them follow proper procedures and obey company policy. But what obligation, if any, does a subordinate have to report that someone above them is padding his or her expense account, or is taking kickbacks on orders placed with a supplier, or is accepting large unreported gifts from suppliers? Most companies would like to know about such activity and stop it. However, unless reporting it is stated as an obligation, such as in corporate guidelines, if those doing the reporting would not in any way be considered accomplices and have nothing to do with the wrongdoing, it is difficult to see how subordinates can have a moral *obligation* to report such activity. In doing so they would help the company, but they might also put their own positions, jobs, or promotions in jeopardy. Workers are not typically hired to spy on their fellow workers or superiors. Nor is it clear that asking employees to act in that capacity would make for a productive corporate atmosphere. There is no general moral obligation for everyone to report every minor instance of wrongdoing of which they become aware. Such a requirement would be impossible to fulfill and would cause more social harm than good. It would turn a normal society into a police state or develop a police-state mentality among its citizens in which everyone watches and reports on everyone else. The cases here do not involve illegal activity or harm to others outside the corporation, and so they are appropriately handled within the corporation. They also involve relatively minor harm to the firm. This does not excuse the activities, but it does affect the obligation of subordinates to report such activity.

Although not obliged to blow the whistle on superiors so acting, are employees morally permitted to do so? Are they ever morally prohibited from doing so?

In the analysis of external whistle blowing, we acknowledged a requirement to try to prevent the threatened harm by reporting it within the firm first. Is there a parallel requirement that before reporting the wrongdoings of a superior one inform that person first? Although this might frequently be the preferable course of action, providing one could do so tactfully and with relative personal impunity, it is not a general requirement. In the cases we are discussing, the action has already been done and the harm inflicted. Because the perpetrators of the prohibited actions in question are acting against the good of the firm, they can claim no right to privacy with respect to those actions and no immunity from being reported. Those above them clearly have the right and often the obligation to stop that activity. Hence, a subordinate who feels strongly about the action may report it. There is no general moral prohibition about reporting wrongdoing, and there is no special prohibition if the wrongdoing occurs within a firm.

A similar kind of analysis applies to reporting the wrongdoings of one’s peers or fellow workers.

The analysis changes once the activity is illegal or causes harm to individuals or serious harm to the company. Reporting such activity is morally permitted. Whether it is morally required depends on the severity of the harm, one’s position within the firm and vis-à-vis the perpetrator, the firm’s general operating procedures, and other pertinent factors. The point is not to look for an automatic rule, but to learn to consider and weigh the pertinent factors in each case.

A company that wishes to foster both collegiality and honesty among its employees will have policies that will help employees work through their responsibilities with respect to issues involving ethical breaches on the part of superiors and fellow employees.

**Three Cases**

In January 2003, *Time* Magazine surprised its readers by choosing three women whistle blowers as its “Persons of the Year.”[8](javascript:findAnchor('ch12fn08')) The three were Coleen Rowley of the FBI, Sherron Watkins of Enron, and Cynthia Cooper of WorldCom. Each engaged in a kind of whistle blowing different from the nongovernmental, impersonal, external whistle blowing in which serious bodily harm or death is threatened by a company’s actions. They therefore allow us to test our model and to see how it might be modified and applied to other kinds of whistle blowing. None of the three considered herself a whistle blower, and many others did not consider them whistle blowers either.[9](javascript:findAnchor('ch12fn09')) Part of the reason why this is the case is that each reported their perception of wrongdoing internally, and it was only though accident or the action of others that they were called on to publicly testify against their employers.

Coleen Rowley worked for the FBI, and so her actions were a form of internal governmental whistle blowing. There are several general types of governmental whistle blowing and the analysis of each is somewhat different. One is whistle blowing by a government employee concerning fraud against the government or whistle blowing by an employee of a firm with a government contract whose firm is involved in defrauding the government. These form the largest number of governmental whistle blowing cases, and the ones that the U.S. government typically has been most interested in. Legislation going back to the False Claims Act of 1863 attempts to protect the government against fraud, and when the Act was revised in 1986 it provided such whistle blowers not only with protection against reprisals of any sort, but also with a claim on a percentage of the money the government recovers. A second kind of whistle blowing is by a government employee who reports to the appropriate government agency corruption within government. A third is the unauthorized release of government documents to the general public (usually via the media) of proof of wrongdoing of any sort that the government refuses to make public. A fourth involves the reporting of threatened harm by either the government or some contractor for the government, exemplified by the case of engineers working on the ill-fated Space Shuttle Challenger launch, which exploded, causing the death of its seven crew members.[10](javascript:findAnchor('ch12fn10'))

