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Obedience and Disobedience in the Context of Whistleblowing: An Attempt at Conceptual Clarification*

J. Babić

University of Belgrade, Belgrade, Serbia

*National Research University Higher School of Economics,
Moscow, Russia*

Abstract

The paper aims to give some conceptual clarifications to two interrelated issues, *disobedience* and *whistleblowing*. There is an obvious difference on the intuitive level – disobedience is considered wrong and blameworthy while whistleblowing has the aura of something positive and desirable. However, despite the differences, the logic of their constitution and functioning is, at least in part, alike, making the matter of real interest when are they justified – taking they *prima facie* are *not* justified. I propose that justification (of both) resides in a valid *aspiration to justification*. Starting from there, I offer an analysis in five sections. In the first section, I analyze the nature, functioning, and scope of *loyalty* and *obedience* as instruments of attaining responsible coordination and cooperation in complex human structures requiring hierarchies and discipline. The main features we encounter as relevant in this analysis are the concepts of loyalty, sincerity, trust and confidence, a strong sense of belonging and responsibility. In the second section I explore how dissent and disobedience get *motivational force in the context of uncertainty*. It is the context in which loyalty becomes divided, producing opposing motivations. The institutionally constituted obligations conflict with a need to dissent, disobey and resist when obeying or fulfilling established expectations is perceived as risky, dangerous, humiliating or wrong. The motivations may be different, and it is an interesting question – what is more critical or

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characteristic in making decisions to dissent. Warning against potential harm, preventing crime, or just avoiding complicity are the most visible motives, but there are possibly many, not all of them necessarily justified. The third section briefly explores some *conditions for possibly justified whistleblowing*. These conditions include: *competence, good intent, existence of some real risk and facing a dilemma what to do*; missing any of these conditions would make an act something else or unjustified. In the fourth section, I explore a question of whether an act of whistleblowing is a mere *right or a duty* – or a different issue like *supererogation*, an act which is beyond the duty, implying that it is, like any other sacrifice, something we have the right not to engage in. In connection with this, there is a problem of *codification*, i.e., legal protection of whistleblowers; both insufficient protection and overprotection have their deficiencies and shortcomings. In the fifth section, I apply this analysis to military issues. I find that there are three types of morally relevant cases of disobedience, indicating that the most difficult one is the case of manifestly legal but at the same time morally wrong orders.

Keywords: social philosophy, ethics, whistleblowing, loyalty, discipline, uncertainty, supererogation, unlawful orders.

Jovan Babić – D.Sc. in Philosophy, Full Professor of Ethics, University of Belgrade; Member of the Research Laboratory on Applied Ethics, National Research University Higher School of Economics.

jovanpbabic@gmail.com

<https://orcid.org/0000-0002-7591-4902>

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Повиновение и неповиновение в контексте доносительства: попытка концептуального осмысления*

Й. Бабич

Белградский университет, Белград, Сербия

Национальный исследовательский университет

«Высшая школа экономики», Москва, Россия

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Аннотация

В статье принимается попытка концептуально пояснить два взаимосвязанных вопроса: *неповиновение* и *доносительство*. Разница заметна уже на интуитивном уровне – неповиновение считается неправильным и заслуживающим порицания, в то время как доносительство окружено ореолом чего-то положительного и желанного. Однако, несмотря на различия, логика их устройства и функционирования этих понятий схожа, по крайней мере частично. Именно поэтому, в тот момент, когда оба действия кажутся оправданными (учитывая их *неоправданность prima facie*), они и представляют для нас наибольший интерес. Предполагается, что оправдание обеих концепций лежит в *искреннем стремлении к оправданию*. Указанные проблемы подвергаются анализу в пяти разделах. Первый раздел посвящен анализу функционирования и масштабов *лояльности* и *послушания* как инструментов достижения ответственной координации и сотрудничества в сложных человеческих системах, требующих иерархии и дисциплины. Основные особенности, с которыми мы сталкиваемся в этом анализе, – это концепции лояльности, искренности, сильного чувства принадлежности и ответственности, а также доверия и уверенности. Второй раздел охватывает то, каким образом несогласие и неповиновение приобретают *мотивационную силу в контексте неопределенности*. Институционально установленные обязательства вступают в противоречие с необходимостью не соглашаться, не подчиняться и сопротивляться, когда подчинение или выполнение установленных ожиданий воспринимается как рискованное, опасное, унижительное или неправильное. Мотивы могут быть разными, и это интересный вопрос – что более критично или характерно в принятии решений о несогласии? Предупреждение о потенциальной опасности, предотвращение преступлений или просто недопущение соучастия в них – наиболее очевидные мотивы, но, возможно, многие из них оправданы. В третьем разделе кратко исследуются некоторые *условия для возможной оправданности доносительства*. Эти условия включают: *компетентность, добрые намерения, наличие некоторого реального риска и дилемму о дальнейших действиях*. Отсутствие любого из этих условий трансформирует действие в нечто необоснованное. В четвертом разделе поднимается вопрос: является ли акт доносительства *обязанностью* или *человеческим правом* или же чем-то принципиально другим, как *суперрогация* – действие, выходящее за рамки обязанности, подразумевая, что это, как и любая другая жертва, является чем-то, чем мы имеем право не заниматься? В связи с этим возникает проблема *кодификации*, т.е. правовой защиты информаторов. Недостаточная защита, как и чрезмерная защита, имеют свои недостатки. В пятом разделе этот анализ применяется к военной проблематике. В ходе исследования было обнаружено, что существует три типа морально

значимых случаев неповиновения, что указывает на то, что наиболее сложным из них является случай явно законных, но в то же время морально неправильных приказов.

Ключевые слова: социальная философия, этика, преданность, дисциплина, неуверенность, суперрогация, незаконные приказы.

