

PRE-EMPTIVE ANONYMOUS WHISTLE-BLOWING

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I. INTRODUCTION

While pretty much everyone recognizes that whistle-blowing can be morally permissible or obligatory under certain circumstances, most theorists offer accounts that are relatively conservative in their estimation of when it is allowed and are reluctant to offer a full recommendation of the practice as an important tool for addressing ethical failures in the workplace. Michael Davis, for example, contends that whistle-blowing is a “tragic” necessity that is sometimes morally required, but that is nevertheless “destructive” for everyone involved.¹ Mike Martin takes a more positive view of the practice but nevertheless argues that the obligation to blow the whistle is only a prima facie duty that can be defeated by personal considerations, such as the worry that going public with accusations of malfeasance might threaten a person’s ability to provide for her family.² From this perspective, it seems overly burdensome to require that individuals blow the whistle on their work superiors and their companies when so much is at stake for them personally. Morality must have some respect for the limits of what people can be asked to sacrifice.

While whistle-blowing is certainly a non-ideal way of dealing with ethical worries within a company, we think that accounts such as these tend to underestimate the moral obligation to shine light on severe professional malfeasance. What is at stake if these individuals do not blow the whistle could involve the risk of serious harms either in terms of the numbers of people harmed, the severity of the harms, or both. If many lives are on the line, it seems less plausible that an agent can simply put aside her knowledge of a potentially grave wrong simply to be loyal or to protect her job or even her career. Perhaps, though, this serious conflict between moral obligations and prudential needs could be sidestepped if there were an alternative method available that allowed the meeting of these moral obligations while minimizing prudential costs.

Thus, while the moral obligation to blow the whistle is a robust demand that overrides obligations of loyalty to one’s company when serious harms are at

stake,³ the obligations that arise out of one's personal life are not trivial. One way that a person can address these moral complexities is to engage in anonymous whistle-blowing. Of course, one problem with anonymous whistle-blowing is that it is generally difficult for a person to protect her anonymity and virtually impossible to do so when she has raised her worries through normal channels.

To address these difficulties we shall argue in favor of a practice that we will call "Pre-emptive Anonymous Whistle-blowing" (PAW). Such whistle-blowing is pre-emptive in that a whistle-blower provides information about malfeasance to a party in a position to do something about it without first raising the worry to one's immediate superiors. Such pre-emption would be morally justifiable only when the agent has good reason to believe that the whistle-blowing is necessary to expose serious harms, there is reasonable evidence that supports this belief, and the agent has good reason to think that her superiors would be unresponsive to attempts to fix the problem through official channels. By design, the PAW strategy differs from the standard approach by not requiring the agent to go through official channels prior to blowing the whistle.

At first blush, this answer may seem unsettling, and PAW admittedly raises a number of worrisome issues. It requires being deceitful to your co-workers, especially your immediate supervisors, undermining any kind of company commitment that employees be honest and open about company problems. It also seems to abandon any notion of company loyalty and does not grant one's superiors the opportunity to prove that they would indeed do the right thing if just given the opportunity.

In spite of these clear drawbacks, we will argue in favor of PAW as part of a larger argument that whistle-blowing is morally required more often than is commonly thought. The argument is not that PAW is commonly required. It is that the availability of PAW as an option provides a method for allaying the concern that whistle-blowing can be overly burdensome due to the risks of job and career. Insofar as that concern can be allayed, it is feasible for there to be substantial moral requirements to engage in whistle-blowing in cases where severe harms can be prevented or severe wrongs corrected. With high enough stakes, there is a moral requirement for whistle-blowing. In such a situation, an agent may either have to make a large prudential sacrifice (by risking her job and possibly her career), or she will have to betray her superiors and company (who she has a reasonable belief would not do the right thing if informed of the problem) and engage in PAW. Either way, the high stakes ensure that whistle-blowing is morally required.

