



# Whistleblowing: Don't Encourage It, Prevent It

## Comment on "Cultures of Silence and Cultures of Voice: The Role of Whistleblowing in Healthcare Organisations"



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### Abstract

In a recent article, Mannion and Davies argue that there are a multitude of ways in which organizations (such as the National Health Service [NHS]) can deal with wrongdoing or ethical problems, including the formation of policies that encourage and protect would-be whistleblowers. However, it is important to distinguish internal reporting about wrongdoing from whistleblowing proper, because the two are morally quite different and should not be dealt with in the same way. This article argues that we should not understand the authors' conclusions to apply to "whistleblowing" proper, because their recommended approach would be both unfeasible and undesirable for addressing whistleblowing defined in this way.

**Keywords:** Whistleblowing, Moral Dilemma, Organizational Policy, Public Policy, Ethics

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In their recent article, Mannion and Davies<sup>1</sup> argue that there are a multitude of ways in which organizations (such as the National Health Service [NHS]) can deal with wrongdoing or ethical problems, including the formation of policies that encourage and protect would-be whistleblowers. While such policies can be effective and helpful when utilized to encourage employees to report to managers internal to their organization, philosophers often distinguish this internal reporting from whistleblowing proper, which occurs when an employee reveals information externally (or publicly) about wrongdoing within the organization. It is important to distinguish internal reporting about wrongdoing from whistleblowing in this more restricted sense, because the two are morally quite different and should not be dealt with in the same way. I will argue that we should not understand the authors' conclusions to apply to "whistleblowing" in the restrictive sense, because their recommended approach would be both unfeasible and undesirable for whistleblowing defined in this way.

### Two Senses of the Term "Whistleblowing"

In the business ethics literature, where the topic has been most thoroughly treated, authors frequently distinguish whistleblowing from other kinds of reporting actions by defining whistleblowing as taking information about one's organization public, or at least outside of normal channels.<sup>2–5</sup> While Mannion and Davies mention this definition at the beginning of their article, they later criticize those who think that whistleblowing is something "separate from normal organizational functioning." Since the article focuses on ways in which healthcare organizations can improve their understanding and treatment of those who make these reports, it is clear that Mannion and Davies understand

the term "whistleblowing" to encompass a wide variety of behaviors, including mere utilization of standard internal reporting procedures.

### Restricting the Term "Whistleblowing" Helps Preserve Important Moral Differences

However, reserving the term "whistleblowing" for those cases that involve going outside one's organization is helpful because employees who consider performing this kind of whistleblowing are actually in a morally unique situation. These employees, unlike those who consider making an internal report, actually face a conflict of duties. Employees, upon entering employment by signing a contract, become involved with their employer in a morally special manner; each party has new obligations and rights as a result of the agreement. The obligations of employees are typically held to include a duty to avoid doing things that would harm the employer's interests: for example by damaging the employer's reputation, or by exposing proprietary information that might give an advantage to competitors. Employers are (understandably) only able to entrust sensitive information to employees on the condition that they will keep this information confidential. Sometimes this stipulation is spelled out in a contract and other times it is not, so these duties can be both explicit and implicit. In a case involving either serious wrongdoing or a serious risk of harm to a member of the public, then, the employee who knows about wrongdoing or risk faces a dilemma: she must either reveal sensitive information about her employer, in accordance with her general moral obligations; or she must keep the information confidential, in accordance with her special obligations to her employer.<sup>4,6</sup>

One thing that this more restrictive definition makes clear

is why it is that whistleblowers often fare so poorly after whistleblowing. Whistleblowers fare poorly because the decision to whistleblow is by definition a tragic choice: a choice generally considered to always end in a failure to fulfill at least one obligation.<sup>7</sup> Whistleblowers had to choose between failing in a duty to the public and failing in a duty to their employer, and they chose to fail in their duty to their employer. One might call into question whether moral tragedies are even theoretically possible (Kant did,<sup>8</sup> and Mill probably would too). For example, at least one recent author has argued that the apparent conflict of duties is merely illusory, because in justified cases of whistleblowing the whistleblowing does not compete with any legitimate interest of the employer.<sup>9</sup> There are theoretical considerations here that are beyond the scope of this essay. But in any case, whistleblowing always violates a *pro tanto* moral duty (ie, a duty we must keep under ordinary circumstances but which may be outweighed on occasion), and it is this fact that accounts for why whistleblowers often fare poorly: not only has the employee harmed the employer's interest, but the employee has harmed that interest while breaking a *pro tanto* obligation to the employer, and so the employee's actions seem morally tainted.

Of course, internal reporters may fare poorly after their reports too. However, this retaliation is not always visited on the reporters by the organization itself—often, it is by those within the organization who were targeted by the report, either mid-level managers or other coworkers. In cases of whistleblowing proper, however, the corporation itself becomes the object of scrutiny, even if the whistleblower only mentions specific persons within the corporation. This is so because the mere fact of whistleblowing suggests that, not only is there corruption within the corporation, but further that the organization does not have the managerial integrity to satisfactorily resolve its own problems.<sup>5</sup> So whistleblowing generally has worse consequences for employers than does mere internal reporting.

