For Next Time

Read:
• Albert Z. Carr, "Is Business Bluffing Ethical?"
• Thomas Carson, "Second Thoughts about Bluffing”.
• Norman E. Bowie, "Does it Pay to Bluff in Business?"

(Also, please bring your readers to class)
Announcements

- First Exam! (Sept 25th; two weeks from today).

- Guest Speaker! (Oct 16th).
  Gary Cohn, EVP/COO
  Marx|Okubo and Associates, inc.
  Topic(s): TBA
For Freeman, the interests of all stakeholders should be given equal consideration. The interests of one stakeholder group are not more important or weightier than the interests of another group.

He thinks this because this is what the stakeholders would choose for themselves behind the Veil of Ignorance (VOL).
Stakeholder Theory Cont…

What is the VOL? It's a concept (a hypothetical scenario) originating from the political philosophy of John Rawls.

Rawls had the idea that a just society is one that the members of that society would choose for themselves behind the VOL.
Stakeholder Theory Cont... 

Behind the Veil,

Each person is rational and self-interested.

Each person doesn't know his or her:
  race, sex, age, intelligence level, income, their occupation, etc.
Stakeholder Theory Cont…

Given this, these rational self-interested people will naturally be compelled to structure their society in such a way that, at the very least, all people are protected from discrimination and exploitation, regardless of where they happen to wind up in society.

E.g. for all I know I could be a minority
Stakeholder Theory Cont…

In the same way, assume stakeholders in a corporation are behind a Veil of Ignorance. For Freeman, stakeholders behind the Veil will naturally want the interests of all to have equal weight.
The VOL Argument:

1. Whatever corporate structure the stakeholders choose for themselves behind the Veil is the structure that justice requires.
2. Stakeholders behind the Veil would choose to have their interests be given equal importance.
3. So justice requires that the interests of all stakeholders be given equal importance.
Evaluation of the VOL Argument

Might stakeholders behind the Veil be risk takers such that they choose to gamble on where they wind up once the Veil is 'lifted'? That is, maybe most of them would choose a corporate structure that only favored shareholder interests (even at a severe cost to others) in the hope that they'll wind up a shareholder. If so, the truth of premise 1 and 2 are called into question.
WHISTLE BLOWING (WB)
Example of WB

Imagine you’re an engineer at Ford and you have reason to believe that the seatbelts in Ford cars are not up to safety standards and that, furthermore, management knows this but does not want to recall or redesign the seatbelts because of the enormous cost. Given the potential risks to the public, you make your concerns known to them.
Policy concerning WB

The False Claims Act:
A federal law passed in 1863; amended in 1986. It protects the federal government against fraud.

Makes any individual or firm liable to be punished that receives money from the government that they are not owed, or avoids paying money owed to the Federal government (tax fraud exempt).

E.g. Nursing home or pharmacy over-billing Medicare
Policy Cont...

It permits individuals, on behalf of the government, to both sue contractors and keep between 15-30% of money recovered.

Thus, it's said to encourage whistleblowing by giving financial incentive to those considering speaking out against those who may be defrauding the government.
Sissela Bok

Whistleblowing
and Professional Responsibility
The Nature of WB

WB has three main features:

- Dissent
- Breach of Loyalty
- Accusation
The Nature of WB

For Bok, to blow the whistle is to engage in dissent; which is to make public a disagreement with an authority.

Q: Given that WB is a form dissent, what are the inherent risks involved to the whistleblower?
The Nature of WB

To blow the whistle is to ignore an obligation to be loyal to one’s company for whom one works.

Q: What does this loyalty consist in, and how does whistleblowing run contrary to it?
The Nature of WB

To blow the whistle is to accuse; i.e. attach responsibility to a person (or group of persons) for "threats to the public". These threats stem from negligence, willful concealment of some danger, or outright abuse on the part of the person or persons in question.
The Nature of WB

These threats to the public must be either present or imminent, and specific.
The Effectiveness of WB

Effective whistleblowing results in members of the public actually being saved from a present or impending harm.

In order for the WB to indeed stop or prevent this harm, his message concerning the harm they face must be:

1. Believed (credible).
2. Able to be acted upon.
The Effectiveness of WB

If the whistleblower,

- Is inarticulate
- Not from the “inside”
- Stands to gain financially
- Is not willing to reveal himself publicly

then, his message will likely not be believed.
The Effectiveness of WB

Even if the message is believed, the public still may not be able to act on the message; say because of political oppression or fear of backlash.
The Permissibility of WB

The potential whistleblower is thinking about accusing persons of impropriety, ignoring his loyalty agreement between him and his employer, and putting himself and sometimes his family at risk to suffer harm. Thus he needs to take great care to ensure that he is not doing anything wrong in blowing the whistle.
The Permissibility of WB

An act of whistleblowing is morally permitted only if:

It’s an act of ‘last resort’.
The Permissibility of WB

To be an option of last resort means that you have first "explored existing avenues (regular channels) for change within the organization" and all of them have failed (or will fail) to achieve the prevention of harm.
The Permissibility of WB

An act of whistleblowing is morally permitted only if:

The whistleblower has done all she can to ensure that she is being fair to those being accused of impropriety.
The Permissibility of WB

An act of whistleblowing is fair to the accused only when:

- The public has a right to know about the message
- The whistleblower is openly revealing herself to the public
- The whistleblower is acting for the right reasons
- The accused is sufficiently responsible for the harm to the public
- The harm to the public is sufficiently egregious
The Permissibility of WB

Also, for Bok,

An act of whistleblowing is morally permitted only if:

The whistleblower has done all she can to ensure that she is being fair to her family.

