

The Morality of Whistleblowing: A Commentary on Richard T. De George

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Introduction

Among the many important contributions to the business ethics field provided by Richard T. De George is his discussion of the morality of whistleblowing. De George (2010), in his classic textbook *Business Ethics*,¹ provides a succinct analysis of the conditions under which external whistleblowing by employees (e.g., to the media, government regulators, or public interest groups) can be considered either morally permissible or morally obligatory. De George's whistleblowing criteria have been referred to as: "important," "famous," having gained "widespread acceptance" (Lindblom 2007, pp. 414–415), representing the "standard theory" on whistleblowing (Davis 1996, p. 154), as well as "frequently cited in articles by other scholars" (Hoffman and McNulty 2010, p. 47).

The topic of whistleblowing continues to be an important and challenging business ethics issue for society: "Whistleblowing is one of the classic issues in business ethics" (Hartman and Desjardins 2008, p. 128). In terms of corporate whistleblowing, the Ethics Resource Center's 2013 "National Business Ethics Survey" found that while 41 % of employees witnessed illegal or unethical misconduct during the previous year, a significant percentage

(37 %) did not report it (Ethics Resource Center 2014, p. 13). The range of illegal and unethical activity that goes unreported is extensive and includes corruption, bribery, receiving and giving gifts and entertainment, kickbacks, extortion, nepotism, favoritism, money laundering, improper use of insider information, use of intermediaries, conflicts of interest, fraud, aggressive accounting, discrimination, sexual harassment, workplace safety, consumer product safety, and environmental pollution (Ethics Resource Center 2014; U.S. Sentencing Commission 2013). One study by the Association of Certified Fraud Examiners (2012, p. 8) estimates that the global total fraud cost alone to organizations per year is US\$3.5 trillion. According to the study, whistleblowing "tips" were the primary method of detection (43 %) followed by management review (15 %) and then internal audit (14 %). The major source of whistleblowing tips were employees (51 %), followed by customers (22 %), and then by anonymous sources (12 %) (2012, p. 14).

Unfortunately, one does not have to look very far over recent years to see significant examples of crime and unethical activity within or on behalf of business organizations and the serious negative impact such scandals have had on investors, employees, customers, competitors, the natural environment, and society in general (e.g., Enron—accounting fraud, Siemens—bribery, Bernie Madoff—investor fraud, BP—Gulf oil spill, Barclays Bank—interest rate manipulation, etc.). While one might hope that the internal reporting of misconduct would help alleviate the problem, research surveys indicate that 21 % (up from

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¹ Although we refer to De George's 7th edition of *Business Ethics* (2010), his criteria have not changed significantly from his 1st edition in 1982.

12 % in 2007) of those reporting misconduct experienced some form of retaliation in return (Ethics Resource Center 2014, p. 13). Examples of retaliation include exclusion from work activity, receiving the cold shoulder, verbal abuse by managers and other employees, almost losing one's job, and not receiving promotions or raises (Ethics Resource Center 2014, p. 45). Forty-six percent of employees indicate fear of retaliation as the reason they did not report wrongdoing (Ethics Resource Center 2012, p. 5). Such empirical evidence suggests that it may be unwise for an employee to report any wrongdoing.

Due to its continued importance and normative complexity, we suggest that a re-examination of De George's normative position on whistleblowing is in order, particularly in light of new developments in whistleblowing legislation and corporate compliance and ethics programs. In so doing, we attempt to build on and refer to existing whistleblowing literature including positions both similar to De George (Bowie 1982; Velasquez 2006) and critical of De George (Davis 1996; Lindblom 2007; Hoffman and McNulty 2010). For our purposes, while there are numerous definitions, we rely on the relatively broad and general definition of whistleblowing provided by Velasquez (2006, p. 377): "An attempt by a member or former member of an organization to disclose wrongdoing in or by the organization."

In order to assess De George's contribution, we first provide in *part one* of our paper a brief overview of the key arguments as expressed by De George. In *part two*, we critique De George's normative assessment by suggesting that there are additional considerations that should be taken into account when discussing the morality of whistleblowing, leading to our proposed set of revised criteria. In *part three*, De George's criteria along with our proposed revised criteria are applied to three classic whistleblowing cases in the business ethics field to initially test each theory's practicality: (i) the Ford Pinto; (ii) Enron, and (iii) Brown & Williamson. Our paper then concludes with its implications. The objective of our paper is not to minimize or diminish De George's important normative contribution to the whistleblowing literature, but rather to attempt to enhance his criteria to make them more robust while pointing out the challenges that are faced when attempting to apply any given set of normative criteria to the act of external whistleblowing.

Summary of De George's Position

In the normative literature on external whistleblowing, there are two extreme positions on moral permissibility or

obligation, which to date have always been rejected. One extreme position is that employees are never permitted to externally blow the whistle, typically based on the notion of loyalty to one's firm and/or due to confidentiality agreements. This position is rejected either because it is morally repugnant to a free and democratic society, or because absolute loyalty toward anyone or any entity either does not exist (Duska 2009) or as an ethical notion is never absolute (Lindblom 2007). The other extreme position is that employees are always morally permitted to externally blow the whistle for any reason, typically based on the notion of free speech. This position is also always rejected as free speech has never been considered an absolute moral principle, or due to the unnecessary harm caused to the firm by externally blowing the whistle.