Бабич Йован – доктор философских наук, профессор Белградского университета, член исследовательской лаборатории по прикладной этике Национального исследовательского университета «Высшая школа экономики».

jovanpbabic@gmail.com

<https://orcid.org/0000-0002-7591-4902>

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Introduction

My aim in this paper is to give a short and modest description, and possibly analysis, of two phenomena which are, in my opinion, similar, interrelated, and partially overlapping – disobedience and whistle-blowing. The difference seems obvious: disobedience is usually seen as something morally wrong and deserving blame; while whistle-blowing, on the contrary, can often produce a rather positive social effect. This presents an interesting analogy that goes beyond the difference in the social consequences; they seem to share the same basis and differ only in the descriptions of their purposes and application. This opens room to explore the way of their constitution in the first place, and then to offer an explanation of how they function, both in the way of how they originate (at the motivational level) and how they work in individual and social life.

Neither disobedience nor whistleblowing are natural actions. They are results of freedom and a matter of choice and decision-making, i.e., they are subject to responsibility. The responsibility refers to two things: firstly, to what their aim is, i.e. the foreseen consequences of the decision made; and, secondly, what the real final consequences are of the attempt to realize those projected outcomes. Both cases can contain a significant amount of uncertainty, which is the very core of freedom – any decision that was made could have been different (and could have been abandoned before its attempted implementation); it is not a necessity but a choice. Decision-making is essentially subjective and based on (psychological)

egoism. Regarding the second case (which is not the matter of subjective intent but a matter of success), it is also uncertain what the final consequences actually will be. The process of their realization requires effort and determination, which is open to uncertainty and beyond any causal necessity. This uncertainty is determined by something we can call the *human condition*, which is very much characterized and defined by its two basic tenets, *fallibility* and *vulnerability*.

Fallibility is not just ignorance, or just a matter of necessary limits in empirical knowledge, it is more than that: the impossibility of having certainty of *successfully implementing* any decision. In empirical knowledge, the limits of predictability are defined and determined by the scope of knowledge available. A good example is our enormous progress in weather forecasting: with any improvement in our knowledge in meteorology, the forecast certainly becomes more and more reliable. There exists no such thing in the realm of freedom – there is always a possibility of something that is not only *unpredicted* (because we did not know enough), but was generally *unpredictable*. (This does not imply that knowledge is not important in implementing human decisions; it only means that knowledge *cannot* bridge the gap between certainty and the future – an impossibility that does not exist in the realm of natural events but depends merely on the scope of our knowledge.)

Vulnerability seems to be a rather direct consequence of fallibility: there is no secured and guaranteed certainty in the realm of freedom. Vulnerability is present in every decision, as a *risk* which cannot be overcome by acquiring any guarantees or safeguards. In the context of taking responsibility, when we make decisions, the position of the decider is always uncertain and often complicated, as s/he cannot avoid the risk of possible failure and guilt. In situations which require a high level of efficiency, this is a very important parameter. Situations in which we encounter disobedience (in the military, or in any other context of established obligation to obey), and also in those where we may face a need to blow the whistle, are characterized by a required high level of efficiency and expediency.

In such situations, obedience and discipline (in the short run, and their social articulation as *loyalty* in the long run) are suitable means of constraining and partially circumventing the risks of fallibility and dangers of vulnerability. This is especially the case in complex and hierarchical social structures, such as business or military organizations, where coordination and cooperation are not easy to

obtain and maintain, which requires issuance of orders in the process of realizing the goals set. The process of executing orders requires discipline and obedience, which in the long run is ensured by loyalty as an institution of endorsing, acceptance, and voluntary execution of the tasks envisaged by the commanders' orders.

1. The nature and scope of loyalty and obedience

Obedience (which presupposes well-defined roles of who is supposed to give orders and who is to obey them) provides coordination; and loyalty provides long-term stability to such coordination and also cooperation (within the particular context). For efficiency in executing joint tasks, coordination is absolutely necessary, while cooperation is even more instrumental and conducive; it is often of vital importance. Loyalty is more complex than obedience, as it includes some additional features: acceptance, devotion, honesty, and a fair amount of sincerity [Kleinig 2017]. Loyalty also presumes other virtues, like honesty, integrity, determination, and endurance. It goes without saying that loyalty facilitates a strong readiness to obey. Normally, there is also a presumption of a sense of belonging to the body aiming to fulfill a joint task, and an experience of success if the task has been completed successfully [Babić 2019]. All this is accompanied by a strong sense of responsibility with respect to the ongoing (or planned) task, presumably endorsed by an authority of an organization, and its mission toward which loyalty is felt. This sense of responsibility must be overcome in cases of disobedience and whistleblowing, and replaced by an equally strong or stronger sense of obligation to abandon the assumed obligation to obey or to be loyal, replacing it with another attitude, the one that requires disobedience and disloyalty. The feeling of obligation based in loyalty is something that existed from before, while the second attitude, the one implying disobedience or whistleblowing, is new on the scene and it has to overpower and suppress all prior feeling of loyalty. The redirection of driving motivation is challenging, as suddenly other hidden or latent loyalties enter the scene, trying to disable motivational force of the original position, the one which is the matter of direct expectation and presumed obligation. At the psychological level, there occurs a fight of rivaling motivations, and the factors of uncertainty and vulnerability make the process burdened with risks of mistake and failure, so the presence of at least some initial reluctance is to be expected (indicated in the awareness of the fact that original loyalty is contested, i.e., of the fact that the agent is on a path of dissent). Loyalty is what makes

the issue of responsibility that complex. In mere obedience, responsibility is simple – it consists in the very process of obeying: no questions are asked. Mere obedience does not rely on any actual or sincere convictions regarding the goal of the action on the side of one who obeys; s/he can be entirely indifferent toward a specific aim and the goal, or the quality of the reasons for which obedience is required: s/he just obeys it all. There is no room to establish any direct responsibility for the very goal that should be achieved through the act of obedience. The responsibility is limited to the act of obeying: somebody else is responsible for the goal. The virtue of obedience, if we postulate it as a virtue, is the quality, or excellence, of the very act of obedience as such. This points to another virtue present here, *reliability*. There are certain degrees in the perceived quality of expected obedience: those who are reliable hold the highest level of that quality. We may presume that reliability requires narrowing the scope of default responsibility to the simple, reduced, space of the efficiency in the execution of a given task. The accomplishment of the task is a mark of excellence in both these virtues, obedience follows directly, and reliability closes this in the long run.

