Whistleblowing and the Bioethicist's Public Obligations

D. ROBERT MACDOUGALL

Abstract: Bioethicists are sometimes thought to have heightened obligations by virtue of the fact that their professional role addresses ethics or morals. For this reason it has been argued that bioethicists ought to "whistleblow"—that is, publicly expose the wrongful or potentially harmful activities of their employer—more often than do other kinds of employees. This article argues that bioethicists do indeed have a heightened obligation to whistleblow, but not because bioethicists have heightened moral obligations in general. Rather, the special duties of bioethicists to act as whistleblowers are best understood by examining the nature of the ethical dilemma typically encountered by private employees and showing why bioethicists do not encounter this dilemma in the same way. Whistleblowing is usually understood as a moral dilemma involving conflicting duties to two parties: the public and a private employer. However, this article argues that this way of understanding whistleblowing has the implication that professions whose members identify their employer as the public—such as government employees or public servants—cannot consider whistleblowing a moral dilemma, because obligations are ultimately owed to only one party: the public. The article contends that bioethicists—even when privately employed—are similar to government employees in the sense that they do not have obligations to defer to the judgments of those with private interests. Consequently, bioethicists may be considered to have a special duty to whistleblow, although for different reasons than those usually cited.

Keywords: whistleblowing; role of bioethicist; professional duties; public interest; organizational ethics; political ethics

Introduction

Although bioethics began as a kind of extrainstitutional social critique, mostly practiced by academic theologians and philosophers, bioethicists have steadily made their way to positions of authority within institutions, obtaining professional responsibilities on research ethics boards, in hospitals and hospital systems, or at private corporations. As a result of this increasing organizational importance, bioethicists are increasingly placed in positions in which they have firsthand knowledge of activities in their employing organization that pose a threat to the public and/or involve wrongdoing. Although it is ideal to avoid putting the public at risk by resolving issues through channels internal to the institution, this approach may be impossible in some situations. In this case, bioethicists may be faced with a difficult decision about whether to go outside their employing organization in order to bring the issue to public attention.

A bioethicist who contemplates such action might be considered a potential whistleblower. For the purposes of this article, we will understand as a "whistleblower" someone with privileged access to information about an organization—usually one for which he or she works—who discovers that the organization is exposing the public to an unacceptable risk or is involved in serious wrongdoing, and takes this information outside of that organization.[1] Given the privileged access bioethicists have to sensitive information in the workplace, we might expect that bioethicist whistleblowers would be rather common.

Cambridge Quarterly of Healthcare Ethics (2014), **23**, 431–442.

doi:10.1017/S0963180114000103

However, it is not just the institutional position of bioethicists that makes them seem likely whistleblowers. The fact that bioethicists are charged with overseeing the ethics of various operations within their institutions intuitively suggests that they may have special duties or, perhaps, should be held to more stringent ethical standards than others. The special responsibilities the bioethicist has for institutional oversight of ethics might seem to indicate, for example, that although we would excuse an average worker who does not whistleblow for fear of losing her job, we would not excuse the bioethicist who refrains from whistleblowing for this reason. In other words, the bioethicist's unique role-related duties also seem to indicate that bioethicists should publicly reveal a threat of public harm or wrongdoing somewhat *more* frequently than those in other professions. The fact that few stories about such individuals exist has caused more than one commentator to wonder whether the bioethics profession has failed to live up to its billing.[2]

In this article I partially explore the larger question of whether bioethicists have special ethical duties by examining whistleblowing as the sort of virtuous action that bioethicists might have special duties to perform. In the first section I explain why it is difficult to show that bioethicists have special moral or professional obligations per se. In the second section, I discuss what it means to have a moral obligation to whistleblow and argue that such an obligation is best understood as one of two competing obligations in a moral dilemma. This dilemma involves a prima facie obligation to the public in conflict with a prima facie obligation to an employer. In the third section, I explain why at least one group of employees—namely, public servants—cannot be considered to experience whistleblowing as a moral dilemma, because their moral duties to the employer and the public cannot (by definition) conflict. In the final section, I argue that bioethicists, similar to public servants, should not be understood to experience opportunities for whistleblowing as a moral dilemma, because the obligations that bioethicists have toward their employers include obligations to make independent determinations about the public interest. As a result, the intuition that bioethicists have a special duty to whistleblow is vindicated by the fact that, although bioethicists have a moral obligation to the public, they are not—unlike most other kinds of employees—bound by any competing obligations to defer to the judgments of their employer about what constitutes the acceptable limitations of private interests.