De George's set of criteria for external whistleblowing, like other proposed sets of criteria, takes a position somewhere between these extremes. De George's starting position is based on the universal ethical principle that "corporations have a moral obligation not to harm" (2010, p. 299). Based on this fundamental notion, De George (2010, p. 301) restricts his initial discussion to external whistleblowing by "employees of profit-making firms" that produce a product or provide a service that "threatens to produce serious bodily harm to the public in general, to employees, or to individual users of the product." While De George believes that employees owe a degree of loyalty to their firms, he indicates that this obligation is not the highest obligation and can therefore be overridden (2010, p. 304). That being said, De George, based on societal norms and general employee beliefs, views whistleblowing as an initial act of "disobedience" (2010, p. 306) which will tend to cause injury to the firm. This then requires a proper moral justification for external whistleblowing, i.e., that more good will result than harm when one blows the whistle externally (2010, p. 306).

While De George does not specifically address the issue of motivation, he does briefly suggest that there should be a "moral motivation" when one blows the whistle, e.g., the whistleblowing should not be out of revenge. This is contrary to Bowie's (1982) criteria for morally justified whistleblowing. Bowie (1982) requires a proper moral motive for blowing the whistle, i.e., to expose unnecessary harm, and illegal or immoral actions, which is not based on one seeking profit or attention. Similar to De George, we are not as concerned with the motive of the whistleblower as Bowie (1982) in relation to our proposed criteria, since motives do not relate to the consequences one is hoping to achieve (i.e., avoiding harm). We would suggest, however, that proper motive (e.g., not based merely on financial reasons, for revenge, or to try to make it more difficult to be fired) should still

relate to whether internal or external whistleblowing can be considered morally praiseworthy.²

Such initial principles lead to De George's three criteria or conditions under which external whistleblowing can be considered to be morally *permissible* (thereafter referred to as "DG1," "DG2," and "DG3"):

1. "The firm, through its product or policy, will do serious and considerable harm to employees or to the public, whether in the person or the user of its product, an innocent bystander, or the general public" [DG1].
2. "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 whistleblowing is not clearly justifiable" [DG2].
3. "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" [DG3].

His next two conditions (thereafter referred to as "DG4" and "DG5"), in addition to the previous three, lead to a moral *obligation* to externally blow the whistle:

4. "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 user of the product" [DG4].
5. "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" [DG5].

Each of De George's five criteria will now be discussed and evaluated.

Critique and Proposed Revised Criteria

De George's first criterion (DG1) might be referred to as the "Harm Principle." De George makes it clear that

² In terms of financial motives, the issue is, however, potentially more relevant today in light of the U.S. *Dodd-Frank Act* which provides for significant monetary payouts to whistleblowers who report directly to the U.S. Securities and Exchange Commission (SEC) even if they don't report internally within their own firms (see Gilley and Hoffman 2011). The primary concern is that providing monetary incentives may motivate and thereby prevent many employees from reporting misconduct internally before going to the SEC.

without the possibility of serious harm resulting from the misconduct (i.e., the harm threatened by a firm's product or policy), one is morally prohibited from blowing the whistle externally. The word "harm" is ambiguous, as one can argue that every product or action of every company has a potential negative impact (i.e., harm) on one or more stakeholders. The qualifiers "serious" and "considerable" are clarified by De George by suggesting that any matters that threaten death are serious. For example, De George suggests that toxic metal drums being dumped into a river by a firm which can later cause cancer should be considered as being serious (2010, p. 307). Tires sold as premium quality but blowing out at 60–70 mph are also considered serious. While De George opens the door to serious financial harm being included as part of his first criterion, he then avoids this possibility by restricting his analysis to death and serious threats to health and body.

Velasquez, similar to De George, also requires serious harm: "...the organization is engaged in some activity that is seriously wronging or will seriously wrong other parties" (2006, p. 379). Others also require harm, but broaden its scope. Davis for example broadens the criterion by using the words "moral wrongdoing" rather than "harm": "[Organizations] engaged in serious moral wrongdoing" (not just to prevent harm) (1996, p. 151). Similarly, Hoffman and McNulty (2010, p. 51) refer to "non-trivial or unethical actions...that are deemed to violate the dignity of one or more of its stakeholders."

Empirical research appears to support the practicality of De George's first criterion. One study found that "Employees weigh the severity of the problem when deciding whether or not a problem should be reported externally" (Ethics Resource Center 2012, p. 14). The following factors were found to be related to whether employees believed the issue was sufficiently serious to report externally: whether it was a very serious crime (83 %); the potential harm to people (78 %); the potential harm to the environment (68 %); and the potential for the company to get into big trouble (59 %) (Ethics Resource Center 2012, p. 15).

Our view of potential harm is that it should be explicitly *broader* than what De George suggests. It appears that De George merely wanted to establish a paradigm case upon which to formulate and present his other criteria and thus limited his harm criterion to "physical" harm. We believe that De George would not necessarily disagree with expanding his notion of harm to other types of harm. For example, De George states: "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" (2010, p. 308). To clarify the nature of the DG1 harm criterion, we would explicitly include those actions that could result in serious financial harm, as well

as serious psychological harm (James 1990). We would also include actions that are clearly in serious breach of the law (i.e., would potentially lead to legal disciplinary action such as a fine against the firm or legal disciplinary action taken against an individual within the firm³). Actions that infringe basic moral rights or involve serious injustice would also be included in our criterion (Velasquez 2006). Our first criterion would therefore potentially capture those matters that would be excluded by De George: "sexual harassment, violations of privacy, industrial espionage, insider trading..." (James 1990, p. 294) or falsification of previous serious misconduct (Davis 1996) as each involves a serious violation of basic moral rights or constitutes a serious injustice.