However, the tasks are parts of a broader whole, and they are motivationally efficient because they are perceived and taken as important; the act of obedience is important because the task for which it aims is important. Endorsement of this importance instigates and initiates the whole process. The quality of obedience is in not asking any questions, but the importance of the issue is taken for granted. Where that is not the case, obeying is, or becomes, hard or even impossible: although then the quality of obedience is narrowed to a mechanical following of orders, whatever they might be, and it is not easy to follow, if you are not convinced that the orders are instrumental and contributive to what has been taken as important – accomplishment of the given task. If an act which you are about to carry out is, *according to your sincere belief*, absurd or contrary to the realization of the (final) goal, we can ask if you can proceed and still see yourself as obedient. Here, we see a vivid connection between obedience and loyalty: loyalty should remove the need to ask questions, since asking questions is counterproductive to the virtue of reliable obedience. You have to trust and be faithful and devoted to the one you are loyal to, hence there is no need to ask questions. All such questions would be a sign of suspicion, adverse to the efficacy, and detrimental to reliability (since they allow or presume existence of an answer that could lead to disobedience). Trust and confidence substitute all need for additional inquiry concerning

accuracy and reliability of the underlying information (and lack of trust would destroy the loyalty).

The fact that the quality of obedience is to be founded on reliability finally leads it to loyalty. All reliable obedience depends on loyalty. Of course, the one who issues the orders and expects them to be executed might be insincere, or issue an order that is plainly wrong, but the one who obeys presumably believes that the order was issued in a sincere belief that it is correct (in the sense that it is instrumental to achieving the goal set). If one thinks that the order is wrong (i.e., non-instrumental) or disagrees with the commander regarding its effectiveness, one still must presume that the issuer believes they are right; otherwise, it would be mere servility or something else, such as an act of complete disinterest, or an act based on fear or investing in fraudulent profit trust. In each case, this would lose its connection with loyalty and with possible moral basis of true (and reliable) obedience. In that case the distribution of responsibility would be different because of the change of the nature of the act itself: the responsibility, as in a criminal act, would be redirected to a different venue, sometimes very complicated one. But even an obedient and loyal criminal believes that his/her leader is sincere in believing that the expected obedience is instrumental to their common goal. Obedience cannot function otherwise.

This does not mean that the one who obeys is pursuing the goal, but s/he definitely presumes that the issuer of the order is both endorsing it and taking over the responsibility both for the task and its accomplishment. When one who obeys does not believe that the issuer takes the order as his/her own, s/he is in an empty space without any loyalty. In the case when an order goes through several steps, or levels, before it comes to the final executor, it is supposed that the chain is flawless: if the executor happens to believe that higher ranking officers did not issue the order, his/her loyalty to the cause, or mission, or task, would be jeopardized and require disobedience *as an act of true obedience!* Here, the issuer is at stake: s/he must take the order as his/her own (or at least pretend to do so) for the obedience to be established at all. The issuer and the executor of orders must be in line here, and loyalty to the issuer is based on his/her taking the responsibility for the task. There is no room for disobedience here, except in a case when some *other* loyalty requires an act of disobeying. This is also a logical structure of whistleblowing.

That is the point where we encounter a (normatively necessary) need for disobedience and whistleblowing to be justified in a stronger sense

from the one in which obedience and loyalty have to be justified. It is even more visible in the case of whistleblowing: while an act of *in principle* unjustified disobedience still would be disobedience (as it is free resistance to submit one's will to the will of the other), this is not possible with whistleblowing. If an act of whistleblowing does not even *aspire* to be justified, it cannot be counted as whistleblowing at all. But at the same time this indicates that the act of blowing a whistle would *not* be *normally* justified if the conditions for this aspiration for justification did not exist. The information revealed by whistleblowing is something that normally would not and should not be revealed.

The normative assumption that whistleblowing *is justifiable* (otherwise, it would not count as such) entails that unjustified whistleblowing is possible only as something determined *ex post facto*, but initially it is presumed to be at least potentially justified (i.e., to have a legitimate aspiration to be such), and it implies a plausible likelihood that it is justified¹. This is not the case with disobedience – the ill-intended disobedience, or morally or even legally unjustified disobedience for that matter, is still what its name designates. There are no such strong normative requirements as in whistleblowing. Whistle-blowing is a much more value-laden term than disobedience. It is a highly demanding term already at the language level. That is why I will focus here only on the case of disobedience that *aspires* to be justified. Aspiring to be justified is not a guarantee of being actually justified, of course, and the demarcation line between justified and unjustified is even more complex as it occurs on two levels: firstly, as the difference between being justified or not in a final moral evaluation; and secondly, as the difference between *being justified to aspire to justification* or not. This second distinction is the central topic of this paper. Whistle-blowing has to be justified in its aspiration for a (potential) justification. However, on the other hand, the all-present *need* to justify it indicates the plausible possibility that, *prima facie* (or presumably), it was not justified, despite its normative necessity to legitimately aspire to be justified. The hidden, but normatively necessary, supposition here is that disobedience as such is *prima facie* unjustified, that there is a prior, established duty to obey (otherwise, obedience would be an act of servility, and as such presumably be *prima facie* unjustified). Still, the disobedience might be *a candidate* for justification, and in some

¹ This resonates with one of the tenets of Just War Theory: the existence of a reasonable chance of success.

situations also a matter of duty, which is in clear opposition to the already established duty to obey. In such a case we have a *conflict of duties*.

