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(1990): 19-41; John M. Whelan, "Charity and the Duty to Rescue," *Social Theory and Practice* 17, no. 3 (1991): 441-56; and David Copp, "Responsibility for Collective Inaction," *Journal of Social Philosophy* 22, no. 2 (1991): 71-80.

3. See, for example, David Theo Goldberg, "Tuning In to Whistle Blowing," *Business and Professional Ethics Journal* 7, no. 2 (1988): 85-94.
4. For an explanation of why whistle-blowing is inevitably a high risk undertaking, see my "Avoiding the Tragedy of Whistleblowing," *Business and Professional Ethics Journal* 8, no. 4 (1989): 3-19.
5. After I presented this paper in Klamath Falls, Boisjoly told me that though his motive for testifying as he did was (as I surmised) to prevent falsification of the record, part of his reason for wanting to prevent that was that he wanted to do what he could to prevent the managers responsible for the disaster from having any part in redesigning the boosters. This *secondary* motive is, of course, consistent with the complicity theory.

6. De George, p. 210: "The notion of *serious* harm might be expanded to include serious financial harm, and 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."
7. See Myron Peretz Glazer and Penina Migdal Glazer, *The Whistleblowers: Exposing Corruption in Government and Industry* (New York: Basic Books, 1989) for a good list of whistle-blowers (with detailed description of each); for an older list (with descriptions), see Alan F. Westin, *Whistleblowing! Loyalty and Dissent in the Corporation* (New York: McGraw-Hill, 1981).
8. Compare De George, p. 211: "By reporting one's concern to one's immediate superior or other appropriate person, one preserves and observes the regular practices of firms, which on the whole promote their order and efficiency; this fulfills one's obligation of minimizing harm, and it *precludes precipitous whistle blowing*." (Italics mine.)

Whistle-Blowing and Employee Loyalty

Ronald Duska

There are proponents on both sides of the issue—those who praise whistle-blowers as civic heroes and those who condemn them as "finks." Maxwell Glen and Cody Shearer, who wrote about the whistle-blowers at Three Mile Island say, "Without the *courageous* breed of assorted company insiders known as whistle-blowers—workers who often risk their livelihoods to disclose information about construction and design flaws—the Nuclear Regulatory Commission itself would be nearly as idle as Three Mile Island. . . . That whistle-blowers deserve both gratitude and protection is beyond disagreement."¹

Still, while Glen and Shearer praise whistle-blowers, others vociferously condemn them. For

example, in a now infamous quote, James Roche, the former president of General Motors said:

Some critics are now busy eroding another support of free enterprise—the loyalty of a management team, with its unifying values and cooperative work. Some of the enemies of business now encourage an employee to be *disloyal* to the enterprise. They want to create suspicion and disharmony, and pry into the proprietary interests of the business. However this is labeled—industrial espionage, whistle-blowing, or professional responsibility—it is another tactic for spreading disunity and creating conflict.²

From Roche's point of view, not only is whistle-blowing not "courageous" and not deserving of "gratitude and protection" as

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Glen and Shearer would have it, it is corrosive and impermissible.

Discussions of whistle-blowing generally revolve around three topics: (1) attempts to define whistle-blowing more precisely, (2) debates about whether and when whistle-blowing is permissible, and (3) debates about whether and when one has an obligation to blow the whistle.

In this paper I want to focus on the second problem, because I find it somewhat disconcerting that there is a problem at all. When I first looked into the ethics of whistle-blowing it seemed to me that whistle-blowing was a good thing, and yet I found in the literature claim after claim that it was in need of defense, that there was something wrong with it, namely that it was an act of disloyalty.

If whistle-blowing is a disloyal act, it deserves disapproval, and ultimately any action of whistle-blowing needs justification. This disturbs me. It is as if the act of a good Samaritan is being condemned as an act of interference, as if the prevention of a suicide needs to be justified.