It could be argued that requiring the employee to first determine whether the harm can be considered "serious" before blowing the whistle externally is too difficult, onerous, or subjective a criterion. For example, one could ask how an employee could ever make a determination of what might be "serious" harm due to the lack of awareness of all of the potential implications of even minor misconduct, or whether the minor misconduct might actually represent the tip of major wrongdoing or a scandal. Instead, external whistleblowing might be suggested as being morally required for any observed misconduct with any degree of potential harm, leaving the recipients of the whistleblower's information (e.g., government regulators, the media, or special interest groups) with the responsibility to determine whether the reported activity is "serious" enough to render appropriate action to be taken.

We agree with De George, however, that a distinction between minor misconduct and misconduct involving "serious" potential harm must necessarily be determined by the employee in order to require external whistleblowing. For example, we would not want an employee to be considered to be morally required to externally blow the whistle on a co-worker taking scotch tape from the supply room for personal use, or when a purchasing manager is observed receiving a coffee mug from a current supplier as a gift (although observation of such acts might still require internal whistleblowing as discussed below). To assist in the determination of what might be considered "serious" misconduct, one might attempt to link the harm criterion to the "newspaper test" used in ethical decision making, i.e., does one believe that the misconduct is sufficiently serious that it should be reported in one of the major headlines of the newspaper?

Our revised criterion (which we identify as Hoffman-Schwartz or HS1) would therefore be as follows:

³ This could include illegal practices such as tax evasion, anti-competitive practices, fraud, environmental pollution, or deceptive advertising.

Misconduct has taken place or is expected to take place that violates the law or involves serious physical harm, serious psychological harm, serious financial harm, serious infringement of basic moral rights, or a serious injustice [HS1].

Due to their similarity, De George's second criterion (DG2) and third criterion (DG3) can be merged together for our purposes and labeled the "Internal Reporting Principle." The two criteria collectively require that internal whistleblowing must take place, initially to one's supervisor (DG2), and then if no action is taken, all the way up the corporate hierarchy to the board of directors if necessary (DG3). Velasquez agrees by requiring that "reasonably serious attempts to prevent the wrong through internal whistleblowing have been tried and have failed" (2006, p. 379). Bowie (1982, p. 143) also argues that "The whistleblower, except in special circumstances, has exhausted all internal channels for dissent before going public." Empirical research supports the proposition that most employees are both willing and able to report matters internally first. A study by the Ethics Resource Center (2012) found the following (emphasis added):

The current stigma assigned to a "whistleblower" as a rogue and disloyal employee is inaccurate. Only one in six reporters (18 percent) ever chooses to report externally. Of those who do go outside their company at some point, 84 percent do so only after trying to report internally first. Furthermore, many of those who are "whistleblowers" in the narrowest sense of the word still try to address the problem within their own company; half of those who choose to report to an outside source initially later report internally as well. Only two percent of employees solely go outside the company and never report the wrongdoing they have observed to their employer.

De George (2010, p. 303) points out the risks and often difficulties faced by those wanting to report matters. Despite the challenges, we agree with De George that internal whistleblowing whenever possible should be a requirement before external whistleblowing takes place. If discussing the misconduct with one's supervisor, senior management, or the board of directors is not possible, then one would fulfill the internal reporting criterion by taking one's concerns through the designated reporting channel (e.g., legal counsel, human resources manager, internal auditor, ombudsperson, compliance officer, or ethics officer), if a reporting channel exists. We also believe that the internal reporting criterion would be met if the whistleblowing takes place anonymously. Our revised criterion would therefore consist of the following:

The misconduct must first be reported internally whenever feasible to one's direct supervisor and, if no action is taken, all the way up to the board of directors or through the designated reporting channel if one exists (e.g., compliance or ethics officer) [HS3].

While we would not go so far as to make it a criterion, we would, however, strongly recommend one additional procedural step whenever possible (and it may not always be possible), that the perpetrator be informed that the misconduct will be reported if it does not cease. De George refers to informing the person first (he focuses on a "superior") as a "preferable course of action, providing one can do so tactfully and with relative personal impunity, [but] it is not a general requirement" (2010, p. 313). We would suggest, however, that warning one's colleagues of their improper misconduct or of one's intention to blow the whistle should always be considered as a first step whenever possible before reporting one's colleagues in accordance with principles of procedural justice. This would obviously be easier with respect to the perpetrator being a co-worker or person in a more junior position, rather than one's own supervisor or a senior manager. If the primary objective is to reduce harm, then taking the initial step of warning the perpetrator can potentially cause the misconduct to come to an end prior to any additional steps being taken. Rather than being related to the moral permissibility or moral obligation of blowing the whistle, taking the additional step of ensuring that the perpetrator has been warned supports the moral praiseworthiness of ultimately blowing the whistle either internally or externally.