The Elusive Source of Special Obligations for Bioethicists

The idea that ethicists ought to be held to a higher standard than others is an intuitively attractive one. Benji Freedman once evocatively compared the unethical ethicist to the unshod cobbler's children.[3] Just as it is possible that the cobbler's children would go unshod, so it is possible that an ethicist might lack personal ethics. But something, in both situations, seems to be quite amiss.

It is, however, surprisingly difficult to say why ethicists ought to be held to a higher standard than others, or why personal ethics is more central to the ethicist's role than, say, to that of the cobbler.[4]

Neither moral theory nor professional ethics would seem easily capable of justifying this position, for example. Moral theory seems, rather than arguing for this position, to argue against it. Insofar as we understand morality to be something that binds persons as such, it would seem that moral obligations are just those

things to which we have a duty by virtue of our humanity. Having professional responsibilities in ethics could not possibly add weight to these obligations, because professional obligations are not the grounds for distinctively moral responsibilities.

Those of a different philosophical persuasion might appeal to the consequences of bioethicists behaving unethically. Although there may be no specific duty to refrain from preaching just because you don't practice, those placed in positions of influence—and *especially* those given a responsibility for ethics education or regulation—are more likely to lead others astray if they don't practice what they preach.

This seems initially plausible. However, if influence is really the issue, this argument wouldn't show that ethicists had some *special* obligation, I think, so much as that they just have an obligation that is proportional to their personal degree of influence. It might turn out, for example, that although bioethicists do indeed have more responsibility for behaving ethically than, say, a garbage collector, they would have somewhat less responsibility for this than a professional athlete or rock star, who undeniably have more personal influence over others than most ethicists do. So this argument would not succeed in establishing a special obligation for ethicists so much as it would establish merely that responsibility is proportional to influence. And it might turn out that professional ethicists are not especially responsible under this criterion.

Perhaps we could clarify that the responsibility to behave ethically is a professional, as opposed to moral, obligation: *bioethicists have a professional obligation to act ethically in their personal lives.* In which case, we would have to ask about the source of such a professional obligation, especially in bioethics, which as yet is only a "profession" in the loosest possible sense, with no established accreditation or code of ethics. I take it that this was part of the reason that Freedman advocated for just such a code and some kind of professionalization.[5] A professional obligation requiring bioethicists to behave in certain ways in their personal lives is a plausible, and for many people attractive, option. But insofar as such obligations are understood to be created by professional organizations, no such obligation can be said to exist in bioethics.

This does not, of course, show that bioethicists have no special obligations; it just shows that grounding an ethicist's heightened obligation to remain personally ethical—such as a heightened duty to whistleblow, even when such a decision might be personally costly—does not seem easily done on the standard bases of moral or professional obligations. If this is so, why have many found it plausible that bioethicists' obligations are different from those of other employees? In order to formulate a clearer picture of why bioethicists might be thought to have a special obligation to whistleblow, it will help to first examine the nature of general obligations to whistleblow.

Whistleblowing as an Ethical Dilemma

Although it may seem initially that there is a straightforward moral duty to whistleblow, most commentators have agreed that the opportunity to whistleblow usually presents itself as a moral dilemma, that is, a decision that weighs two competing prima facie moral obligations or loyalties.[6]

There are two major views of the competing obligations or loyalties at stake. Before considering what the two views have in common (the idea that there is an

obligation to one's employer), we briefly consider their differences (whether the competing obligation is an obligation to prevent public harm or an obligation to avoid complicity in wrongdoing against the public).

The Prima Facie Obligation to the Public

That whistleblowing is required by one's obligation to prevent public harm is an intuitive position. Whistleblowing to prevent public harm seems to bind together numerous kinds of whistleblowing cases, including revelations of environmental danger (e.g., the Alberta oil sands case), undisclosed risks linked to a trial drug (e.g., the Nancy Olivieri case), fraud in accounting practices (e.g., the Enron scandal), and physical safety concerns (e.g., the *Challenger* case).

For our purposes, we can understand someone to be a member of the "public" when they have not consented to undertake any risks other than those that are ordinarily understood to befall members of the public. For example, someone who agrees to drive as a pizza delivery person consents to all the risks normally associated with driving many hours on public roads, even if he or she has not explicitly agreed to these. These risks are well-known, and usually assumed consented-to by members of the public that venture out onto public roads. The same pizza delivery person would be considered an at-risk member of the public if it turned out that the car provided by the pizza delivery company was an especially dangerous one—for example, if it had not recently passed safety inspections—and the driver had not been made aware of this. Under these circumstances, the delivery person is subject to abnormal risks to which he or she has not consented. However, if the same pizza delivery person driving the same unsafe car had consented to unusually risky circumstances, he or she could no longer be considered an at-risk member of the public, and the interaction between the pizza person and the employer is morally different because it is the result of private agreement.