In his book *Business Ethics*, Norman Bowie claims that "whistle-blowing . . . violate(s) a *prima facie* duty of loyalty to one's employer." According to Bowie, there is a duty of loyalty that prohibits one from reporting his employer or company. Bowie, of course, recognizes that this is only a *prima facie* duty, that is, one that can be overridden by a higher duty to the public good. Nevertheless, the axiom that whistle-blowing is disloyal is Bowie's starting point.³

Bowie is not alone. Sissela Bok sees "whistle-blowing" as an instance of disloyalty:

The whistle-blower hopes to stop the game; but since he is neither referee nor coach, and since he blows the whistle on his own team, his act is seen as a *violation of loyalty*. In holding his position, he has assumed certain obligations to his colleagues and clients. He may even have subscribed to a loyalty oath or a promise of confidentiality. . . . Loyalty to colleagues and to clients comes to be pitted against loyalty to the public interest, to those who may be injured unless the revelation is made.⁴

Bowie and Bok end up defending whistle-blowing in certain contexts, so I don't necessarily disagree with their conclusions. However, I fail to see how one has an obligation of loyalty to one's company, so I disagree with their perception of the problem and their starting point. I want to argue that one does not have an obligation of loyalty to a company, even a *prima facie* one, because companies are not the kind of things that are properly objects of loyalty. To make them objects of loyalty gives them a moral status they do not deserve and in raising their status, one lowers the status of the individuals who work for the companies. Thus, the difference in perception is important because those who think employees have an obligation of loyalty to a company fail to take into account a relevant moral difference between persons and corporations.

But why aren't companies the kind of things that can be objects of loyalty? To answer that we have to ask what are proper objects of loyalty. John Ladd states the problem this way, "Granted that loyalty is the wholehearted devotion to an object of some kind, what kind of thing is the object? Is it an abstract entity, such as an idea or a collective being? Or is it a person or group of persons?"⁵ Philosophers fall into three camps on the question. On one side are the idealists who hold that loyalty is devotion to something more than persons, to some cause or abstract entity. On the other side are what Ladd calls "social atomists," and these include empiricists and utilitarians, who think that at most one can only be loyal to individuals and that loyalty can ultimately be explained away as some other obligation that holds between two people. Finally, there is a moderate position that holds that although idealists go too far in postulating some superpersonal entity as an object of loyalty, loyalty is still an important and real relation that holds between people, one that cannot be dismissed by reducing it to some other relation.

There does seem to be a view of loyalty that is not extreme. According to Ladd, "loyalty" is

taken to refer to a relation between persons—for instance, between a lord and vassal, between a parent and child, between friends. Thus the concept is ordinarily taken to be a relation between persons."⁶

But this raises a problem. What if one is loyal to a group over. There is a difference between loyalty to a group of persons, and loyalty to a person. There are instances of loyalty to a group, such as a person's loyalty to this team, and a person's loyalty to his country. Families, countries, and other sumably groups of persons are ordinarily construed as persons.

But to what am I loyal? Am I being loyal to the group as a whole group or to its members? Is the object of loyalty in this case a person. It is simply the individual. Am I loyal in a group? To the family? Am I loyal to each member or to something larger than the group, what is it? We are not a group as an entity of its own right, having an identity of its own.

To avoid the problem, one might argue for the sake of the group, but this consists in the fact that a group is not a real entity, but a mental fiction by which we group individuals. It is certainly a fiction over and above the individuals, consequently is not a person. Under such a position, loyalty would be owed to a company, but a company is a mere mental group. One would have no obligations to individual members of the group, but could never be justified in having obligations for the sake of the group collectively. A company is not a person in terms of the individual.

up defending whistle-blowers, so I don't necessarily draw conclusions. However, there is an obligation of loyalty, and people disagree with their perceptions and their starting points that one does not have loyalty to a company, even a large one. Companies are not properly objects of loyalty; giving loyalty gives them what they do not deserve and lowers the status of the work for the companies. In perception is important to think employees have loyalty to a company fail to see the relevant moral difference between corporations.

Companies are the kind of things that have loyalty? To answer that question, proper objects of loyalty. The problem this way, "Granted heartfelt devotion to an object, what kind of thing is the object, such as an idea or a person or group of persons fall into three camps. On one side are the idealists who devote to something some cause or abstract ideal. These are what Ladd calls 'idealists' and include empiricists who think that at most one can have loyalty to individuals and that loyalty can be lost away as some other relationship between two people. Finally, the position that holds loyalty too far in postulating loyalty as an object of loyalty, but that real relation that cannot be dissolved by some other relation. This is a view of loyalty that according to Ladd, 'loyalty' is

taken to refer to a relationship between persons—for instance, between a lord and his vassal, between a parent and his children, or between friends. Thus the object of loyalty is ordinarily taken to be a person or a group of persons."⁶

But this raises a problem that Ladd glosses over. There is a difference between a person or a group of persons, and aside from instances of loyalty that relate two people such as lord/vassal, parent/child, or friend/friend, there are instances of loyalty relating a person to a group, such as a person to his family, a person to this team, and a person to his country. Families, countries, and teams are presumably groups of persons. They are certainly ordinarily construed as objects of loyalty.