Due to the risks of internal whistleblowing, we would also add another level of protection to the whistleblower by suggesting that if the firm does not have a written anti-retaliation policy against whistleblowing that is enforced, one is not obligated to blow the whistle internally. We would leave it completely up to the employee to make this determination, and if no formal anti-retaliation policy exists or if there is no evidence to suggest the policy will be upheld by the firm's management, then one would not be required to internally report wrongdoing. We would still require the existence of an effective firm anti-retaliation policy even when anonymous whistleblowing is possible, due to the inherent risks of one's identity ultimately being discovered and the demonstrated negative harm caused to the employee as a result. Recent cases demonstrate that without such protection, whistleblowers remain at the mercy of their firm's retribution.⁴ The exception would be for professionals working within a firm, who would still be

bound by their professional ethical obligations of taking steps to avoid potential harm by reporting misconduct internally even when facing personal risk to oneself by doing so. Our revised criteria would therefore be as follows:

Unless one is a professional working within the firm, an effective written anti-retaliation policy must exist at the firm [HS4].

De George's next criterion (DG4) involving the requirement to have documented evidence (i.e., the "Evidentiary Principle"), is intended to avoid frivolous claims or claims being made based on improper motives. Others agree with De George on requiring proper evidence before external whistleblowing takes place: Velasquez indicates that there should be "clear, substantiated, and reasonably comprehensive evidence..." (2006, p. 379); Hoffman and McNulty (2010) as well as Bowie (1982) require "compelling evidence" while Davis (1996, p. 151) requires that the whistleblower's beliefs are "justified" and "true." It would be difficult to argue that some sort of evidentiary standard should not exist before one is morally obligated to externally blow the whistle, or morally permitted to blow the whistle at all for that matter.

Davis, however, goes on to qualify the evidentiary requirement to distinguish it from De George: "[T]he...theory does not require the whistleblower to have enough evidence to convince others of the wrong in question" (1996, pp. 152–153). While James believes that one should not merely blow the whistle based on mere suspicion, guess, or hunch, and should take steps to "gather as much evidence as they can" (James 1990, p. 297), he views De George's evidentiary requirement as too strict. We agree, and instead of requiring "documented" evidence, we subscribe to the less stringent legal test used in the *Dodd-Frank Act* of "reasonable belief," i.e., one should hold a reasonable belief that the misconduct is taking place based on first-hand knowledge.⁵ We believe that appropriate responsibility can also be expected of and placed on the media or government regulator to engage in proper fact-finding and confirmation before any misconduct is reported to the public. Libel laws and accusations of lack of due process would hopefully ensure some protection against erroneous claims being made by either the media or government based on a whistleblower's report. The requirement of internal whistleblowing will also act as an evidentiary screening mechanism by providing the firm with the opportunity to properly investigate and then verify or dispute the evidentiary basis of the claim being made before it goes public. We therefore agree with James

⁴ See the National Whistleblowers Center at: <http://www.whistleblowers.org/>. Accessed on 23 May 2014.

⁵ See: <http://sec.gov/rules/final/2011/34-64545.pdf>. Accessed on 23 May 2014.

(1990) and Davis (1996) that De George's evidentiary requirement for external whistleblowing is too stringent.

Our revised criterion would therefore be as follows⁶:

Reasonable evidence or belief of misconduct based on first-hand knowledge can be provided [HS2].

One of the most stringent of De George's criteria (DG5) is what we call the "Make a Difference Principle," i.e., one has good reason to believe that blowing the whistle will lead to changes in the firm's practices. This criterion combined with the previous evidentiary criterion elevates for De George the moral *permissibility* of external whistleblowing to one of moral *obligation*. Velasquez agrees with De George by stating a similar requirement: "It is reasonably certain that external whistleblowing will prevent the wrong" (2006, p. 379) as does Bowie (1982, p. 143): "[Whistleblowing] has some chance of success." Davis, however, disagrees by arguing what he calls the "paradox of failure," i.e., as the history of whistleblowing demonstrates its general ineffectiveness in causing change, external whistleblowing will paradoxically never be morally obligated if D5 is applied. As a result, Davis argues that external whistleblowing (1996, p. 151): "...does not require [belief] that [the] revelation will prevent...the wrong." While empirical research shows that the vast majority of employees (79 %) who blow the whistle believe that corrective action will take place (Ethics Resource Center 2012, p. 5), it's not clear what percent erroneously decide not to blow the whistle externally because they believe changes in practice will not take place.

Our assertion is that the requirement that employees will have "good reasons" to believe that external whistleblowing will result in changes in practice is too stringent. If internal whistleblowing has already taken place up to the board of directors with no changes being effected, then one might reasonably expect that even the media or government regulators will face a challenge in causing the firm to change its practices as well. It is simply too great a hurdle to require employees to first "have good reasons to believe" that external whistleblowing will likely lead to change, as opposed to merely hoping that things will change. We would find it ethically offensive that a major corporate scandal involving loss of life resulted from an employee not acting because he or she believed that there was a low likelihood of any changes taking place through reporting the misconduct. In addition, at the very least, the fact that there was a whistleblowing report that was not

acted upon could be used later on with respect to punishing those (e.g., firm executives or government regulators) who did not act appropriately after receiving the information, which can hopefully prevent similar inaction in the future.

De George's concern over the potential harm to the whistleblower, however, is a valid one: "The chance of being successful must be *worth the risk one takes and the danger to which one is exposed*" (2010, p. 311, emphasis added). Hoffman and McNulty (2010) make it clear that legal protections, despite improvements over the years, remain insufficient or are not enforced leaving external whistleblowers extremely vulnerable to personal harm. Similar to HS4 (i.e., anti-retaliation policies must exist for morally obligated internal whistleblowing), this concern for the well being of the whistleblower is partially addressed in our next additional criterion for external whistleblowing as follows:

Unless one is a professional working within the firm, legal protections for employees that blow the whistle externally must exist and be effective (i.e., enforced) in order for external whistleblowing to ever be morally required [HS5].