The need to justify does not necessarily imply a normative assumption that we think the act is normally or *prima facie* wrong², as there can be a rivaling option which also legitimately aspires to justification: *two rivaling acts justified on the basis of two different sets of reasons* (or possibly more). The duty to obey has been established as an institutional fact, while at the same time there is a need to disobey, also based on some other (valid and good enough) reasons. In any case the need for justification indicates a deviation from the normal or usual – *expected* – course of action (as said before, obedience but not disobedience is a virtue, which implies that disobedience is *prima facie* wrong and, if justified, entails a conflict of duties).

2. Disobedience as motivation. Uncertainty

An expected course of action ensures *predictability*, necessary for planning and efficiency in realization of set goals. Thus, orderliness becomes crucial, and part of that is a defined structure of entitlement to issue orders and the ensuing obligation to obey them. *Hierarchy* plays a significant role in this structure, as a pre-defined description of each person's role in the process. This holds especially for big institutions, like militaries and corporations; but in principle, any cooperative work requires this kind of structuring. Hierarchy and obedience are apparent in almost all working situations; they imply defined distribution of obligations and entitlements. Direct obedience is only the most visible part of it, but there are other forms of the articulation of relations like *loyalty*, *discretion*, *confidence*, all based on *trust* which seems to be the condition for those virtues to function. These *virtues* function as a cluster, determining and defining the scope of legitimate authority and entitlement, creating a kind of *equilibrium of virtues* which allows for smooth and efficient realization of set goals, preserving and protecting the integrity of everyone in the process. This equilibrium of virtues functions as a whole: it is easy to be confident, obedient, or discrete if trust and loyalty are prevailing.

However, some situations exist where trust is missing, or where orders or expectations are such that their fulfillment is risky, dangerous, humiliating, or plainly wrong. In such cases obedience is perceived as

² Cf. Michael Davis's remark: "We do not need to justify an act unless we have reason to think it wrong" [Davis 1996, as cited in Shaw 2003, 87].

unacceptable, rendering expectation of disobedience as something that is proper or even required. In the first case, disobedience is assumed to be justified, and possibly a *right*; while in the second case, it could be perceived as mandatory, constituting an obligation or *duty*. In such cases one wants to, or should, avoid or prevent those things that would occur if obedience (or loyalty) were blindly followed: harm, actions perceived as wrong, complicity in wrongdoing, etc. Also, one might want to, or should, avoid becoming responsible for what one does not approve of.

Disobedience, in the form of whistleblowing, might become a temptation and be felt as a kind of “moral obligation to prevent serious harm ... if they [the whistleblowers] are able to do so” [De George 2006, 300]. There are obvious discrepancies in determining the defining moment here. For example, Michael Davis, in his “complicity theory” criticizes what he calls “the standard theory” (in De George and others) that prevention³ is the key factor in defining an act as whistleblowing, claiming that avoiding complicity is central in the definition of whistleblowing. Many cases of whistleblowing come *after* harm has already been done, when prevention is no longer possible. But we may accept that whistleblowing designates a combination of actions where the common feature is that the act of whistleblowing includes *a disclosure* of some *insider*⁴ information *from* about some wrongdoing that is not perceived as a mere mistake but as a practice or as an intended wrongful act. The most visible specificity of whistleblowing as disobedience is targeted revealing of sensitive information by someone who is not entitled to reveal it to someone who has not been authorized to receive it. Any such information might be protected, and unauthorized dissemination might be arguably harmful or destructive. However, this is obviously not the case when any unauthorized revealing is whistleblowing; a certain set of conditions must be present for an act of revealing information to qualify as whistleblowing. The revealing cannot be accidental; it definitely has to be intentional. The information must contain revelation of something perceived as wrong, but this wrongness is not recognized or readily

³ In the “standard theory” the motivation of whistleblowers is “to save the[ir] organization” [Boatright 2009, 88].

⁴ This is a crucial part of the definition of whistleblowing: “the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action” [Near & Miceli 1985, 4, as cited in Kusari 2015, 36].

revealed; otherwise, it would not be whistleblowing. And it should be aimed at counteracting and/or remedying this wrong.

However, it is not the wrongness contained in the information that makes revealing it to be an act of whistleblowing. A policeman publishing information about a crime organization is not blowing a whistle [Davis 1996, 87]⁵. In this case, he might be warning us about something dangerous and wrong, and he is entitled to do that. Even a criminal revealing information about a crime syndicate is not a whistle-blower [Davis 1996, 88]⁶ (but may be regarded as a traitor). The reason for that is in the fact that neither disobedience nor whistleblowing represent resistance to something imposed by force; it has to be *voluntary*. Whistleblowing must be taken from *within* an accepted institutional scheme which, in principle, must be taken or perceived as *their own*; whistleblowers do not act *against* their organizations, or their former organizations. Whistleblowers are not, or do not perceive themselves to be, traitors (although they might be seen as such by others)⁷. Both disobedience and whistleblowing occur only when there is an *established obligation* to obey or to be loyal (and not to reveal such information as “should not be revealed”). If you disobey an order issued by someone who has no right to issue such an order, this will not be a case of disobedience. If you reveal unpleasant but important information about your competition, it might, in some circumstances, even be a heroic act; but it still will not be an act of whistleblowing. For something to become an act of disobedience, it must be a breach of an obligation, established and presumably accepted as generally valid and legitimate.

There is a subtle line here, between disobedience and whistleblowing: in neither case is the agent cardinally distanced

⁵ Cf. [Beauchamp & Bowie 2004, 298].