2. STANDARD VIEWS ON WHISTLE-BLOWING

There are various attempts to define "whistle-blowing," but for our purposes, it is sufficient to understand it in a roughly standard way as a set of actions, by one or more employees or members of some organization, with the goal of bringing attention to some serious and preventable harm or grave moral wrong being

caused from within that organization, by providing information to persons outside organizationally approved channels. Such whistle-blowing can be "internal" in the sense that those to whom the evidence of misconduct is provided are still within the organization, but outside of the normal chain of command, but is usually thought of as being "external," where the information is provided to those outside of the organization, such as government enforcement agencies or media organizations. Classic cases of whistle-blowing usually involve public safety hazards as in the oft-discussed Challenger disaster but can also involve criminal behavior, serious mistreatment of employees—such as sexual harassment—or misuse of funds. While there may be grey areas where individuals are unsure whether the stakes are sufficient to warrant whistle-blowing, in the paradigmatic cases, it is often clear that the harms to others are high enough or the moral wrongs are grave enough to warrant action.

Richard DeGeorge offers the classic treatment of whistle-blowing, by arguing that an employee is morally obliged to blow the whistle when the following five conditions are satisfied:

- 1) The public is threatened by a serious harm.
- 2) The employee has reported her concern to her immediate superior.
- 3) The employee has exhausted all other normal channels of communication within the corporation.
- 4) The employee has documentation that would convince "a reasonable, impartial observer that one's view of the situation is correct."⁴
- 5) The employee has good reason to think that blowing the whistle will prevent the harm from occurring.⁵

DeGeorge suggests that whistle-blowing is morally permissible when the first three conditions are satisfied, and morally obligatory when all five are satisfied.

While DeGeorge's account remains the standard treatment of whistle-blowing, it has received a great deal of criticism. Many, for example, worry that the fourth and fifth conditions are too strong.⁶ Contrary to the fourth condition, an employee seems justified in blowing the whistle with enough documentation that indicates there is likely a problem, even if that is less documentation than would be required to convince someone that she is right about the problem. Contrary to the fifth condition, a hope that harms can be averted seems sufficient; requiring a belief that this will work is more than we usually need to have to do the morally right action.⁷

In addition to these worries, Mike Martin raises a more fundamental problem that the kind of account articulated by DeGeorge attempts to impose a general rule for whistle-blowing, which ignores both the importance of situational context and the heavy burdens that whistle-blowers face, such as the threat of being fired, missing out on promotions, or more generally being blackballed within the industry. On Martin's account, we can at best develop general rules that provide a *prima facie* justification for whistle-blowing, but whether a person ought to blow the whistle will depend on that person's particular situation. Specifically, Martin

argues that one has a *prima facie* obligation when she “has good reason to believe there is a serious moral problem, has exhausted normal organizational channels (except in emergencies when time precludes that), has available a reasonable amount of documentation, and has reasonable hope of solving the problem by blowing the whistle.”⁸ Such an obligation, however, is only *prima facie* and can be defeated by personal considerations such as employees’ “responsibilities to their family, other personal obligations which depend on having an income, and their rights to pursue their careers.”⁹ Martin says little about how these kinds of personal considerations are to be weighed against the harms that the whistle-blowing aims to vitiate, but what is particularly distinctive about his account is his suggestion that personal considerations can defeat the obligation to prevent public harm by whistle-blowing. As he says:

[E]ngineers are people, as well as professionals. They have personal obligations to their families, as well as sundry other obligations in personal life which can be met only if they have an income. They also have personal rights to pursue their careers. These personal obligations and rights are moral ones, and they legitimately interact with professional obligations in ways that sometimes make it permissible for engineers not to whistle-blow, even when they have a *prima facie* obligation to do so.¹⁰

Thus, by reducing the obligation to a *prima facie* one that depends on the agent’s circumstances, the agent’s personal burdens play a much greater role in determining when the agent ought to blow the whistle.

Michael Davis provides further worries for the standard account that may also apply to Martin’s contextual account. Because we can distinguish between whistle-blowing cases based in preventing harm from those cases based in addressing moral wrongs, conditions based on the former may have no relevance to the latter, even in a *prima facie* sense.¹¹ In the moral wrong cases, there may be no harms to prevent or problems that can be solved. There may only be wrongs that require accounting for, and it may be morally necessary to respond to those wrongs even if it will not produce positive results in the future.

For a harm type example, imagine a company where upper management consistently looks the other way when there is evidence of sexual harassment, creating a hostile work environment for its female employees. In such a case, a whistle-blower could point out that sexual harassment with the goal of preventing further harms to those female employees. However, if we suppose that all the females have quit the company and other females in the field know not to apply there, then females can no longer be harmed at that company. If a whistle-blower at that point speaks out, his goal is to expose a moral wrong that occurred in the past, even though that wrong has now ceased for incidental reasons (there just are not any more females at the company).