If an employee decides to blow the whistle externally when no legal protection exists (e.g., for private firms), this is the point where we would label such actions as not only morally permissible but supererogatory or morally praiseworthy. This criterion might therefore be looked upon as an exempting condition with respect to the moral obligation to blow the whistle externally. The employee, after doing all he or she can do internally to rectify the misconduct, due to lack of legal protection against retaliation, should not be morally compelled to place the interests of others who might be harmed by the company's actions before his or her own interests as well as the interests of one's family (see Vandekerckhove and Tsahuridu 2010). This action is similar to one who places one's entire financial and mental well being at risk in order to save the lives of others. We would not therefore morally criticize an employee who does not blow the whistle externally when there are insufficient legal protections. We would, however, argue that such an employee, if required to be involved in the misconduct or in a cover up, would at that point have a moral obligation to *quit* the firm after first finding another position elsewhere to avoid being an accomplice in harming or wronging others.

Our only exception to our HS5 criterion is with respect to professionals (e.g., engineers, lawyers, accountants) working within a firm (see James 1990; Velasquez 2006). Due to their professional codes of ethics, professionals possess additional ethical obligations to prevent harm to society, even when their own personal self-interests are at stake. They are aware of this obligation upon receiving

⁶ We place this as the second criterion as it appears to more closely follow the temporal order of the whistleblowing process: first harm must exist, leading to reasonable belief, then internal reporting.

their professional designations, and are therefore aware of the risks of working for a firm that is engaged in misconduct that can harm society. Employees who are not professionals with inherent additional ethical obligations should not be held to the same standard in terms of being morally obligated to blow the whistle externally when no legal protections exist.

We believe our position is in alignment with that proposed by Hoffman and McNulty (2010, p. 52, emphasis added): "If an employee has compelling evidence of organizational misconduct, he or she has a duty to blow the whistle *unless* that person has reason to believe that his or her own dignity would be seriously harmed by doing so." Due to the empirical research on the high likelihood of negative implications of blowing the whistle (Velasquez 2006) along with the current lack of legal protections (Hoffman and McNulty 2010), we believe our suggested HS5 criterion provides at least some protection for the whistleblower against otherwise being morally required to seriously harm his or her personal well-being.

To summarize, our revised proposed criteria in order for either internal or external whistleblowing to be morally obligatory consist of the following:

HS1. *Misconduct has taken place or is expected to take place that seriously violates the law or involves serious physical harm, serious psychological harm, serious financial harm, serious infringement of basic moral rights, or a serious injustice.*

HS2. *Reasonable evidence or belief of misconduct based on first-hand knowledge can be provided.*

HS3. *Misconduct must first be reported internally whenever feasible to one's direct supervisor and, if no action is taken, all the way up to the board of directors or through the designated reporting channel if one exists (e.g., compliance or ethics officer).*

For *internal* whistleblowing to be morally obligatory, in addition to HS1 (or HS 1 modified, see below), HS2, and HS3, the following criterion is required:

HS4. *Unless one is a professional, an effective written anti-retaliation policy must exist at the firm.*

For *external* whistleblowing to be morally obligatory, in addition to HS1, HS2, HS3, and HS4, the following criterion is required:

HS5. *Unless one is a professional, effective legal protections for employees must exist.*

While our discussion, similar to De George, focuses on the moral permissibility or moral obligation of *external* whistleblowing, we should point out how our criteria would apply to *internal* whistleblowing, which as

previously indicated is much more common than external whistleblowing.

De George does provide a brief indication that his harm criterion (DG1) would be less stringent for internal whistleblowing. De George (2010, p. 312) appears to broaden his harm criterion substantially in terms of the moral permissibility of internal whistleblowing to include other less serious types of harm to the firm including "padding...expense accounts...taking kickbacks [from] suppliers..." or "accepting large unreported gifts from suppliers." De George states that reporting activity internally is morally permitted if "the activity is illegal or causes harm to individuals or serious harm to the company" (2010, p. 313). We would refer to this criterion as "DG1 (modified)," which would necessarily incorporate the more serious harm involved in DG1. Whether internal whistleblowing is morally required or obligatory, however, according to De George depends on other factors to be considered including the "severity of the harm, one's position within the firm and vis-à-vis the perpetrator, [and] the firm's general operating procedures..." (2010, p. 313). According to De George, rather than disloyalty to the firm, internal whistleblowing often represents disloyalty to one's immediate supervisor or one's peers which would thereby justify less stringent criteria.