⁶ Cf. also in [Beauchamp & Bowie 2004, 299].

⁷ See for example what happened to a high-profile whistle blower, Roger Boisjoly: “Boisjoly had to say goodbye to the company town, to old friends and neighbors, and the building rockets; he had to start a new career at an age when most people are preparing for retirement” [Davis 1996, as cited in Beauchamp & Bowie, 2004, 300]. Or: “Although widely lauded for his courage in alerting the National Aeronautics and Space Administration and his company to the dangers in the design of the space vehicle’s booster rockets and for his frank testimony to a presidential commission investigating the accident, he has paid a terrible personal price for his actions. He was ostracized by most of the 1,600 residents of Willard, Utah, where Morton Thiokol is based and where, just three years earlier, he had served as mayor. And his life at Morton Thiokol, which made the faulty booster rockets, became unbearable” [Pennisi 1990].

from the scheme that s/he used to accept before. On the contrary, s/he does something that usurps the entitlement to authorize dissent, as disobedience *per se* is not rebellion. Whistleblowers are not hostile toward their organization, which is at stake. Acceptance, at least as an official attitude, is supposed to be there all the time – producing a conflict and subsequent reversal of loyalties and leading, by assumption or in the hope, to a temporary usurpation of the position of the one who feels *entitled to refuse* obedience; or to reveal information entrusted, or, as a member of the organizational scheme, officially acquainted with. However, at the same time one feels that s/he *should* disobey or blow the whistle for the very same reasons that allegedly require obedience or loyalty. The reasons to disobey or blow the whistle are in conflict with the reasons to obey and be loyal; and the conflict is resolved so that the reasons to disobey or blow the whistle override the prior reasons to obey and be loyal. The conflict may take one of these two principal forms: it may be a conflict of duties or a conflict where on one side there is an obligation and on the other side – an interest (this is the case where the motive for whistleblowing consists in avoiding complicity in a crime, or where the fear from being caught in an illegitimate activity is greater than the fear of one's superiors; or just the desire not to be involved in what one considers to be illegal or immoral). In any case, these whistle-blowers assume that whistleblowing is better or even more truly loyal than not whistleblowing.

To put it succinctly, there typically occurs a kind of paradox here: the agent is not attempting to rescue himself/herself from a risk or danger (which often could be done by concealing), but (temporarily?) takes a position of entitlement to do what s/he is not entitled to. S/he “takes the charge” (or even command, if I may say so), and takes it ultimately and, though unauthorized and presumably a weaker party, s/he still acts contrary to what was expected or required before. There is a requirement and expectation for the agent *not to do or to act* in the way s/he decided to, and this requirement/expectation comes from the official body toward which there was a formally established obligation and official duty to obey. Furthermore, the “party” towards which there was an obligation must be *their own* organization and their own superiors, the ones toward which or to whom that obligation is directed.

The motives for whistleblowing can be different. The most common one is probably an attempt to protect *higher goals and values* from a risk or an attack based on some *lower* justificatory reasons, like the

duty to keep orderly discipline. This is an attempt to be loyal to what is considered to be more important than expected mechanical loyalty, and so essential that other interests must be regarded as less important and readily sacrificed for the sake of this higher goal. Speaking in hierarchical terms, this implies a need to sacrifice the interest of what is lower in the hierarchy for something higher. For example, one may believe that the long-term interests of his business should be protected by whistleblowing, at the cost of disobedience or disloyalty to interest that are regarded as lower (in the hierarchy of values). The hierarchy of values implies a hierarchy of loyalties, and a need – and justification – to sacrifice the requirements of lower loyalties to those of the higher ones: self-interest can be sacrificed to the interests of one's group, then to the interests of the unit/department, then to one's military regiment, then to one's country, and finally to mankind, or to the requirements of the moral law.

The whole picture is not that simple. There are other motivating reasons, such as a desire to avoid harm to legitimate important interests of others, either general or personal. It might be harmful for one's personal integrity to obey or keep silent and not become a whistleblower. Preventing harm is also powerful motivation, as well as performing one's legal or moral duty, or, again, avoiding complicity. The motivation might be mere desire to warn against potential harm, (which would happen if you obey) and the alternative to silently proceed with your work and not do any whistleblowing.

Of course, we may look at this from another angle. We may ask if preserving your conscience is just another selfish motive, or if a desire to protect the law and morality entails acting as a hidden policeman, or if trying to avoid complicity in a crime or wrongdoing is a move to avoiding responsibility. Which of the possible "angles" is the most appropriate, is quite important in the case.

* * *

Another difficulty is the overall context of *uncertainty*. Many of the listed parameters are often unclear or hard to prove (or at least not known at the right time). Our fallibility and vulnerability – as two basic features of the human position in any relevant moral situation, as mentioned – complicate the problem even further: *ignorance*, or *lack of adequate knowledge*, is not a good basis for courage or wisdom. Fallibility implies a possibility that you might be wrong about what you think you know. There is a risk of not knowing all that is relevant,

in regards to the quality of a decision someone else has made, which then affects your position in the context of your established obligation to be loyal and to obey rules. The facts you assume may be quite true, but still be only a fraction (and, on the top of that, a less important and irrelevant fraction) of the information needed to make the right decision.

However, in situations when this is not at all an issue – when the prospective whistle-blowers have all the required information at their disposal, and when they are also competent to assess all the risks – the dilemma might still remain. In this case, fallibility will be directly connected with vulnerability: even if you are right, you may not be able to prove it, or to know whether you will be able to do so. The prospect of success might be rather slim. Furthermore, vulnerability implies that you might suffer even if you *are right and can prove it*. Whistleblowing is not needed wheremere information on wrongdoing is sufficient to prevent and correct it. Wrongdoing is never accidental, it is usually either intentionally self-interested or malicious activity or an activity motivated by a sincere belief to be the right one. The former case is morally and personally simpler but not necessarily easier to accomplish. The latter one might be rather complex and brings yet another factor into play – *competence*. If your superiors, as it was in the case of the Space Shuttle *Challenger* disaster in 1986, think they know better, the hierarchical order and their rank in that order might make the case very difficult. Whistleblowing happens when there is opposition to the proposal contained in whistleblowing.