But to what am I loyal in such a group? In being loyal to the group am I being loyal to the whole group or to its members? It is easy to see the object of loyalty in the case of an individual person. It is simply the individual. But to whom am I loyal in a group? To whom am I loyal in a family? Am I loyal to each and every individual or to something larger, and if to something larger, what is it? We are tempted to think of a group as an entity of its own, an individual in its own right, having an identity of its own.

To avoid the problem of individuals existing for the sake of the group, the atomists insist that a group is nothing more than the individuals who comprise it, nothing other than a mental fiction by which we refer to a group of individuals. It is certainly not a reality or entity over and above the sum of its parts, and consequently is not a proper object of loyalty. Under such a position, of course, no loyalty would be owed to a company because a company is a mere mental fiction, since it is a group. One would have obligations to the individual members of the company, but one could never be justified in overriding those obligations for the sake of the "group" taken collectively. A company has no moral status except in terms of the individual members who

comprise it. It is not a proper object of loyalty. But the atomists go too far. Some groups, such as a family, do have a reality of their own, whereas groups of people walking down the street do not. From Ladd's point of view the social atomist is wrong because he fails to recognize the kinds of groups that are held together by "the ties that bind." The atomist tries to reduce these groups to simple sets of individuals bound together by some externally imposed criteria. This seems wrong.

There do seem to be groups in which the relationships and interactions create a new force or entity. A group takes on an identity and a reality of its own that is determined by its purpose, and this purpose defines the various relationships and roles set up within the group. There is a division of labor into roles necessary for the fulfillment of the purposes of the group. The membership, then, is not of individuals who are the same but of individuals who have specific relationships to one another determined by the aim of the group. Thus we get specific relationships like parent/child, coach/player, and so on, that don't occur in other groups. It seems then that an atomist account of loyalty that restricts loyalty merely to individuals and does not include loyalty to groups might be inadequate.

But once I have admitted that we can have loyalty to a group, do I not open myself up to criticism from the proponent of loyalty to the company? Might not the proponent of loyalty to business say: "Very well. I agree with you. The atomists are shortsighted. Groups have some sort of reality and they can be proper objects of loyalty. But companies are groups. Therefore companies are proper objects of loyalty."

The point seems well taken, except for the fact that the kinds of relationships that loyalty requires are just the kind that one does not find in business. As Ladd says, "The ties that bind the persons together provide the basis of loyalty." But all sorts of ties bind people together. I am a member of a group of fans if I go to a ball game. I am a member of a group if I merely walk down

the street. What binds people together in a business is not sufficient to require loyalty.

A business or corporation does two things in the free enterprise system: It produces a good or service and it makes a profit. The making of a profit, however, is the primary function of a business as a business, for if the production of the good or service is not profitable, the business would be out of business. Thus nonprofitable goods or services are a means to an end. People bound together in a business are bound together not for mutual fulfillment and support, but to divide labor or make a profit. Thus, while we can jokingly refer to a family as a place where "they have to take you in no matter what," we cannot refer to a company in that way. If a worker does not produce in a company or if cheaper laborers are available, the company—in order to fulfill its purpose—should get rid of the worker. A company feels no obligation of loyalty. The saying "You can't buy loyalty" is true. Loyalty depends on ties that demand self-sacrifice with no expectation of reward. Business functions on the basis of enlightened self-interest. I am devoted to a company not because it is like a parent to me; it is not. Attempts of some companies to create "one big happy family" ought to be looked on with suspicion. I am not devoted to it at all, nor should I be. I work for it because it pays me. I am not in a family to get paid, I am in a company to get paid.

The cold hard truth is that the goal of profit is what gives birth to a company and forms that particular group. Money is what ties the group together. But in such a commercialized venture, with such a goal, there is no loyalty, or at least none need be expected. An employer will release an employee and an employee will walk away from an employer when it is profitable for either one to do so.

Not only is loyalty to a corporation not required, it more than likely is misguided. There is nothing as pathetic as the story of the loyal employee who, having given above and beyond the call of duty, is let go in the restructuring of the company. He feels betrayed because he mis-

takenly viewed the company as an object of his loyalty. Getting rid of such foolish romanticism and coming to grips with this hard but accurate assessment should ultimately benefit everyone.

To think we owe a company or corporation loyalty requires us to think of that company as a person or as a group with a goal of human fulfillment. If we think of it in this way we can be loyal. But this is the wrong way to think. A company is not a person. A company is an instrument, and an instrument with a specific purpose, the making of profit. To treat an instrument as an end in itself, like a person, may not be as bad as treating an end as an instrument, but it does give the instrument a moral status it does not deserve; and by elevating the instrument we lower the end. All things, instruments and ends, become alike.