We would argue that *internal* whistleblowing is always morally *permissible* as long as our first three criteria are met. In terms of our first criterion (HS1) with respect to internal reporting, similar to De George, we would also drop the requirement for the harm to be considered "serious" in nature by the employee. We would include any potential legal or ethical misconduct, including any misconduct involving a violation of the firm's code of ethics if one exists. We will refer to this less stringent harm requirement as "HS1 (modified)," which would necessarily incorporate the more serious harm involved in HS1. In other words, internal whistleblowing above one's supervisor is *always* morally permissible as long as any misconduct or harm (physical or financial) is or is about to take place (HS1 modified), if reasonable belief of the misconduct or potential misconduct exists (HS2), and if one has already reported the matter to one's supervisor when feasible (HS3). If the firm has an effective anti-retaliation policy in place (HS4), then one would be *morally obligated* under such circumstances to blow the whistle internally. As a professional, one would be morally obligated to internally whistleblow if only the first three criteria are met (HS1, HS2, HS3) even when there is no effective anti-retaliation policy in place (HS4). In other words, business firms should not expect employees to be morally required to blow the whistle internally (which is now a requirement in many corporate codes of ethics the failure of which can lead to dismissal) unless business firms are prepared to take

Table 1 De George (DG) versus Hoffman-Schwartz (HS) criteria for whistleblowing

	Internal whistleblowing	External whistleblowing
<i>De George's (DG) criteria for whistleblowing</i>		
Morally permissible (or not morally prohibited)	DG1 (modified) (harm)	DG1 (serious harm)
	DG2 (internal—supervisor)	DG2 (internal—supervisor)
	DG3 (internal—up to the board)	DG3 (internal—up to the board)
Morally obligatory	Suggested factors to consider:	DG1 (serious harm)
	Severity of harm	DG2 (internal—supervisor)
	One's position in firm vis-à-vis perpetrator	DG3 (internal—up to the board)
	Firm's operating procedures	DG4 (documented evidence)
		DG5 (make a difference)
	Internal whistleblowing	External whistleblowing
<i>Hoffman-Schwartz (HS) criteria for whistleblowing</i>		
Morally permissible	HS1 (modified) (misconduct)	HS1 (serious harm)
	HS2 (reasonable belief)	HS2 (reasonable belief)
	HS3 (internal reporting)	HS3 (internal reporting)
Morally obligatory	HS1 (modified) (misconduct)	HS1 (serious harm)
	HS2 (reasonable belief)	HS2 (reasonable belief)
	HS3 (internal reporting)	HS3 (internal reporting)
	HS4 (anti-retaliation policy)	HS4 (anti-retaliation policy)
		HS5 (legal protection)

the necessary steps to ensure that their employees will be protected against reprisals for doing so. If an employee decides to blow the whistle internally on wrongdoing without guaranteed protections from the firm against reprisals, they have simply acted in a morally praiseworthy (but non-obligatory) manner.

Table 1 above summarizes the criteria for De George (DG) versus Hoffman-Schwartz (HS) in relation to morally permissible/obligatory and internal/external whistleblowing.

Application of Revised Criteria

In order to preliminarily evaluate the practicality of our proposed criteria, we will apply them to several classic business ethics cases including the Ford Pinto, Sherron Watkins of Enron, and Jeffrey Wigand of Brown & Williamson.

Ford Pinto: In the case of the Ford Pinto and its defective fuel tank, one can argue that a Ford employee or manager would only have been morally *permitted* to blow the whistle externally (which would also have been a morally praiseworthy act), but would not have been morally *obligated* to do so. There was clear potential for serious physical harm to the users of the vehicle (HS1), reasonable belief that the defect existed (HS2), while reporting internally was irrelevant since even senior management was aware of the defect (HS3). One might assume, however, that Ford did not possess any anti-retaliation policy at the time (HS4), and that legal protections against whistleblowing were non-existent (HS5). For the latter two reasons, employees would not have been obligated to blow the whistle either internally or externally, although it would have been morally praiseworthy to do so. Ford engineers, however, as professionals would have been morally obligated to blow the whistle internally up to the Board of Directors even if no effective anti-retaliation policy existed (HS4), and externally against Ford, despite any lack of effective legal protections (HS5), due to their additional professional ethical obligations to protect society from harm. Although not obligated to blow the whistle externally, any Ford employee who might be complicit in covering up the defect from the public would be morally obligated to quit Ford once another job was found.

De George would come to a similar conclusion but for different reasons. De George does appear to indicate that despite the relatively low risk of harm, and the fact that "it is not immoral not to make the safest automobile possible..." (2010, p. 307), the defect's potential seriousness of harm (i.e., death) suggests that his first criterion (DG1) would be met. As mentioned, one might assume that the matter was already well known internally up to the most senior levels of management (DG2 and DG3). There also appeared to be accessible, documented evidence that would convince an impartial observer that the Ford Pinto posed a serious danger to the users of the vehicle with respect to DG4. However, De George's fifth criterion (DG5) of the likelihood of making a difference is not as clear. While De George asks the question: "Did anyone at Ford have an obligation to make known to the public the facts that Ford knew but did not make public?" (2010, p. 299), he unfortunately does not clearly answer the question for the reader. But due to the DG5 criterion, one might not be morally obligated to blow the whistle externally, according to De George, including Ford's professional engineers.

Enron: According to our proposed criteria, Sherron Watkins of Enron, as a professional accountant, was morally *obligated* to blow the whistle both internally and externally based on the fraud taking place. In terms of our first criterion (HS1), there was a reasonable expectation held by Watkins that Enron would financially implode, leaving employees and shareholders in a serious and precarious financial situation. This would be considered significant financial harm leading to a potential obligation to blow the whistle internally. As Watkins reported her concerns directly to Ken Lay, who was not only the CEO but was also the Chairman of the Board of Directors, and no action was taken (even after receiving guidance from a law firm), our third criterion (HS3) was met (although Watkins might have also taken her concerns to the Board's audit committee). Watkins had more than reasonable evidence (HS2). In terms of our fifth criterion (HS5), although sufficient legal protections did not exist to protect her at the time (see Sinzduk, 2008), as a Certified Public Accountant (i.e., professional) working within the firm, our criterion would not act as an exempting condition, and she would have to be prepared to face the personal circumstances that would result including being fired for her actions. As a professional, Watkins was morally obligated to blow the whistle internally as well despite the apparent lack of an effective anti-retaliation policy (HS4) for whistleblowers.