This distinction is problematic for the standard account because there is no threat of public harm to be prevented, and so the first and fifth conditions cannot

be met. Largely due to this point, Davis believes three paradoxes arise for the standard view of whistle-blowing. One is the paradox of missing harm, which Davis uses merely to point out that there is often no harm to be prevented in real life whistle-blowing cases, making the standard account largely irrelevant.¹²

The next one is the paradox of failure, wherein Davis points out that whistle-blowers rarely succeed in preventing harm. In the case of whistle-blowers who are addressing moral wrongs, and not trying to prevent harms, there is little chance that they will prevent harms. And where whistle-blowers do attempt to prevent harms, they often fail. Thus, Davis points out that it makes little sense to require of whistle-blowers that they believe or even hope their efforts will make a difference because most of the time they will be unable to make any tangible difference.¹³

Davis’s final paradox is the paradox of burden. Because whistle-blowers are unlikely to prevent any harms, and they are likely to face stark consequences for their attempts, Davis points out that whistle-blowers should always be thought of as Good Samaritans performing supererogatory acts, and not merely as minimally decent agents.¹⁴ If the actions of whistle-blowers were quite clearly going beyond the call of duty, then it would not make sense to think they were morally required to act. Instead, it would seem that we would only owe them praise and gratitude when they were willing to act at great personal risk to themselves and with little hope of preventing any serious harms to the public.

Davis responds to these paradoxes with an alternative account, which he refers to as “complicity theory.” Based on the problems that the paradoxes represent, it seems that whistle-blowing could be at best morally permissible but not morally obligatory. However, Davis argues that whistle-blowing could be obligatory if the whistle-blower was somehow complicit in the moral wrongs that she was exposing.¹⁵ If the whistle-blower contributed to the moral corruption of her organization, then she would have a moral responsibility to make amends for whatever moral wrongs were done, partially by her. In this way, the moral obligation derives not from the severity of the harms to be prevented, which Davis thinks are overblown in theoretical accounts, but by the fact that the agent herself is morally responsible to correct a problem that she helped to create.

Davis’s complicity theory, too, though, is faced by its own problems, especially because it does not seem to be sufficiently general to apply to all whistle-blowing cases.¹⁶ It does make sense that agents would be responsible for moral wrongs with which they are complicit, but agents can learn of moral wrongs and potential severe harms when they are not a part of the problem. These agents still have moral questions about whether it is permissible or obligatory for them to blow the whistle, and Davis does not seem to have answers for them. It may or may not be true that Davis’s cases constitute the majority. But these cases certainly can exist, and a moral theory should be able to address them.

There are then three important whistle-blowing theories: DeGeorge’s standard account, Martin’s contextual account, and Davis’s complicity theory. Each of these

theories has positives to offer, but each also has drawbacks. Importantly, none of these three accounts explains how agents can be morally obligated in the face of heavy personal burdens, but there is a strong intuition that such a moral obligation could be justified when the stakes are potentially quite huge. If there were grave moral wrongs to be addressed or quite serious harms to be prevented, it would seem an agent would be obligated to act even if personal stakes were likewise high. Yet, none of these authors see the possibility for pre-emptive anonymous whistle-blowing as potentially clearing up this conflict between these moral and prudential issues. To help make the case for PAW as a possible resolution to such a conflict of interests, it will be useful to distinguish the different types of responsibility. Then, we will see how agents can be held morally responsible for engaging in PAW in spite of high personal and company risks.

3. CONFLICTING RESPONSIBILITIES

One way to pinpoint what is at stake in this case is to distinguish between the six distinct types of responsibility that agents fall under: moral, legal, prudential, professional, official, and all-things-considered. Moral and legal responsibilities are clear enough. Prudential responsibility concerns an agent's responsibility to bring fulfillment or happiness, broadly considered, to herself. When we say that our students have a *responsibility* to do the reading, it is not clear that this is a moral responsibility; it is instead a prudential responsibility insofar as they will grow to be better, smarter persons and live more fulfilling lives if they do the readings in our courses (or so we would like to believe).