What I will call the *public harm theory* of the whistleblower's obligation to the public understands the major impetus for whistleblowing to come from an *obligation to warn* members of the public about actions that put them substantially at risk of harm, that is, at greater risk than would ordinarily befall members of the public. These potentially harmful actions may be clearly illegal or fraudulent, or their wrongfulness may be unclear, for example, in the case that it is unclear whether the risk to the public is significant enough to say that members of the public are being exposed to a truly unusual risk of harm of the sort to which they ought to be required to give consent.

Under this public harm theory of whistleblower obligations, a major question is whether whistleblowing is ever morally required.[7] This is so because it is questionable to what extent we have a duty to warn others. For example, the major proponent of this view has stated that in some cases, whistleblowing will be required because "as a general rule, people have a moral obligation to prevent serious harm to others if they are able to do so and can do so with little cost to themselves."[8]

However, in some major cases considered whistleblowing, it has been unclear that the whistleblower accomplished (or even intended to accomplish) the prevention of serious harm to others.[9] Take, for example, the case of Nancy Olivieri. During trials of a drug she was studying, it became apparent to Olivieri at first only that

the drug was ineffective. Olivieri subsequently, and despite threats of legal action from the drug manufacturer and trial sponsor, disclosed this information to the research participants in the study by revising the consent form. Olivieri did not campaign to stop the trial altogether, nor did she claim that the harms presented by the trial drug would necessarily outweigh the benefits for the individual patients. Rather, Olivieri sought to *inform* the research participants about apparent decreased effectiveness in some persons and actually desired to continue the trial in order to continue searching for the reasons related to loss of effectiveness.[10] In many cases, it seems that preventing serious public harm is not even contemplated by the whistleblower.

It is also unlikely that whistleblowing ever involves only "little cost" to oneself. In the Olivieri case and many others like it, the whistleblower in question suffered major personal and professional setbacks as a result of the whistleblowing actions. Many authors (including De George himself[11]) have noted that such large personal costs are the norm, rather than the exception.

On the public harm theory of whistleblowing, then, whistleblowing is morally required when it prevents public harm and poses little cost to oneself. But if it is true that whistleblowing sometimes does not (and is not intended to) prevent major public harm, and also that it often poses major costs to oneself, it becomes difficult to explain why whistleblowers feel such a strong moral compulsion to whistleblow. At best, many instances of whistleblowing are morally permissible but would not be so strongly morally required as to justify risking one's career and personal savings.

For just these reasons, another view of the competing obligations at stake in cases of whistleblowing has been proposed by Davis.[12] In Davis's *complicity theory*, the duty to whistleblow is binding because the whistleblower is a member of the organization involved in wrongdoing. The whistleblower's obligation derives from his complicity in the wrongdoing perpetrated by the organization of which he is a member. We ordinarily have an obligation to set right any wrong we have caused (or contributed to), and this is the source of the obligation to the public. Notably, this view of the source of obligation makes no specific claim about a risk of public harm that must be avoided. By redefining whistleblowing in terms of wrongdoing, Davis includes, but does not limit his definition to, cases that put the public at serious risk of harm. Davis' account successfully explains why it is that whistleblowers often feel a strong sense of duty to blow the whistle: they do in fact have such an obligation, even if relatively little harm is anticipated to come from the wrongdoing. On this view of whistleblowing, there is a strong (albeit prima facie) obligation to whistleblow because of one's connection to the organization involved in wrongdoing.

Both the public harm and complicity theory, then, invoke a duty to the public. Under public harm theory, this duty involves preventing harm to the public, whereas under complicity theory, the major impetus for whistleblowing is a responsibility to avoid complicity in wrongdoing, which may or may not include reducing the prospect of harm to the public.