Remember that Roche refers to the "management team" and Bok sees the name "whistle-blowing" coming from the instance of a referee blowing a whistle in the presence of a foul. What is perceived as bad about whistle-blowing in business from this perspective is that one blows the whistle on one's own team, thereby violating team loyalty. If the company can get its employees to view it as a team they belong to, it is easier to demand loyalty. Then the rules governing teamwork and team loyalty will apply. One reason the appeal to a team and team loyalty works so well in business is that businesses are in competition with one another. Effective motivation turns business practices into a game and instills teamwork.

But businesses differ from teams in very important respects, which makes the analogy between business and a team dangerous. Loyalty to a team is loyalty within the context of sport or a competition. Teamwork and team loyalty require that in the circumscribed activity of the game I cooperate with my fellow players, so that pulling all together, we may win. The object of (most) sports is victory. But winning in sports is a social convention, divorced from the usual goings on of society. Such a winning is most times a harmless, morally neutral diversion.

But the fact that this victory is the rules enforced by a referee is a socially developed convention within a larger social context, different from competition in sport rather than being defined by the game. Competition leads not only to winners and losers. One can lose at sports with no consequences. The consequences of business are much larger. For business can be those who are forced to lose voluntarily (we are all forced to lose) who are still affected by the loss. People cannot choose to lose. It permeates everyone's life.

The team model, then, is not the model of the free market. In the free market there competition is said to be the game. Rival companies are in competition. The object is to win. To call a business a team is to jeopardize winning and is viewed as a mistake.

But isn't it time to stop viewing business as games? Business is controlled and are not controlled. The activities of business are for everyone, not just the activities of the corporation.

Warthen v. Tomlinson Memorial Hospital

Plaintiff Corrine Warthen v. Tomlinson Memorial Hospital summary judgment of missing her action against

488 A.2d 299 (1985). Opinion

But the fact that this victory in sports, within the rules enforced by a referee (whistle-blower), is a socially developed convention taking place within a larger social context makes it quite different from competition in business, which, rather than being defined by a context, permeates the whole of society in its influence. Competition leads not only to victory but to losers. One can lose at sport with precious few consequences. The consequences of losing at business are much larger. Further, the losers in business can be those who are not in the game voluntarily (we are all forced to participate) but who are still affected by business decisions. People cannot choose to participate in business. It permeates everyone's lives.

The team model, then, fits very well with the model of the free market system, because there competition is said to be the name of the game. Rival companies compete and their object is to win. To call a foul on one's own teammate is to jeopardize one's chances of winning and is viewed as disloyalty.

But isn't it time to stop viewing corporate machinations as games? These games are not controlled and are not ended after a specific time. The activities of business affect the lives of everyone, not just the game players. The analogy of the corporation to a team and the

consequent appeal to team loyalty, although understandable, is seriously misleading, at least in the moral sphere where competition is not the prevailing virtue.

If my analysis is correct, the issue of the permissibility of whistle-blowing is not a real issue since there is no obligation of loyalty to a company. Whistle-blowing is not only permissible but expected when a company is harming society. The issue is not one of disloyalty to the company, but of whether the whistle-blower has an obligation to society if blowing the whistle will bring him retaliation.

NOTES

1. Maxwell Glen and Cody Shearer, "Going After the Whistle-Blowers," *Philadelphia Inquirer*, (August 2, 1983), Op-Ed, p. 11A.
2. James M. Roche, "The Competitive System, to Work, to Preserve, and to Protect," *Vital Speeches of the Day* (May 1971), p. 445.
3. Norman Bowie, *Business Ethics* (Englewood Cliffs, N.J.: Prentice Hall, 1982), 140-43.
4. Sissela Bok, "Whistleblowing and Professional Responsibilities," *New York University Education Quarterly* 2 (1980): 3.
5. John Ladd, "Loyalty," *Encyclopedia of Philosophy* 5: 97.
6. Ibid.

LEGAL PERSPECTIVES

Warthen v. Toms River Community Memorial Hospital

Superior Court of New Jersey

Plaintiff Corrine Warthen appeals from a summary judgment of the Law Division dismissing her action against defendant Toms

River Community Memorial Hospital (Hospital). Plaintiff sought to recover damages for her allegedly wrongful discharge in violation

488 A.2d 299 (1985). Opinion by Judge Michels.

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