Professional and official responsibilities are easily confused because they quite often overlap. Professional responsibility references a person's obligations to her profession, such that she meets her professional responsibility by doing things that are required by members of good standing in her profession, and she fails it by doing things that could bring shame to her profession. Official responsibility references a person's obligations to her company. These distinct responsibilities often overlap insofar as a person acts in both capacities (as a member of her profession and as an employee of her company) while on the job. But they can easily come apart. A doctor, for example, has a professional responsibility, but usually not an official one, to save lives while on vacation, out having dinner, or even while she is unemployed. Such requirements do not derive from the doctor's employment but from her station as a medical professional.

Because these first five responsibility types can provide distinct directions to an agent, it is incumbent on the agent to figure out what her all-things-considered responsibility is. The sixth and final responsibility produces a single result after the agent has considered what she is required to do based on all of the others. Thus, if the first five responsibilities come into conflict, then the agent must make a determination of what her all-things-considered responsibility requires of her.

Then, if she were being rational, she would then act according to her all-things-considered responsibility.¹⁷

Though we must keep in mind Martin's point that situational context can change a great deal, there is a standard breakdown of responsibilities that will apply to most typical whistle-blowing cases. Legal responsibility is largely irrelevant because the various legal protections for whistle-blowers do not imply there is any legal requirement to engage in whistle-blowing.

The agent will have at least one powerful moral responsibility to either address a grave moral wrong or work to prevent serious harms. We can assume the relevance of this moral responsibility because it is what initiates the whistle-blowing cases: there would not be anything to blow the whistle on if one of these moral responsibilities were not active. Thus, it is inherent to these cases that there is a moral responsibility to blow the whistle.

In almost every typical whistle-blowing case, the agent will also have some strongly operative prudential responsibilities to protect *herself* from serious harms. The agent has a clear prudential responsibility to keep her job and not get blackballed out of her career. She also has a prudential responsibility to keep her workplace as a location where she can generally be happy because it would be horrible to constantly be the object of disapprobation and resentment from one's colleagues. She also has a responsibility to keep her family happy, and that, too, requires keeping her job. This responsibility can be thought of as either a moral responsibility or a prudential one. That may depend in part on how much her family would suffer if she lost her job. She would have a moral responsibility to keep her family from starving, but if she would quickly get another job in another workplace or field, and all that would happen is that her family's cost of living might be lessened, then this is probably a prudential responsibility. Clearly though, the agent would have a good deal of prudential responsibilities not to blow the whistle.

It might seem that we could simplify whistle-blowing then as a clear conflict between moral and prudential responsibilities, but there is more at stake. Professional and official responsibilities are clearly relevant even though they play less central roles in much of the whistle-blowing literature. But we should discuss each of these responsibility types prior to seeking an all-things-considered responsibility in this scenario.

An agent's professional responsibility in almost any whistle-blowing scenario is to prevent severe harms that would disgrace the profession publicly or to expose moral wrongs that are already tainting the profession internally. In a certain way, one of the clearest and most common professional responsibilities is to avoid allowing or contributing any moral disgrace or taint on one's profession. Although it is not always true, in most standard whistle-blowing cases, the person with knowledge of the potential wrongdoing is in the same profession as the people who are doing the wrongdoing. They likely work together, and that is why the

whistle-blower has knowledge of the ongoing wrong or potential harm. The potential whistle-blower then has a professional responsibility not to allow these members of her profession to do something—or continue doing something—that would disgrace her profession.

It might seem that official responsibility is clear in a whistle-blowing scenario, but there is some complexity here. On the surface, the agent's official responsibility is to do as she is told. If she is told not to expose her company's wrongdoing, then that is what she is officially responsible for in a direct way. Now, there is a good chance that she is also officially responsible for not allowing disgrace to come to her company. And that can be taken in two ways: it could mean that she should prevent harms that may derive from the company so that the company is not disgraced after the fact, or it could mean that she should work to ensure that the company's wrongdoings do not come to light. Only the former would suggest a possible official responsibility to blow the whistle. The problem is that there is probably more prudential danger to companies to have their wrongdoings exposed than there is to have disasters happen. Many companies that we discuss in well-known whistle-blowing cases thrived long after their respective disasters (Ford survived the Pinto disaster, Union Carbide continues to exist as a subsidiary of Dow Chemical long after the Bhopal disaster, and Morton Thiokol ran under that name for another twenty years after the Challenger disaster and continues to exist in a derivative form today). Because agents have clear direct official responsibilities to listen to their superiors and indirect official responsibilities not to make their companies look bad, it is probably safest to just assume that the agent's official responsibility in the end is to do what she is told, which we are assuming is to cover up the incident so that the company is not harmed at least in the short term.