Opposition is often followed by counteraction. Many prefer the strategy of shooting the messenger instead of coping with the uncertainties of solving the problem⁸. Even after successful whistleblowing, and for a long time after that, whistleblowers face a serious risk of retaliation. After harmful and presumably confidential information is released, the “attacked” party may try to cover it up, redirecting the attack at the whistleblower rather than solving the problems exposed by the party’s action. And very often, there will follow overt retaliation (if the cover-up process allows this). In some cases, the whistleblowers may even get arrested after reporting corruption [Walden & Edwards 2014]. In this context, it might look questionable to insist on using all internal

⁸ “Many IGO managers attempt to ‘shoot the messenger’ rather than address his or her substantive disclosure” [Walden & Edwards 2014, as cited in Kusari 2015, 38].

channels⁹ before whistleblowing – this seems to be a rather empirical issue. We can only imagine how many attempts of whistleblowing have been prevented. In a notorious whistleblowing case in the 1970s, Frank Camps, who tried to rectify a life threatening flaw in the Ford Pinto cars which resulted in up to 180 road deaths¹⁰, first attempted all available internal channels; but after the case finished in a scandal, he was forced to resign and was never again able to find a job in the field (not only in his previous company, but in the whole professional area). Another case was Roger Boisjoly, who tried to warn that launching Space Shuttle *Challenger* 1986 was too risky: in the crucial part of making decision he was first advised to change his “engineer’s cap” to an allegedly more proper “manager’s hat;” but after the disaster itself he faced ostracism and it became impossible for him to continue working in the same field. No one wants to hire a whistle-blower¹¹. All this indicates a need for a stronger and better-defined protection for whistle-blowers, and this is certainly a relevant and important part of the responsible regulation of whistleblowing.

3. Conditions for justified whistleblowing

Now we can ask where are the limits, or demarcation lines in this sphere – the *limits of obedience and disobedience*. A provisional, highly theoretical answer could be that a *liability to one’s obligation expires when that obligation is overridden by another, stronger, obligation*. But in a practice this might be very obscure and hard to determine. Disobedience, and for that matter also whistle-blowing, is always a *violation of a previously established obligation and expectations built on that*. Here we have a specific *asymmetry* at stake: the otherwise legitimate and justified order is perceived as wrong, impermissible, or even illegal – but this is not obvious, or at least is not obviously visible, besides also usually being hard to prove as such. The loyalty is, or was preserved, but its validity has become questionable. If there was no loyalty at all (from the outset, or if it expired in the meantime (always

⁹ For Boatright this is one of the most basic conditions for justified whistleblowing; cf. [Boatright 2009, 98].

¹⁰ He admits to be “an accomplice in those actions”, but “want to feel [to have done] everything in [his] scope of influence to prevent such a tragedy.” Cf. “To Design a Pinto”, in A. P. Iannone [Iannone 1989, 216, 218]. Cf. also R. De George [De George 2006, 298].

¹¹ For more details cf. Elizabeth Pennisi [Pennisi 1990]; Derek Lowe [Lowe 2012]. Cf. also Mathew A. Foust [Foust2012, 164ff].

with the assumption that loyalty is valid only where the source of loyalty itself is legitimate), it would be something different. That is also why a denunciation of a member of a criminal clan, strictly speaking, is not whistleblowing – because of this normative assumption that loyalty is due only to legitimate authorities.

It seems that whistleblowing requires some conditions for its proper articulation, and I would suggest ones that appear most important.

Competence comes first. It is normatively presumed. Someone who is seen as incompetent cannot be a whistleblower. A whistleblower must have the competence to understand the importance of the disclosed information, the importance which makes the seriousness of the situation (e.g., mere guessing that “something important is going on” is not an act of whistleblowing). This is also valid in disobedience: someone who is not competent to obey cannot disobey. However, there is a thin line between incompetence and ignorance of what is relevant and what is not. Ignorance might be excused as it can be non-culpable¹², but normally not in this kind of cases. Ignorance as an excuse would destroy any possible aspiration for justification of the act as whistleblowing or disobedience. Competence functions as the indicator that the agent knows well and precisely what s/he is doing.

The second condition for a valid articulation of whistleblowing is *good intent*. Good intent is a prerequisite condition for any act of disobedience and whistleblowing to have a valid aspiration for justification. Good intent does not depend on factual truthfulness of the information revealed or on possible *ex post facto* justification of the act of disobedience. It does not secure them as being right, all things considered. But without good intent, they would be plainly wrong and lose the validity of the aspiration to justification. Part of this condition is that the agent does not desire to achieve something for oneself (acquiring greater power, imposing on others one’s own will or just one’s own belief, including one’s own belief in what is right). So, malicious intentions are per assumption excluded. Otherwise, whistleblowing would shrink to *denunciation*¹³. If denunciation, or some other bad intention of that kind, results in a good effect, it still

¹² In another context cf. J. Babić [Babić 2007].

¹³ Cf.: “There have always been informers or snitches who reveal information to enrich themselves or to get back at others. However, [...] whistleblowers are generally conscientious people who expose some wrongdoing, often at great personal risk” [Boatright 2009, 89]

will not be articulated in a structure defined as a valid case of whistle-blowing, nor bear any fruit, as the aspiration for justification could not be established. However, the motive to avoid complicity might be considered a valid reason to aspire for justification, especially after the deed, when the wrong has already been caused [Davis 1996]. But the need to avoid complicity must not be the only reason in such cases. Besides, complicity in wrongdoing is an empirical matter. Simple avoidance of a complicity charge in an immoral or illegal act that has already been committed, as is found, e.g., in mobsters who turn state witnesses, cannot be treated as whistle-blowing.