E.g. it would be impermissible to blow the whistle if the harm to the public is not egregious enough to warrant risking likely harm to the family (i.e. the benefit to the public is not considerable enough to outweigh the harm to her family).
The Permissibility of WB

Finally (and generally), the whistleblower needs to make sure:

She has consulted with others--prior to going public -- to ensure her facts are straight concerning the nature of the harm, who is responsible and their degree of responsibility, the nature of her motives, etc.
The Prudence of WB

For Bok,

It obviously wouldn’t be in one’s self-interest to blow the whistle if her message would likely prove ineffective, or if the benefit to the public is not considerable enough to outweigh the harm she’ll likely face.
Question

What if members of the public face (or will face) a sufficiently egregious harm, the would-be whistle-blower has exhausted all internal channels, etc, etc. Yet the reason why she wants to blow the whistle is because she wants revenge on her boss, the one responsible for the harm. She doesn’t care about the public at all. Is she not permitted to blow the whistle in this case?
Richard De George

“Whistle Blowing”
A Preliminary:

Q: What’s the difference between an act being morally permissible as opposed to supererogatory, or morally obligatory?
Summary of De George

When the following conditions apply, WB is **morally permissible**:

1. The firm, through its product or policy, will do serious and considerable harm to the public.
2. The employee has made his moral concern known to his immediate superior, who has not acted on the information.
3. The employee has then exhausted all other internal procedures within the firm (managerial ladder, board of directors, etc.)

Why do these three conditions only establish moral permissibility and not moral obligation?
Summary of De George

The answer for De George lies in condition 1, which as is, means the whistleblower lacks documented evidence (you may have evidence of some form concerning condition 1, but it’s not ‘hard’ physical evidence e.g. actual quality control tests showing the product is dangerous). It's unlikely that people will act on your message of impropriety if you don't have compelling documented evidence. You're not required to bring (or risk) harm to yourself by speaking out if you know that it's likely that no good will come of it!
Summary of De George

Furthermore, even if you have documented evidence of impropriety, there's still no guarantee that people will act on your message. So you need further evidence that your message (and documentation) will be clearly presented to the public and that the public will act on it appropriately (e.g. launch an investigation, avoid using the product).
Summary of De George

So, if the following two conditions are satisfied along with the previous three, then whistleblowing is **morally obligatory**:

4. The whistleblower has documented evidence that would convince a reasonable, impartial observer of a serious danger.

5. The whistleblower has good reason to believe that going public will probably effect positive change (prevent the harm).
Davis’ Problems with De George

For Michael Davis, De George's view is the standard theory concerning when whistleblowing is either permissible or obligatory.
Davis’ Problems with De George

On the standard theory, if a would-be whistleblower doesn't have as his aim the prevention of ‘serious and considerable’ harm to the public, then he is not permitted to blow the whistle on his organization.
Davis’ Problems with De George

But, for Davis, there are many intuitively permissible cases of whistleblowing where it's clear that the whistleblower doesn't have as his aim the prevention of such harm. Rather the aim is to prevent wrong-doing on the part of the organization, wrong-doing that doesn't threaten harm to the public.
Davis’ Problems with De George

Davis' main example:

The Space Shuttle Challenger Case Study

What’s this?
Davis’ Problems with De George

The Details:

- Boisjoly was an engineer for Thiokol, a company in contract with NASA for shuttle construction.

- Boisjoly expressed concerns with Thiokol management about the safety of launching Space Shuttle Challenger the day before its scheduled launch in 1986.
Davis’ Problems with De George

- The O-rings between the Solid Rocket Boosters were faulty and thus dangerous.

- Thiokol management considered telling NASA to delay launch but decided against it last minute.
Davis’ Problems with De George

Boisjoly claims--before the Rogers Commission--that Thiokol knew for a long time about the potential problems with the O-rings and failed to act appropriately.

For Davis, Boisjoly's main purpose in testifying was to prevent Thiokol from falsifying records.
Davis’ Problems with De George

For Davis, Boisjoly's act of testifying before the Rogers Commission was an act of whistleblowing, and that act was clearly justified.
Davis’ Problems with De George

Boisjoly was seemingly permitted to blow the whistle against his company, but the standard theory doesn't explain *why* he was. For it was not the purpose of Boisjoly to prevent harm to the public.

How was that not his purpose?
Davis’ Problems with De George

Falsifying records was not going to bring imminent death or grave illness. So to prevent such falsification is not to prevent such harm.
Davis’ Problems with De George

Furthermore, there's no reason to think Boisjoly's testimony would:

- Launch an investigation into safety protocol within NASA,
- Reawaken a concern for safety within NASA,
- Cause Thiokol to re-design the Solid Rocket Boosters.

It was the explosion of Challenger itself that would cause all this to happen.
Davis’ Problems with De George

There’s no good reason, then, to think that Boisjoly’s act of whistleblowing had as its aim the prevention of serious and considerable harm to the public. On the standard theory, his act is impermissible. But clearly it’s permissible! Boisjoly is permitted to call out the wrong-doing of Thiokol and to keep them from covering it up. So the standard theory is faulty.
Davis’ Problems with De George

Another problem Davis has with De George:

According to the standard theory, one is obligated to blow the whistle when all five conditions (see De George) are met.

Why is this?
Davis’ Problems with De George

What grounds the obligation is the principle that you are required to prevent serious harm to others when doing so only brings little cost to yourself.

This is the principle of ”Minimally Decent Samaritanism"
Davis’ Problems with De George

But whistleblowers typically do not face a low cost to themselves.

The standard theory, then, hasn't shown that the five conditions generates an obligation.