Now that we have set up these potential conflicts of distinct responsibilities, we can examine the whistle-blowing case in hopes of isolating how a whistle-blower can figure out what her all-things-considered responsibility is. Most potential whistle-blowers face a situation where their legal responsibility is silent, their professional and moral responsibilities tell them to blow the whistle, and their prudential and official responsibilities tell them not to do so. From these distinct and conflicting responsibilities, the potential whistle-blower must determine her all-things-considered responsibility and then act for that.

4. PRE-EMPTIVE ANONYMOUS WHISTLE-BLOWING

At this point, we reach an important practical limit of what philosophers can accomplish. We have set up a general method for contrasting the distinct responsibilities in a more or less typical whistle-blowing case and noted that the agent must now determine what her all-things-considered responsibility is. Importantly, though, that is the agent's job—and not the philosophers'. In part, this division

of labor is due to the fact that context becomes very important at this point. How to weigh these distinct responsibilities depends in large part on the particulars of the agent's situation and what exactly is at stake for each type of responsibility. We cannot judge that in the abstract. Further, philosophers are not trained in such a way that we are better moral reasoners than ordinary agents. We cannot assume that we would handle the situation better than the agent herself just because we are philosophically trained. Instead, the final decision must be left with the agent.

What philosophers can do is to point out the availability of a third option that may alter the dynamics of the agent's deliberation. The agent is deliberating over whether she has an all-things-considered responsibility to begin the whistle-blowing process or not. But she has a third option: pre-emptive anonymous whistle-blowing, or PAW. Notice how PAW affects the agent's deliberation: by pre-emptively blowing the whistle, the agent fulfills her moral and professional responsibilities while at the same time avoiding any prudential irresponsibility. Pre-emptive anonymous whistle-blowing moves three of the agent's responsibilities onto the same side, effectively making a very strong case for blowing the whistle.

Now, once again, it is not the philosopher's job to reason on the agent's behalf in the abstract, ignoring all the ways in which context and variables in the circumstances can alter what the agent should do. But it is quite difficult to imagine how official responsibility alone can override moral, professional, and prudential responsibility, put together. It is, in general, the weakest of the responsibilities. There is something important about being loyal, working hard, and generally doing what one is told, for the sake of one's company. But, a person probably should not do any of those things if it would be immoral to do so. Nor should she do those things if her company is asking her to do something that could taint or disgrace her profession. Perhaps official responsibility can often trump prudential responsibility, but even there, it is a close call if only official responsibility is at stake. Often doing things at work makes us unhappy, and we think we cannot stop just because we are unhappy, but we would not think it was permissible to make our families unhappy, for example, simply to meet an official responsibility. It does seem, even in the abstract, that when moral, professional, and prudential responsibilities all side with one action, and only official responsibility is against it, that you should perform that action, all things considered.

Having said that, we are not recommending that all potential whistle-blowers should choose PAW. The point here is that it is hard to see how not blowing the whistle is going to win out when the moral stakes are high and PAW is an option. It might be that within the potential whistle-blower's own situation, she should go through normal channels and only blow the whistle after that attempt fails. It might be that prudential considerations weigh so heavy for her in particular, that going through normal channels amounts to too much risk for that to be her all-things-considered responsibility. Yet, in that case, the whistle-blower has the option of engaging in PAW instead. While it is conceivable that a whistle-blower may find

her official responsibility so high that it outweighs her moral, professional, and prudential responsibilities, the addition of PAW to the potential whistle-blower's options makes that a very unlikely scenario.

5. OBJECTIONS

The PAW theory may seem at first to be controversial. It is therefore important to consider possible objections to it. The first objection questions whether the PAW theory is too demanding because it ignores familiar intuitions about the stringency of positive and negative obligations. This objection follows from the line of thought that positive obligations to perform certain actions are weaker than negative obligations to merely refrain from performing certain actions. Positive obligations are usually thought of as "imperfect" moral obligations that we need not always perform. The second set of objections asks whether this theory is responsive to the problems that plagued the three better known theories listed above. We will consider each objection in turn.