The third condition, for both whistleblowing and disobedience, is the existence of some *real risk*. Without risk, this would not be a type of dissent at all. Again, per assumption, this cannot be a kind of a direct (visible) investment into one's own interests (e.g., one's prestige). If there is no impending risk, this would be something different, like correction of a perceived error. The fact that the "other party" is one's superior would not matter. Superiors normally cooperate in a fight against danger, e.g., in accidents.

Lastly, and related the previous one: the agent must face a *dilemma* of how far s/he should go. S/he must know that the action is risky and uncertain, not only in terms of possible retaliation but also in terms of possibly being wrong (or incapable of proving she is right). S/he is necessarily *involved* and determined in the intention (revealing some accidentally obtained information would hardly be designated as "whistleblowing," and accidental revelation of such information would certainly not be whistleblowing). Many who complain for various, and often good, reasons stop at the point when raising an internal issue gets to be real whistle-blowing. This condition might be articulated as the last resort solution: missing those first, internal, steps before going to public is certainly not a contributing factor in designating an action as "whistle-blowing." Part of the definition of a whistleblower is that such people do not intend to become whistleblowers – on the contrary, it must be supposed that they would rather solve the problem without it (but they cannot). Whistleblowers are not, or at least should not be, spies, they always have to be more insiders than outsiders. Spies are not whistleblowers and cannot be designated as such.

All of these conditions are complex and interconnected. Competence presupposes adequate knowledge of the problem and also the capacity of effectively applying such knowledge. Good intent presupposes

competence, as without competence it would be void and without any direction (which must be a part of what intention is).

4. Duty, right, or supererogation?

There are some further issues of interest in conceptual and ethical analysis of whistleblowing and disobedience. Firstly, the issue if whistleblowing, and also justified disobedience, is a matter of *rights* or more than that, matters of *duty/obligation*. It looks as an issue of minor importance; but it is not so. For example, if whistleblowing (and other cases of justified and risky acts of disobedience) involves a significant amount of *sacrificing* something otherwise valuable and important for the agent, this may be too much to require or even expect as a part of duty. The acts of whistleblowing and those acts of disobedience (relevantly similar) would be *supererogatory* acts, acts beyond the duty, and could amount at most to be *rights*, not duties. On the other side, if some acts of whistleblowing or disobedience are actually duties, they would be more than mere rights; they would be mandatory, not a matter of voluntary deliberation.

A whole range of articles of law, including protection of whistleblowers and dissenters, depends heavily on this. Whistleblowing should be regulated and protected even if it is only a matter of rights; but if it is a matter of duty, the regulation and especially protection gets direct importance and sensitivity. You cannot *require* something which is not legally regulated, and without providing participants in it with definite protective measures. But on the other hand, such a solution has some far-reaching consequences regarding the articulation of trust, confidence, and loyalty: all those notions become more relative as the agents gain *additional* obligations and duties which turn them into something akin to secret police members, or even possibly spies. The social price of such solution may be too high, even if the solution is morally correct.

But if whistleblowing and disobedience (when justified) are considered to be rights but not duties, other important consequences follow, especially at the level of responsibility. Having a right also presupposes a right not to exercise that right. That lessens or precludes the strict imputation of responsibility because the decision would be in the purview of the agent who is free to decide at his will. On the other hand, the degree or level of praise would be affected: you do not praise someone for fulfilling his/her duty as you would with something done beyond the scope of duty.

Still, we can ask how something as important as whistleblowing can be only a right, without being a duty [Davis 1996, 96]?¹⁴ The issue is complex. For example, we might say that the right to refuse violating a law implies that an individual who refuses to obey an order because they deem it to be illegal must proceed at her own risk, while the duty to do so implies existence of a right to be protected from the uncertainties/risks implied by the act. However, the uncertainties are not controllable, partly because of vulnerability, partly because of unpredictability of the outcome, and also because of some stable and enduring features of expected reality as a matter of established facts. For example, can we “expect a whistleblower to go back to work for a boss whom he or she has just defeated in a lawsuit” [Devine 2015, 14].

* * *

Obviously, whistleblowing is a very complex issue. We may just mention a few more points, in addition to those already explored (or at least mentioned), without going into detail.

It seems that the major issue is a legal status of whistleblowing. How far should regulation of whistleblowing go? There are many problems connected with finding a solution. On the one hand, there is an obvious need to protect whistle-blowers from retaliation and harassment. On the other hand, there is a danger of overprotection that can have many adverse effects, from decrease in work discipline and loyalty, to endangering trust and confidence, to giving a stimulus to bad sides of human nature to show their ugly face (malice, envy, resentment, expectation of personal advantage or prestige, etc.). Both insufficient protection and overprotection have their deficiencies and shortcomings. Furthermore, there is one neglected problem: whistle-blowers are often well protected “on paper”¹⁵, or supported and praised, even eulogized, in public – but still harassed and persecuted by those in power, the real decision-makers. One of the issues discussed is using the right channels for disclosure, and requirement to *first seek* a resolution within the organization, going to the public (or outside the organization) only when there is no available or effective channel inside. This is an important part of the issue, although it might be quite independent from the extent of the problem. There are several differ-

¹⁴ Cf. “How whistleblowing can be morally permissible without being morally required?” [Beauchamp & Bowie 2004, 304].