The actions of Coleen Rowley do not fall neatly into any of these four categories. Following the September 11, 2001 attack on the World Trade Center and the Pentagon, Rowley tried to bring to the attention of her superiors a failure of the FBI to follow up reports filed before September 11 on the actions of Zacaias Moussaoui, who had taken instruction on how to fly a 747, and whom the government later charged with aiding the Al Qaeda in the attack.[11](javascript:findAnchor('ch12fn11')) She wrote up her concerns for the Director of the FBI, Robert Mueller, and two members of the House and Senate Intelligence Committee, which was investigating the attacks. She didn’t intend her letter to be made public. It was released to the press by someone else, and as a result she was contacted by various news media and called to testify publicly at the Committee’s hearings. She became famous for her detailing of failures she perceived in the FBI and of some of the procedures and atmosphere that worked against FBI employees being able to function effectively and the FBI being able to respond appropriately to threats that were reported.

Whether or not she is considered an internal whistle blower, it seems clear that she acted appropriately in making her concerns known and in trying to bring them to the attention of the Director of the FBI. In this case the first three conditions that must be fulfilled to justify whistle blowing are the same as in cases of nongovernmental whistle blowing. Serious harm was threatened if procedures were not changed, and she appropriately worked first within the system. The other two conditions were also arguably fulfilled, even though she did go public on her own.

The other two whistle blowers that *Time* honored were Sherron Watkins and Cynthia Cooper. What makes these cases different from our paradigm case of whistle blowing is that the harm threatened was not bodily harm or death, but financial harm. The entity primarily affected was the company in question itself, although those harmed included not only employees but shareholders, including pension fund and mutual fund holders. At the time both individuals contacted senior management about their findings and concerns they could not know that their respective companies and the shareholders would suffer the extensive and very serious harm they eventually did. But they did know that certain individuals were doing what was illegal or very likely so, and they could foresee harm to the company once the illegality became known.

Cynthia Cooper was vice president of internal audit at WorldCom, which dealt with operations auditing within the company. Financial audits were handled by the accounting firm of Arthur Andersen. When an unusual accounting practice was brought to her attention (listing operating expenses as capital expenses in order to inflate the corporate earnings report), she started investigating it. Although operations expenses were part of her responsibility, the reporting of earnings was officially part of the financial audit. Nonetheless, she pursued it. What she and her team uncovered were accounting practices that inflated the company’s profit statement by $3.8 billion. She reported her findings to the audit committee of WorldCom’s Board of Directors, which shortly thereafter fired Scott Sullivan, the firm’s chief financial officer, and David Myers, WorldCom’s controller. When her audit memo was released to the press in connection with a government investigation into the company’s fraudulent practices, Cooper became a center of attention. Myers cooperated with the federal authorities, who indicted Sullivan for accounting fraud. The company was forced into bankruptcy. *Time* reports that “some employees think the company could have borrowed its way out of its problems and avoided bankruptcy if she [Cooper] had stayed quiet.”[12](javascript:findAnchor('ch12fn12')) Whatever other employees may think, it is clear that Cooper was morally permitted to write the memo she did to the audit committee, since the practices she uncovered were illegal. She was also morally permitted to go beyond the strict lines of her job description to uncover the evidence of the wrongdoing. Whether she was morally obliged to do so is less clear, if we look simply at our whistle blowing model. But any firm that wishes to behave both ethically and legally would be happy that employees act this way, since it is clearly in the firm’s best interest to uncover and correct such actions rather than have them discovered by federal agencies.