For the first objection, one might object that the requirements being put forward here are overly stringent because they ignore the common intuition that agents have greater discretion when it comes to their fulfillment of positive obligations than they do for negative obligations. The thought behind this objection is that negative obligations prohibit actions: don't murder, don't rape, don't steal, don't lie, etc. These obligations are absolutely binding but not overly burdensome by their negative nature; they merely tell us what not to do. Positive obligations, on the other hand, take over our actions and require us to go do something, such as give to charity or save drowning children, when it is easy to do so. Because positive obligations specifically direct agents toward things they have to do, it is thought that they either must allow wide discretion so that the agent can decide when to meet them (such as with charity) or only be applicable when something serious and not too burdensome is at stake (such as saving children when it is easy).

It might be thought that this theory creates too big of a burden because it requires agents who know about serious harms or grave moral wrongs to blow the whistle, either through normal channels or through PAW. That is a positive obligation because it tells the agent what she actively must do. It also creates a big risk for the agent and puts more of a burden on her than simply ignoring the problem.

In response to this objection, it is important to examine that standard case of morally required positive obligations: children drowning in lakes. While it is true that agents have much more leeway over fulfilling their positive obligations, there are clear cases where positive obligations are fully directive and give clear, explicit moral requirements at a particular moment in time. The most common example given to prove this point is that a person, let's call him Larry, sees a small girl drowning in a lake. Larry knows he is a good swimmer, the child is well within his ability to carry out of the lake, and no one else is around. Because it is clearly

easy for Larry to save the child and no one else can, it is clear that Larry has a positive obligation that morally requires him to save her right now.

It is not just because it is easy for Larry to fulfill his positive obligation that he is morally required to do so. The positive obligation rises to the level of a fully directed moral requirement based on a ratio between the severity of the possible harm if the agent does not act versus the risk to the agent if he does act. Let's call this the harm/risk ratio. The case where it is easy to save a child's life is useful because in that case it is obvious from that harm/risk ratio that the agent is morally required because all the weight is on the side of the harm that would result from inaction. Yet, we could certainly design a case where there was some definite risk, but inaction would still produce a severe enough harm that the person would be morally required to act.

Imagine not too far from the girl drowning in the lake is a four-foot alligator. Now, Larry is from a part of the country where it is well known that alligators, unlike crocodiles, do not attack humans except in extreme circumstances where they are confused, starving, or feeling exceptionally threatened. And Larry can see quite clearly that the alligator is not attacking the little girl, so it is unlikely that it is starving or feeling threatened. Because Larry can move slowly and still save the girl, he doubts the alligator will suddenly become confused. On top of all of these reassurances, it is only a four-foot alligator, and so it is not likely to kill Larry. It could at worst bite off one of his feet or arms. Of course, it could kill the little girl, so she is in even more danger than in the drowning case.

In this case, Larry faces a quite severe risk—the possibility of losing a foot or hand, which we could imagine would severely effect Larry's ability to be efficient at work, thus risking his livelihood, which keeps his family fed—though he has good reason to believe it will not come to that. We think Larry is morally required to save the girl in spite of his risk because she is facing certain death (either by drowning, alligator, or both), whereas there is only a small chance of Larry losing a foot or hand. His harm/risk ratio still weighs highly against inaction, and so it seems to us that he is morally obligated. Perhaps, though, others might have different intuitions, so let's strengthen the case.

Now, let's suppose it is not just one little girl in the lake, but a group of ten small children. Fortunately for Larry, they are, though, all connected on a rope. The alligator is still there, but the rope makes Larry's job easier because he merely has to get into the lake and give it a good hard yank. Larry in fact knows this because this is not the first time the kids have fallen in the lake. Earlier in the day these kids, who are on a field trip, fell into the lake, and their teacher simply yanked them out in a matter of thirty seconds. Unfortunately, their teacher is now paralyzed in fear due to the alligator, which was not there earlier—he does not know the difference in aggression levels between alligators and crocodiles, and Larry has neither the time nor the ability to explain it to him right now. So, it is up to Larry to get in the water, yank the rope, and get out within thirty seconds.