¹⁵ Cf. Tom Devine’s observation: “Employees have risked retaliation thinking they had genuine protection” [Devine 2015, 7].

ent moral and legal bases for regulation and protection of those who disclose guarded information: from the importance of preventing possible harm, protection from unjustified treatment at the working place (harassment, mobbing, unjustified dismissal, ostracism, retaliation after dismissal, etc.), down to the freedom of expression. All these moments are different, sometimes very different from one another. Freedom of expression is a particularly sensitive and complex matter. As one of the basic human rights, it has many legitimate restrictions, such as safety, public and other, prevention of crime, business or official secrets, discretion, decency, etc. On the other hand, there are legitimate rights of the public to be informed. Of course, there are other relevant and important moments in dealing with whistleblowing. A very important one, the one that legislators should have in mind in construing laws that might produce false hopes and an even more false feeling of security, is the prospect of the whistleblower's further life after whistleblowing. Adverse psychological and social impact on the wellbeing and health of whistle-blowers deserves appropriate empirical exploring. Such impacts are not restricted to the whistleblowers themselves but also affect their families. One of the most imminent is losing the job and subsequent unemployment, but this may be accompanied by a prospective permanent inability to find a job in the field. Health and self-esteem can be compromised, followed by feelings of insecurity and hesitation. This might lead to a nervous breakdown. After some time, whistleblowers can "lose their confidence even to deal with this situation" [Kenny 2015, 75]. What comes next is poverty and humiliating financial struggles [Kenny 2015, 76], and finally a social stigma [Kenny 2015, 77]. The problem can become a matter of life necessities. "[O]n the one hand, I wanted truth and justice. On the other hand I had a family and a future to consider" [Kenny 2015, 78]. A desire to return to normal life is quite natural in such situations, which leads to "temptation to quit the whistle-blowing process" [Kenny 2015]. Other, perhaps less important, moments in dealing with whistleblowing are cross-border disclosures and the legal (and also moral) heterogeneity in how it is perceived and dealt with. In the absence of a world government, it is not possible to have a unified legal approach, which destroys part of moral plausibility of the matter. In the context of more and more prevailing multinational environment in business and military spheres, this appears to be more and more relevant. There is a question that

can be raised: “whether there is a need for an international convention which provides protection for whistleblowers”¹⁶.

5. Disobedience and whistleblowing in military context

In military contexts, we find similar structures requiring discipline, obedience, loyalty, and the same set of virtues that we find in all institutions and organization that depend on hierarchy. We may expect somewhat higher strictness than in regular “civilian” contexts, but in democracies, and ever more privatized warfare, armies are becoming very similar to corporations. Disobedience faces the same or similar difficulties in its aspiration to be justified or obligatory. I will again very briefly enumerate what I think to be the most, or some of the most, important issues in this subfield, without going into deeper analysis or details. It goes without saying that all of these issues are important, complex and deserve much more detailed exploration. Typical military cases might be divided into three following types:

1. The easiest case is disobedience of a clearly, “manifestly” unlawful or illegal order, or one that is obviously not related to the purpose at stake, as defined and reasoned in the military. Many codes of conduct contain clauses demanding disobedience of “manifestly illegal” or immoral or senseless orders, sometimes even accompanied with a directive to immediately take appropriate measures against the issuer of such an order.

2. A more complicated case is incompetent or misplaced orders which are not clear enough; such an order might be very hard to follow, but as it is not “*manifestly illegal*” it might be very difficult to refuse. Taking fallibility (and also vulnerability, and the presence of possible disguised forms of unknown risks and threats potentially created by an act of disobedience) is an extremely muddy terrain. Discipline certainly is not the supreme military virtue, but it is still an important one, and maintenance of discipline is vital for military effectiveness. How serious should an issue be, to justify disobedience? Furthermore, how can you *prove* that you were justified in refusing an order? Even if you *can* prove it, you cannot know in advance that you can do it. These are two different problems: the knowledge of illegality of an order does not imply the knowledge of how to prove that illegality in a court-martial, and even less so the knowledge how to carry out the

¹⁶ “Multi-national agreements already exist in global aviation, administered by the International Civil Aviation Organisation, which is a UN agency” [Hyde & Savage 2015, 28].

process in reality. The value of orders and proper discipline requires obedience even if the orders are not very well defined: the orders have to be *very improper* to qualify for any justification of disobedience.

3. Immoral but legal orders are especially difficult cases. There are two cases in this set: one where the legality of the order is not clear (the order *might* be legal) but the case is clearly immoral; and second, a competent and clearly legal but still immoral order. From the moral point of view, the second situation presents the greatest problem. Such cases might become tragic, and they justify measures of legal protection of the disobedient with the same arguments that justify protection of whistle-blowers. The process relies on the (normatively necessary) assumption that law and morality are not the same – that it is possible for an order to be legal but morally wrong. It seems to me that this is one of the most striking symptoms of our fallibility, one that leads to some of the most difficult cases of vulnerability in all human condition.

Conclusion

In conclusion, we can say that objectivity requires approaching each case separately, one by one. This movement to objectivity is an empirical matter, and because of that, it is extremely difficult to formulate general governing principles to differentiate between justified and unjustified cases. Whistleblowing should not become an act of denunciation, which, taking human nature into account, is not uncommon or unexpected. This, among other things, gives a sort of normative priority to those “attacked” by whistleblowing, or to those who issue orders that are not obeyed. The implication is that it could be very dangerous to give strong protection to whistle-blowers, similar to those who are disobedient: *they* should justify what they are doing, normally, not those who are *probably* “guilty.” In any case, the *presumption of innocence* usually resides with those who are normally stronger. This might look unjust, and often really is so, but this asymmetry cannot be overcome by strictly legal regulation. This is the price of fallibility. The result is a significant vulnerability that requires increased accountability and vigilance, i.e., responsibility based on seriousness. Such decisions must always be made anew, and it is impossible to substitute them with a Manichean black-and-white theoretical or ideological scheme that would resolve all conflicts (and wars) before they happen.

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