The story of Sherron Watkins and Enron is somewhat similar to Sullivan’s. Like Sullivan, she was a vice president. She was given the assignment by Andrew Fastow, the company’s Chief Financial Officer, to identify some of the company’s assets that it could sell. In doing so, she found accounting anomalies and investigated further. She intended to report her misgivings to the CEO, Jeffrey Skilling, but he resigned before she could do so, and he was replaced by Kenneth Lay. A week later she wrote a memo to the new CEO detailing her findings, and then went to see Lay in person.[13](javascript:findAnchor('ch12fn13')) In October the company announced a large loss and in December it filed for bankruptcy. When a federal investigation was begun her memo became public and she shot to the center of media attention. Unlike Sullivan’s fellow employees, *Time* reports that “Some laid-off Enron employees began blaming Watkins for not taking her concerns to the Securities and Exchange Commission,”[14](javascript:findAnchor('ch12fn14')) that is, for not publicly blowing the whistle. Whether she was morally required to do so is not clear. In retrospect a great deal of harm came to a large number of people. If we use our whistle blowing model, then one might argue that all five conditions were met, and she did have the moral obligation to go public. But unlike the paradigm case in which physical harm or death is threatened, she could not know what the outcome would be for Enron. Not all cases of fraud result in the demise of a company and in the loss of their life’s savings by thousands of people. Furthermore, the rationale for making whistle blowing mandatory rests on the strong possibility that the harm can be prevented. In this case, had she gone public it is not clear that the investors and employees who suffered as a result of Enron’s demise would have fared any better. What is clear is that morally and legally she could not take part in any fraud or in covering up any fraud, and both that she was morally permitted to do what she did and that she would have been morally permitted to go public.

Precluding the Need for Whistle Blowing

The need for moral heroes shows a defective society and defective corporations. It is more important to change the legal and corporate structures that make whistle blowing necessary than to convince people to be moral heroes.

Because it is easier to change the law than to change the practice of all corporations, it should be illegal for any employer to fire an employee, or to take any punitive measures, at the time or later, against an employee who satisfies the first three aforementioned conditions and blows the whistle on the company. Because satisfying those conditions makes the action morally justifiable, the law should protect employees when they are acting in accordance with what their conscience demands. If the whistle is falsely blown, the company will have suffered no great harm. If it is appropriately blown, the company should suffer the consequences of its actions being made public. But to protect a whistle blower by passing such a law is no easy matter. Employers can make life difficult for whistle blowers without firing them. There are many ways of passing over an employee. He or she can be relegated to the back room of the firm or be given unpleasant jobs. Employers can always find reasons not to promote employees or not to give them raises. Not all of this can be prevented by law, but some of the more blatant practices can be prohibited.

Second, the law can mandate that the individuals responsible for the decision to proceed with a faulty product or to engage in a harmful practice be penalized. The law has been reluctant to interfere with the operations of companies. As a result, those in the firm who have been guilty of immoral and illegal practices have gone untouched even though the corporation was fined for its activity.

A third possibility is that every company of a certain size be required by law to have an inspector general, an internal operational auditor, an ethics officer, or some comparable person whose job it is to uncover immoral and illegal practices. This person’s job would be to listen to the moral concerns of employees, at every level, about the firm’s practices. He or she should be independent of management and report to the audit committee of the board, which, ideally, should be a committee made up entirely of outside board members. The inspector or auditor should be charged with making public those complaints that should be made public if not changed from within. Failure on the inspector’s part to take proper action with respect to a worker’s complaint, such that the worker is forced to go public, should be prima facie evidence of an attempt to cover up a dangerous practice or product, and the inspector should be subject to criminal charges.

The Sarbanes-Oxley Act of 2002 attempts to provide some protection for whistle blowers[15](javascript:findAnchor('ch12fn15')) by providing both civil and criminal penalties for violating a whistle blower’s rights in reporting fraud. The provisions are stronger now for such whistle blowers than they are for those reporting environmental or safety issues, although OSHA is the agency that drew up the rules implementing the Act. Whether the Act will induce companies to encourage employees to report financial, ethical and legal misconduct, and immunize them against retaliation remains to be seen.