There is then only a thirty-second window where the alligator could attack Larry, but that is highly unlikely because it is not attacking the kids.

In this case, it seems unquestionable that Larry has a moral responsibility to save these kids. There remains a very real risk to Larry (and indirectly to his family), but it is very unlikely for it to come up in the short time he will be in the lake. And the harm that would result from Larry's inaction now includes the probable deaths of ten children. Given the severity of that harm from his inaction, and the low likelihood of harm to Larry if he acts, it seems clear that he is morally required to act.

This fictionalized lake case can be analogized to our anonymous whistle-blowing case. The anonymous whistle-blower has the ability to greatly decrease the risk to her job and career by blowing the whistle anonymously. If there were multiple lives at stake from her inaction, then it would be clear that her harm/risk ratio would be so high as to require that she act. Even though we are arguing for a morally required positive obligation for this agent, it does seem the sort of case, like Larry and the ten children on a rope, where there can be so much at stake and the risk can be so minimized that the agent must act.

While it seems like a positive obligation to blow the whistle is warranted, we must test this theory against the standard objections applied to other theories. For example, Mike Martin worries about accounts that provide clear, unwavering rules that agents would have to follow in real life because such accounts ignore the various ways in which context matters.¹⁸ Our account is quite sensitive to the importance of considering agents' specific contexts, and that is why we do not give a unilateral recommendation that we think all agents must follow. The account argues that either agents ought to go through the normal channels prior to blowing the whistle, or they should engage in PAW, depending on their specific situations. We even left open the possibility that agents may have a compelling case for not blowing the whistle, but where the moral wrong is quite grave or the potential harms are quite severe, it is nearly impossible for us to imagine what that possibility would look like, given that PAW is an option.

With his three paradoxes, Michael Davis also poses objections that should be addressed by any theory of whistle-blowing. Davis uses the paradox of missing harm to argue that in many real life situations, what is at stake are moral wrongs to be addressed and not necessarily harms to be avoided.¹⁹ We worry that Davis's own complicity theory takes this approach too far and loses sight of the many real cases where the issue is in fact that there are harms to be avoided. Instead, our theory cautions that agents should act, either through normal channels or through PAW, in both cases that involve moral wrongs or potential harms. Thus, we fall into neither this paradox nor the possible opposite paradox that would warn theorists not to have theories that only addressed the moral wrong cases.

In his paradox of failure, Davis also warns against requiring success for whistle-blowers because it can be quite difficult for them to make a difference in real

life.²⁰ This account does not require that whistle-blowers act only when they think they will be successful. Instead, they ought to act whenever their responsibilities require that they do so. Namely, if there is a need to prevent harms, correct moral wrongs, or prevent the disgrace to the agent's profession, then she is responsible for acting. But being responsible does not require that she thinks she will get it right. It only requires that she be in a position where it makes sense for her to be required to act. And she is in that position wherever there are these types of problems that she can attempt to address or prevent through her actions. Thus, there is no success condition here to run contrary to Davis's paradox of failure.

Davis's final paradox is the paradox of burden, which argues that whistle-blowers should always be treated as Good Samaritans who perform supererogatory acts because their actions always carry so much burden that they are not merely minimally decent Samaritans.²¹ This account does some work to diminish the force of this paradox. Of course, it is not completely undermined because there are quite a number of whistle-blowers that do go beyond the call of duty and do something morally heroic.

Yet, PAW offers an alternative to facing all the risk normally associated with whistle-blowing, so that it is possible to think of a whistle-blower as only a minimally decent Samaritan. A whistle-blower engaging in PAW still faces some risk, but because the risk is lessened, she is faced with less burden than in the standard whistle-blowing cases, and that makes what she does closer to morally decent than heroic. And that shift is quite important because it is much easier to see how an action can be morally required if the person who does it is not considered heroic. If it is the minimally decent thing to do, then it can be morally required. Thus, adding PAW as an option makes it plausible that there can be a strong moral requirement to blow the whistle when the potential harms are serious or the moral wrongs are grave.