These considerations suggest that whistleblowers would be more likely to experience retaliation than those who merely give internal reports. Indeed, one meta-analysis found that employers are more likely to retaliate in cases of whistleblowing than in cases of mere internal reporting.<sup>10</sup>

However, in that meta-analysis Mesmer and Viswesvaran<sup>10</sup> also note that although retaliation is more likely in cases of external reporting, the correlation is not as strong as one might expect. They suggest that this is due to the fact that successful whistleblowers will generally place the target organization under increased scrutiny, and any attempt to retaliate against the whistleblower will likely be revealed again through the same channel (the whistleblower) and result in more public attention directed towards the organization's internal operations. So even if an organization wishes to retaliate, it may face impediments to doing so.

The best reason for thinking that employers face worse consequences from whistleblowing than they do from internal reporting, however, lies not in the prevalence of retaliation against whistleblowing employees, but rather in two widely known facts—first, that the vast majority of employers place a high value on a good public reputation, and second, that whistleblowing puts this reputation at risk in a way that internal reporting need not. While it is possible for companies

to undertake internal investigations of wrongdoing without damaging their public reputation, it is usually not possible to avoid damaging a reputation when the accusations are public, as discussed above, even if the accusations later turn out to be untrue.

### **Should We Always Incentivize and Protect Whistleblowers?**

From a societal perspective, internal reporting is highly desirable—especially in public institutions like the NHS. As Mannion and Davies observe, careful thought needs to be given to ways in which organizations can discover internal problems and solve them before they cause patients harm. Moreover, organizations themselves have a great interest in making sure such reporting occurs: they avoid hurting patients, of course, and they also avoid public relations problems, they keep employees happy, etc. In cases where an employee makes an internal report and it turns out that the employee misunderstood the supposed instance of wrongdoing, or where the employee's alarm turns out to be a false alarm, managers can talk to employees and defuse the concerns without causing a public relations nightmare. Not only is this kind of reporting generally beneficial, but it is also possible for organizations to make this kind of reporting relatively accessible and safe. The highest authorities in the organization can protect those who report by keeping the source of the report anonymous, by moving employees to other areas of the organization, and perhaps by rewarding employees for looking out for the organization's long-term interests.

In cases of whistleblowing in the restrictive sense, however, it is not clear that giving strong protection to whistleblowers is nearly as feasible. There has been a push for laws protecting the jobs of persons who whistleblow, for example. But even when a job is formally protected by legislation, employers have a multitude of methods for ending an employment relationship without actually firing the employee. By making the employee's job more difficult, giving the employee the least desirable tasks or hours, refusing to promote an employee, or otherwise making the employee feel unwelcome, organizations can effectively end an employment relationship while still following the letter of the law. So, a committed organization can save an employee's job, even if there is some resistance within the organization; but laws will not necessarily protect the whistleblower if an organization has decided to end the relationship with a whistleblower.

More importantly, however, even if it were possible to legislate complete protection for whistleblowers, such legislation would be undesirable. Policies that aim to encourage whistleblowing must try to hit something like a goldilocks standard—neither too hot nor too cold, but just right. If employees face few or no ramifications for whistleblowing actions, employees are more likely to make spurious information public—maybe because they misunderstand the actions they think they have observed, misinterpret what counts as unacceptable risk,<sup>11</sup> or perhaps even because they have malicious intent towards an employer. Whistleblowing can cause tremendous damage to organizations, even when the allegations turn out to be untrue. Although the damage that untrue revelations causes is not widely known, this does not mean it is uncommon—companies rarely have an interest in publicizing the amount of

damage that they have suffered as a result of false accusations.<sup>5</sup> Moreover, incentive programs that reward whistleblowers monetarily for their revelations — such as *qui tam* lawsuits that reward those who blow the whistle on companies defrauding the government — can have mixed results. In a 2001 case, whistleblower Douglas Durand received \$77 million of an \$885 million dollar settlement between his former employer (TAP Pharmaceutical Products) and the U.S. government. According to one report, the whistleblower himself had been in a position to prevent the actions that were the subject of the lawsuit; but instead of preventing them, he watched quietly and collected evidence to build his case.<sup>12</sup> In a separate trial several years later a jury found the employees innocent of the charges that had been instrumental to the government's victory in the earlier case against the corporation.<sup>13</sup> Such a case suggests the possibility that incentives for whistleblowing can go too far.

On the other hand, if employees think there is no chance that their complaint will be heard, and that they will only suffer for their revelations, they may decide not to whistleblow even when whistleblowing could prevent great public harm. Designing public policy to protect or encourage whistleblowers must take this variety of possible outcomes into consideration, because the consequences of going too far either in incentivizing whistleblowing or in failing to protect whistleblowers can be severe.

It is crucial to remember that whistleblowing, in the sense of “going outside one’s organization,” raises numerous moral issues not associated with mere internal reporting about wrongdoing. While Mannion and Davies bring up a host of considerations that ought to be valuable to managers who are serious about improving their own organizations, there are good reasons to think that these considerations apply only to internal reporting and do not apply in the same way to “whistleblowing” in the more restrictive sense. It will always be preferable for organizations to deal internally with issues of wrongdoing than to drag the debate out into public — a process which often produces great harm to both the whistleblower and organization and may or may not benefit society at large. There is much to be gained by improving these internal reporting policies: most importantly, they can

prevent the need for whistleblowing altogether.

#### Ethical issues

Not applicable.

#### Competing interests

Author declares that he has no competing interests.

#### Author's contribution

DRM is the single author of the manuscript.

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