Nonetheless, a company that wishes to be moral—that does not wish to engage in harmful practices or to produce harmful products—can take steps to preclude the necessity of whistle blowing. It can establish channels whereby those employees who have moral concerns can get a fair hearing without danger to their position or standing in the company. Expressing such concerns, moreover, should be considered a demonstration of company loyalty and should be rewarded appropriately. The company might establish the position of ombudsman to hear such complaints or moral concerns, or an independent committee of the board might be established to hear such complaints and concerns. Someone might even be paid by the company to present the position of the would-be whistle blower, who would argue for what the company should do from a moral point of view, rather than what those interested in meeting a schedule or making a profit would like to do. Such a person’s success within the company could depend on his or her success in precluding whistle blowing, as well as the conditions that lead to it.

Unions and professional organizations should become concerned with the problem of whistle blowing. They should support their members who feel obligated to blow the whistle on a company; they should defend and support members in their endeavors and prevent them from being fired or abused on the job. They can also establish channels of their own, to which members can report concerns, and then follow up such concerns and force appropriate action.

Although we have concentrated on a specific type of nongovernmental, impersonal, external whistle blowing that threatens serious physical harm to the public, the analysis provides a model for dealing with other kinds of whistle blowing as well.

Because external whistle blowing involves disloyalty or disobedience at some level, we start by requiring that it be justified, rather than assuming it needs no justification. To distinguish the various kinds of whistle blowing, listing conditions that make it morally permissible and those that make it morally required is useful as a guide. In personal whistle blowing, there are many instances in which it is permitted but not obligatory. Many people may prefer to change employers rather than blow the whistle, and this may be perfectly justifiable. In all cases, one must weigh the harm done against the good to be achieved and the rights to be protected.

Whistle blowing is a relatively recent phenomenon in the workplace. It is one more indication of the falsity of the Myth of Amoral Business. Whistle blowing should also alert corporations to what can and should be done if they wish to be both moral and excellent. When corporate structures preclude the need for whistle blowing, they protect both workers’ rights and the public’s good.

Study Questions

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| 1. | In your opinion, was the Ford Motor Company or anyone in the company guilty of any ethical breaches? Defend your answer by means of a utilitarian analysis. |

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| 2. | Did anyone in the Ford Motor Company have an obligation to blow the whistle? Defend your answer. |

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| 3. | Define *whistle blowing; internal whistle blowing; external whistle blowing; personal whistle blowing; impersonal whistle blowing; governmental whistle blowing; nongovernmental whistle blowing*. Give an illustrative example of each. |

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| 4. | How might someone argue that whistle blowing is always morally prohibited? What is wrong with that argument? |

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| 5. | How much loyalty, if any, does a worker owe a firm? Defend your answer. |

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| 6. | How might someone argue that whistle blowing is always morally permitted? What is wrong with that argument? |

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| 7. | Under what three conditions is whistle blowing morally permitted? How do you defend the legitimacy of those three conditions? |

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| 8. | In the kind of whistle blowing developed in the chapter, why must the threatened harm be serious and considerable? Give examples of kinds of harm that you judge to be serious and considerable. What kinds would you not judge to be serious and considerable? |

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| 9. | In external whistle blowing, why must internal avenues of remedy be tried first? |

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| 10. | Under what conditions is whistle blowing morally mandatory? |

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| 11. | Are employees in a subordinate position obliged to internally blow the whistle on their superiors whom they know are padding their expense accounts? Are embezzling funds? In each case say why or why not. |

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| 12. | Describe the cases of Coleen Rowley, Cynthia Cooper and Sherron Watkins. Do you consider them whistle blowers? Explain. |

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| 13. | Develop guidelines for personal whistle blowing. Defend the guidelines you develop. |

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| 14. | What can government do to protect whistle blowers? How effective can they be? |

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| 15. | How can firms preclude the need for whistle blowing? |

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| 16. | How does whistle blowing indicate the falsity of the Myth of Amoral Business? |

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| 17. | Using the analysis for external, impersonal, nongovernmental whistle blowing as a model, under what conditions is external, impersonal, governmental whistle blowing morally permissible? Morally mandatory? |

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| 18. | Jane Fainsell works for an airplane manufacturer and has access to evidence that the company is charging the government for spare parts up to five times what they cost, amounting to about $1 million in overcharges. Is she morally obliged to do anything about this? If so, what? |

**Prentice Hall’s ABC News Video Cases: Business Ethics**

Prentice Hall’s ABC Video Cases CD-ROM contains case studies of important issues in business ethics today. The following case is especially relevant to the topics discussed in this chapter:

* Nightline: Ford and Firestone, What Went Wrong (June 19, 2001)

Notes

1For sources and more details on the Pinto, see Richard T. De George, “Ethical Responsibilities of Engineers in Large Organizations: The Pinto Case,” *Business and Professional Ethics Journal*, 1, no. 1 (1981), pp. 1–14; Lee P. Strobel, *Reckless Homicide? Ford’s Pinto Trial* (South Bend, Ind.: And Books, 1980); and Mark Dowie, “Pinto Madness,” *Mother Jones*, September/October 1977, pp. 24–28.

2Among the many articles that have appeared, one of the earliest and most incendiary was Mark Dowie, “Pinto Madness,” *Mother Jones* (2), 1977, pp. 18–32. For a defense of Ford and an explanation of the decisions made, see Matthew T. Lee and M. David Ermann, “Pinto ’Madness’ as a Flawed Landmark Narrative: An Organizational and Network Analysis,” *Social Problems* 46 (1), 1999, pp. 30–47.

3Some general works dealing with whistle blowing are Myron Peretz Glazer, Penina Migdal Glazer, *The Whistleblowers: Exposing Corruption in Government and Industry* (New York: Basic Books, 1989); C. Fred Alford, *Whistleblowers: Broken Lives and Organizational Power* (Ithaca, N.Y.: Cornell University Press, 2001); Roberta Ann Johnson, *Whistleblowing: When It Works—And Why* (Boulder, Colo.: Lynne Rienner Publishers, 2003); Gerald Vinten (ed.), *Whistleblowing: Subversion or Corporate Citizenship?* (New York: St. Martin’s Press, 1994); Marcia P. Miceli and Janet P. Near, *Blowing the Whistle: The Organizational and Legal Implications for Companies and Employees* (New York: Lexington Books, 1992). Ancorr Web: Anti-Corruption Ring Online has a useful bibliography on whistle blowing at <http://www1.oecd.org/daf/nocorruptionweb/Corruption/prev_whistle.htm#references>.

4U.S. Merit Systems Protection Board, *Whistle Blowing and the Federal Employee* (Washington, D.C.: U.S. Government Printing Office, 1981). In 1986 Congress revised the False Claims Act. It not only protects those who blow the whistle on government contractor fraud but also gives the whistle blower up to 30 percent of the amount received from a successful suit (Miceli and Near, pp. 247–248).

5Two of the most famous cases were made into movies: In *Erin Brockovich* Julia Roberts (portraying Brockovich) is a woman who discovers a chemical company is polluting drinking water. In *Silkwood* Meryl Streep (playing Karen Silkwood) uncovers corruption and previously unreported danger of contamination at a nuclear plant.

6Robert M. Anderson, Robert Perrucci, Dan E. Schendel, and Leon E. Trachtman, *Divided Loyalties: Whistle-Blowing at BART* (West Lafayette, Ind.: Purdue University, 1980).

7For one discussion of loyalty, see Alan F. Westin, Henry I. Kurtz, and Albert Robbins, *Whistle Blowing: Loyalty and Dissent in the Corporation* (New York: McGraw-Hill, 1981).

8*Time*, Dec. 20, 2002/Jan. 6, 2003 cover and pp. 30–60.

9Of the three, Sherron Watkins after the fact portrayed herself as a whistle blower. Dan Ackman, Feb. 14, 2002) available at <http://www.forbes.com/2002/02/14/0214watkins.html>, disagrees and argues that Watkins was not a whistle blower.

10Diane Vaughan, *The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA* (Chicago: The University of Chicago Press, 1996).

11For the U.S. government indictment against Moussai, see <http://www.usdoj.gov/ag/moussaouiindictment.htm>.

12*Time*, p. 50.

13The text of the memo is available at <http://www.itmweb.com/f012002.htm>. In the memo she suggests ways to resolve the difficulties the company and suggests the best plan is to “clean up quietly if possible.”

14*Time*, p.56.

15Ashlea Ebeling, “Blowing the Sarbanes-Oxley Whistle,” *Forbes* online at <http://www.forbes.com/2003/06/18/cx_ae_0618beltway.html>.



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