De George (2010) addresses the Enron case and appears to hold that Watkins was not morally obligated to blow the whistle externally. The primary reason is that it was not clear according to his DG5 criterion whether blowing the whistle would effect any change ("it is not clear that the investors and employees who suffered as a result of Enron's demise would have fared any better [by Watkins going public]" (De George, 2010, p. 316). De George does later state, however, that "[Watkins] would have been morally permitted to go public" (2010, p. 316), suggesting he is prepared to extend his notion of "harm" to now include serious financial harm as well as physical harm.

Brown & Williamson: Dr. Jeffrey Wigand, former Vice President of Research and Development at the tobacco firm Brown & Williamson with a doctorate in biochemistry, had much to lose by blowing the whistle on his firm. Dr. Wigand was receiving a significant salary, and had a child who required expensive medical care covered through his firm's health benefits. Dr. Wigand also at one point signed an expanded confidentiality agreement with his firm. Dr. Wigand had become aware, however, that the company was intentionally manipulating its tobacco blend to increase the amount of nicotine in its cigarettes, which increased the level of addiction and danger to the users of its already dangerous product. While the additional harm was not clear, one can argue that the product if even more addictive and dangerous did represent significant potential

harm to the users (HS1). Dr. Wigand had reliable firsthand evidence (HS2), and had reported his concerns internally to the CEO, which were ignored (HS3). On this basis, it was morally permissible and morally praiseworthy for Dr. Wigand to externally blow the whistle to the news television program *60 Minutes*, but not morally obligatory due to the lack of an effective anti-retaliation policy (HS4) and the lack of legal protections for blowing the whistle (HS5). In other words, we do not believe that Dr. Wigand was morally required to sacrifice his job, his career, and put his own family's health coverage at risk, even though he had information that might indirectly save additional lives. This would not be true, of course, if Dr. Wigand were subject to higher ethical standards by being a member of a profession which demanded that he protect the public from harm.

According to De George's fifth criterion (DG5), however, Dr. Wigand might have assumed that there was little chance that blowing the whistle would lead to any changes of practice by tobacco companies, and thus for this reason alone he would not have been morally obligated to blow the whistle externally. We are concerned that even if legal protections exist for whistleblowers, De George's criteria would morally permit individuals (including professionals) to walk away from whistleblowing situations that could lead to the deaths of others simply because they do not have "good reasons" to believe that blowing the whistle externally will necessarily make a difference.

Implications and Conclusion

Any proposed set of normative criteria that renders external whistleblowing obligatory will be subject to criticism, exceptions, and potential modifications due to changes in practical reality. De George, however, has provided the business ethics community with an important initial set of criteria for external whistleblowing which has withstood several competing positions and criticisms over the years. Like everyone else, De George rejects the position that external whistleblowing is *always* morally justifiable, and also rejects the position that external whistleblowing is *never* morally justifiable. Due to the high likelihood of negative consequences to the whistleblower, however, such as being fired, blackballed in the industry, denied promotions, or becoming targets for revenge, according to De George the decision to report wrongdoing by an employee cannot be taken lightly (2010, p. 303). The potential severe negative impact on the employee and the firm due to external whistleblowing appears to be his critical concern, leading to his somewhat stringent criteria, which arguably will rarely if ever lead to a moral obligation to blow the whistle.

Should one be obligated to lose one's job, be harassed, or blackballed from one's industry, in order to save the

lives of others or protect them from serious physical or financial harm? Is this not similar to the basic life saving ethical dilemma of whether one can be morally compelled to put themselves at risk in order to save someone else? One's answer to this question may determine where on the spectrum one falls in terms of the moral obligation to blow the whistle externally, and the sort of criteria one should reflect upon. The issue becomes more complex when a situation is faced whereby the firm might go bankrupt due to a scandal being disclosed. Should one be required to blow the whistle externally to protect someone from being seriously physically harmed by their company if the expected result is that thousands might lose their jobs and tens of thousands of shareholders might lose their wealth?

We believe the answer to both of these questions should be "yes," but would typically not be "yes," as matters currently stand today due to the lack of effective anti-retaliation policies at many firms (see Hassink et al. 2007) and insufficient legal protections in many jurisdictions (see Lewis 2008). Unlike other proposed criteria, we also impose corresponding ethical obligations on business firms and governments as well. First, firms have an ethical obligation (and for U.S. public firms it is now a legal obligation under the *Sarbanes-Oxley Act*) to ensure that there are proper whistleblowing channels for their employees. Such whistleblowing channels should provide for anonymity when desired, confidentiality whenever possible, guaranteed protections against harassment and retaliation, due process taking place during investigations, and there must be a follow-up with the employee who has blown the whistle on the outcome. There must also be a designated individual who receives the complaints (e.g., compliance or ethics officer) who then reports not to the CEO but to the firm's independent directors (e.g., audit committee), and that this individual is preferably not hired or fired by the CEO (see Hoffman and Rowe 2007).