The Prima Facie Obligation of Loyalty to One's Employer

In both theories, the obligation to the public—whatever its nature—is juxtaposed against a moral obligation to one's employer.[13] The whistleblowing literature does

not frequently dwell on the nature or gravity of the moral obligation to one's employer. Perhaps the reason that the moral obligation to one's employer is not often considered is that most whistleblower actions entering the public eye involve an employer engaged in unequivocal wrongdoing. The impression that whistleblowing is only ever contemplated in situations involving unequivocal instances of wrongdoing may, however, be an artifact of several features of famous whistleblower cases. First, few jurisdictions protect individuals from the significant personal costs of whistleblowing, thus virtually ensuring that only those who have encountered grave wrongdoing will be motivated to persist in whistleblowing efforts. Second, the best-known whistleblowing cases are well-known usually because of the gravity of the wrongdoing they expose. That we are less familiar with cases of whistleblowing that did not expose great wrongdoing is the inevitable consequence of the fact that such cases are less interesting.

Not all cases of contemplated whistleblowing will involve instances of unequivocal wrongdoing, however. Both the public harm theory and the complicity theory will allow for a greater-than-normal risk of harm to the public as sufficient to give moral motivation to an act of whistleblowing. As I explained it earlier, the public is at risk to the extent that risks created by the organization's actions are more severe than those normally experienced by members of the public. This is a determination that is necessarily subject to interpretation, and it is not inconceivable that an employer and an employee will differ in their estimations of the degree and acceptability of some amount of risk to the public. Moreover, establishing whether some particular risk is unacceptable is often not even theoretically possible. A finding of negligence, for example, relies on the judgment of a group of jurors or a judge who are asked to consider whether some party had a duty of care and whether there was a breach of that duty. It is not always possible to prospectively determine whether these parties will find a duty of care, particularly if the activity in which the company is engaged has not been explicitly considered in previous case law. In the event that someone actually suffers a harm (the inevitability of which, when prospectively discussing risk, cannot be a given), a jury may end up deciding that the organization had no duty of care and that the member of the public who suffered the harm should have recognized the risk and avoided it.

Given that perceptions of wrongdoing can sometimes result from misunderstanding, differently estimating, or overestimating the seriousness of a risk, are there morally relevant reasons for employees to err on the side of confidentiality, or to defer to employer estimations of risk, when the employee and employer's estimations are discrepant? Given the somewhat subjective nature of determinations about acceptable risks, there are reasons for thinking both that there is an obligation to keep information about one's employer confidential and also that there are relevant reasons to defer to employer judgments about the acceptability of a risk to the public.

The obligation to keep information confidential. First, when an employee is hired, it is often not explicitly stated but rather presumed that the employee and employer enter into a relationship of mutual loyalty. The existence of mutual obligations of loyalty is indicated, for example, by the fact that employers cannot publish confidential details about employee health, and employees cannot share trade secrets with competitors. These obligations are not contractually identified but

rather considered implicit in the employer-employee relationship, and their breach is considered a tort.

Further evidence that employers trust employees to remain loyal is found in the fact that employees are granted privileged access to sensitive information in the first place. Employers would rightly be hesitant to hire employees that are likely, when in doubt, to undertake actions that will aid the competition. Even if only a small minority of cases that initially appear to be wrongdoing turn out to be cases in which the employee has misperceived the employer's wrongdoing, the fact that the employee may misperceive the situation should create a prima facie obligation to keep sensitive information about one's employer confidential.

The case for this obligation is made stronger by the fact that employers typically stand to suffer considerable harms as a result of whistleblowing actions. Whistleblowing obviously raises public awareness about the substance of the organization's wrongdoing and can create an impression in the public mind that is difficult to erase, even if the company is eventually vindicated. Moreover, the fact that the whistleblower had to go *public* suggests, whether or not it is true, that the company in question is organizationally corrupt. Employees would not bring an issue to public attention unless it at least seemed likely that the company's administration would be unwilling to hear the complaint or address it adequately.[14] The company and the individuals involved will also likely be subjects of intrusive investigations and forced to pay legal fees for defense.[15] All of this can occur even if, in the final analysis, the company was not at fault.

Reasons to defer to employer judgments about the acceptability of risk. Both theories allow the presence of a greater-than-normal risk of harm to motivate individual instances of whistleblowing. Consequently, both theories must sometimes rely on a prior judgment that some greater-than-normal or unacceptable risk exists. However, neither states who should make the determination that some risk is ultimately unacceptable.

In cases in which there is little precedent or it is otherwise not entirely clear whether or not a risk is unacceptable, who should make the determination? There are two reasons for thinking that employees should defer to the employer's determinations about the ultimate acceptability of risks. First, the employer may be better positioned to make such a determination about the acceptability of a risk. Employers often make decisions about risks advisedly, with knowledge of relevant case law, industrial or commercial standards, and advice from a legal team. Many employees will not be in such a position. Second, an employer usually has an interest in being careful in such determinations, because the employer will almost certainly bear the majority of the costs if the employer is finally held accountable at law. This is not to say that employees should defer to their employer's judgment when the risks to the public are obviously unjustifiable, just that it is plausible to consider employees to have a prima facie obligation to defer to employer judgment about justifiable risks.