6. CONCLUSION

There is admittedly something counterintuitive in the fundamental idea behind pre-emptive anonymous whistle-blowing because it might seem to be dismissive of employees' obligations to their companies. We do not deny that employees have such obligations, and we agree with Martin's suggestions toward institutional and legal reform that will make whistle-blowing less necessary or frequent.²² We do not, however, think of whistle-blowing as a "tragic" choice because obligations of loyalty to one's company seem to be definitively outweighed by severe harms or moral wrongs. The problem with the main alternative accounts of whistle-blowing is that they seem to understate our obligation to prevent harms from occurring. The kind of harms or wrongs that occasion whistle-blowing are typically severe—more like cases of rescuing people from mortal danger—and are not easily defeated by competing normative demands. Our account, we believe, offers the best way

of accounting for our obligation to prevent harm, while also appreciating the tremendous personal burdens that such whistle-blowers undertake. Pre-emption decreases these risks and makes whistle-blowing more clearly obligatory.

There is also a practical danger in recommending PAW because it will always be easier than proceeding through the normal channels of communication. We do not think, however, that pre-emption is always morally justified. One needs to have good reasons to think that respecting the normal chain of command is very likely to lead to failure and that the only way the wrong can be addressed (and the only way that one can protect one's anonymity and therefore personal obligations) is by engaging in PAW. In cases where there are severe wrongs or harms that are being committed, agents who are in a position to do something about it are *either* obligated to proceed through the normal channels and then blow the whistle, *or* if their warnings are likely to fall on deaf ears and there is significant personal risk, they can engage in PAW. We do not mean to encourage pre-emptive anonymous whistle-blowing, but only to suggest that it is preferable to doing nothing when the stakes are high.

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NOTES

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1. Michael Davis, "Avoiding the Tragedy of Whistleblowing," *Business and Professional Ethics Journal*, vol. 8, no. 4 (1989), pp. 3–19.

2. Mike W. Martin, "Whistleblowing: Professionalism, Personal Life and Shared Responsibility for Safety in Engineering," *Business and Professional Ethics Journal*, vol. 11, no. 2 (1992), pp. 21–40.

3. Not everyone, however, agrees that there is a genuine conflict between the obligation to blow the whistle and the obligation to be loyal. See, for example, John Corvino, "Loyalty in Business?," *Journal of Business Ethics*, vol. 41, nos. 1–2 (2002), pp. 179–185; and Wim Vandekerckhove and M. S. Ronald Commers, "Whistle Blowing and Rational Loyalty," *Journal of Business Ethics*, vol. 53, nos. 1–2 (2004), pp. 225–233.

4. Richard DeGeorge, *Business Ethics* (7th edition) (New York: Pearson, 2010), p. 310.

5. *Ibid.*, pp. 306–311.

6. See, for example, Martin, "Whistleblowing," p. 27; and Gene G. James, "Whistle Blowing: Its Moral Justification," in *Business Ethics*, ed. W. Michael Hoffman and Jennifer Mills Moore (New York: McGraw-Hill, 1990), pp. 332–344.

7. Martin, "Whistleblowing," p. 27.

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

11. Michael Davis, "Some Paradoxes of Whistleblowing," *Business and Professional Ethics Journal*, vol. 15, no. 1 (1996), pp. 3–19; pp. 8–10.

12. *Ibid.*, pp. 8–9.

13. *Ibid.*, pp. 9–10.

14. *Ibid.*, p. 8.

15. *Ibid.*, p. 15.

16. A. David Kline, "On Complicity Theory," *Science and Engineering Ethics*, vol. 2, no. 2 (2006), pp. 257–264; pp. 261–263.

17. It is controversial whether moral responsibility trumps whenever it is relevant, so that an agent's moral responsibility always becomes her all-things-considered responsibility. We do not intend to take a stance on that issue here. In the end, not much here turns on it. If you think moral responsibility does not trump, then we can ask whether an agent's prudential or official responsibilities outweigh her moral responsibility to blow the whistle. If you think moral responsibility does trump, then we can ask whether agents do indeed have moral responsibilities in the case at hand, or whether there is too much burden (based on their prudential or official responsibilities) for it to count as a true moral responsibility. In the end, these would amount to different perspectives on the same question. We will speak as if moral responsibility does not trump but do not intend to endorse that view.

18. Martin, "Whistleblowing," pp. 27–28.

19. Davis, "Some Paradoxes," pp. 8–9.

20. *Ibid.*, pp. 9–10.

21. *Ibid.*, p. 8.

22. Michael Davis, "Avoiding the Tragedy," pp. 9–15.