Second, we also place ethical obligations on governments around the world to ensure that proper legal whistleblowing protection is in place and is being properly enforced for employees of all firms, including both public and private firms. While progress on both of these fronts has taken place over the years (e.g., U.S. *False Claims Act*, U.S. *Sarbanes-Oxley Act*, U.S. *Dodd-Frank Act*, UK *Public Interest Disclosure Act*, etc.), there is certainly room for improvement. We believe that only when firms establish effective internal whistleblowing channels for their employees with effective anti-retaliation policies (HS4) and when there is effective government legislation to protect external whistleblowers (HSS) will one be able to argue that non-professional employees are morally obligated to blow the whistle externally when our proposed criteria are otherwise met.

Finally, if firms were to take reasonable steps to ensure that they possess an ethical corporate culture, including

instilling ethical values within the firm's policies, procedures, and practices, establishing a comprehensive ethics program (including codes and ethics training), along with the existence of ethical leadership, then the vast majority of instances of potential internal and external whistleblowing of misconduct will become greatly reduced (see Schwartz 2013). Research supports the proposition that "strong ethical cultures" diminish organizational misconduct and thereby the need for employees to blow the whistle internally or externally (Ethics Resource Center 2014). Our view is that while employees based on our proposed criteria may on rare occasions have a moral obligation to blow the whistle externally, firms (through their boards of directors and senior management) possess a contemporaneous ethical obligation to ensure that their employees work within an organization that has a strong ethical corporate culture that reduces the need for whistleblowing while simultaneously protecting those employees who do choose to blow the whistle.

References

- Association of Certified Fraud Examiners. (2012). Report to the Nations on Occupational Fraud and Abuse: 2012 Global Fraud Study (Austin Texas). Available at: http://www.acfe.com/uploadedFiles/ACFE_Website/Content/rtn/2012-report-to-nations.pdf. Accessed on 23 May 2014.
- Bowie, N. E. (1982). *Business ethics*. Englewood Cliffs, NJ: Prentice Hall, Inc.
- Davis, M. (1996). Some paradoxes of whistleblowing. *Business & Professional Ethics Journal*, 15(1). In Beauchamp, T. L., Bowie, N. E., & D. G. Arnold. (2009). *Ethical theory and business* (8th ed., pp. 147–155). Upper Saddle River, New Jersey: Pearson Education.
- De George, R. T. (2010). *Business ethics* (7th ed., pp. 298–318). New York: Prentice Hall.
- Duska, R. (2009). Whistle-blowing and employee loyalty. In T. L. Beauchamp, N. E. Bowie, & D. G. Arnold (Eds.), *Ethical theory and business* (8th ed., pp. 155–159). Upper Saddle River, NJ: Pearson Education.
- Ethics Resource Center. (2012). Inside the mind of a whistleblower. Washington DC. Available at: <http://www.ethics.org/resource/inside-mind-whistleblower>. Accessed on 23 May 2014.
- Ethics Resource Center. (2014). *National business ethics survey*. Washington, DC. Available at: <http://www.ethics.org/nbes/>. Accessed on 23 May 2014.
- Gilley, M., & Hoffman, W. M. (2011). Will rewards for whistleblowers encourage ethical behavior? *The CQ Researcher*, 21, 409–432.
- Hartman, L., & Desjardins, J. (2008). *Business ethics: Decision-making for personal integrity & social responsibility*. New York: McGraw Hill.
- Hassink, H., de Vries, M., & Bollen, L. (2007). A content analysis of whistleblowing policies of leading European companies. *Journal of Business Ethics*, 75(1), 25–44.
- Hoffman, W. M., & McNulty, R. E. (2010). A business ethics theory of whistleblowing: Responding to the \$1 trillion question. In M. Arszulowicz (Ed.), *Whistleblowing: In defense of proper action* (pp. 45–59). New York: Transaction Publishers.

- Hoffman, W. M., & Rowe, M. (2007). Ethics officer as agent of the board. *Business and Society Review*, 112(4), 553–572.
- James, G. G. (1990). Whistle blowing: Its moral justification. In W. M. Hoffman, R. E. Frederick, & M. S. Schwartz (Eds.), *Business ethics: Readings and cases in corporate morality* (4th ed., pp. 291–302), 2001. New York: McGraw Hill.
- Lewis, D. (2008). Ten years of public interest disclosure legislation in the UK: Are whistleblowers adequately protected? *Journal of Business Ethics*, 82(2), 497–507.
- Lindblom, L. (2007). Dissolving the moral dilemma of whistleblowing. *Journal of Business Ethics*, 76, 413–426.
- Schwartz, M. S. (2013). Developing and sustaining an ethical corporate culture: The core elements. *Business Horizons*, 56, 39–50.
- Sinzdak, G. (2008). An analysis of current whistleblower laws: Defending a more flexible approach to reporting requirements. *California Law Review*, 96(6), 1633–1668.
- U.S. Sentencing Commission. (2013). Organizations receiving fines or restitution. Sourcebook for Federal Sentencing Statistics. Available at: <http://www.ussc.gov/research-and-publications/topical-index-publications/annual-reports-and-statistical-source-books>. Accessed on 23 May 2014.
- Vandekerckhove, W., & Tsahuridu, E. E. (2010). Risky rescues and the duty to blow the whistle. *Journal of Business Ethics*, 97(3), 365–380.
- Velasquez, M. G. (2006). *Business ethics: Concepts and cases* (6th ed.). Upper Saddle River, New Jersey: Pearson/Prentice Hall.