The Moral Relevance of a Public Employer

All this is to say, then, that it is with good reason that whistleblowing decisions can often be considered genuine moral dilemmas, that is, decisions invoking competing ethical obligations. And indeed, if bioethicists experience whistleblowing

decisions as moral dilemmas, then I presume we could not say at the outset whether bioethicists have a special duty to whistleblow, because this would presume that we knew which ethical obligation is, in all cases, more morally weighty. And even if bioethicists have heightened duties toward the public by virtue of their work as ethicists (although, as I have argued, they do not), one would presume that they would also have heightened duties to an employer for the same reason. Consequently, we would expect no more instances of whistleblowing by bioethicists than by anyone else.

Not all employees experience opportunities for whistleblowing as a moral dilemma, however. The equation changes if the two parties to which one has competing obligations (the employer and the public) cannot be easily distinguished from each other. This is paradigmatically the case with public (or government) employees.

What is meant by saying that someone is a "public" employee? Under most theories of government legitimacy, governments derive normative legitimacy by serving the entire public. This may be construed primarily as serving the public by protecting its *freedoms* (as in most liberal theories of government), or as serving the public by promoting the public's *interests* or the *common good* (as is more often stressed in communitarian theories of government).

Now, it is certainly the case that governments do not always do a very good job of either protecting public rights or promoting public interests. But the important point is that public employers, under either theory of government (liberal or communitarian), only exert a distinctly *moral* claim on their employees insofar as they require those employees to fulfill their role as servants of the public. This is so because the government itself only gains moral legitimacy from serving the public, so government employees must also gain moral legitimacy from their role in serving the public. For public employees, then, one cannot distinguish between the legitimate moral obligations to the employer and the legitimate moral obligations to the public, because the moral obligations that the two impose on the public servant cannot, in theory, conflict. Because the obligations of the public servant are obligations to the entire public, questions about a moral dilemma, at least insofar as they presume obligations to promote the interests or rights of different parties, fall away entirely.

It is for this reason that the government "whistleblower" does not face a true moral dilemma that forces him to choose between an obligation to an employer and an obligation to the public. Insofar as either has a morally legitimate claim on his loyalty, it is coextensive with the claims of the other.

It is against this background that we can plausibly guess why a number of legislatures have moved to protect public-sector "whistleblowers" before private ones.[16] Insofar as public employees reveal corruption, wrongdoing, or risk of harm to the public, they are simply doing their job. Governments that pass legislation protecting public employees who expose risk or wrongdoing can expect public approval because governments are institutions that the public expects (rightfully) to serve everyone, not merely private interests. If it becomes public knowledge that a government has fired an employee for exposing governmental wrongdoing or actions that put the public at risk, a public scandal is created, because a government that fires someone who works in the interest of the public calls into question whether that government is really serving the rights or interests we suppose it should.

We can also see that the public employees who go to the public with information about an employer, while undeniably serving a vitally important function, can no longer be considered whistleblowers at all. The definition for whistleblowing given at the beginning of the article required that the whistleblower go *outside* his or her organization. But because the government official cannot really go outside his or her organization, he or she cannot whistleblow. By going to the public, such individuals merely approach their *actual* employer; they pursue channels internal to their organization, as it were, because they merely approach the party to whom they owe final loyalty, the public. Even when public employees skip steps prescribed in administrative regulations, their actions are more morally similar to those of the private employee who goes straight to the CEO of her organization than they are to those of the private employee who takes information about wrongdoing or risk straight to the media or a public official. That the public employee cannot really serve as a whistleblower is an artifact of the stipulated definition. But it points, again, to what I take to be the morally significant point: the government "whistleblower" does not experience the moral dilemma of choosing between two prima facie obligations. If, alternatively, we define whistleblowing to include pursuing internal channels (as some authors have), then government employees might still be understood as whistleblowers. But even if we change the definition in this way, the important point would remain that, however we define whistleblowing, public employees cannot experience a genuine moral dilemma between the legitimate moral claims of their employers and those of the public.

Bioethicists: Private or Public Employees?

This brings us back to the question of bioethicists and their special responsibilities. Need bioethicists, like private employees, consider potential acts of whistleblowing to invoke a moral dilemma that necessitates choosing between competing moral obligations? Or are bioethicists more like public employees, not bound by potentially competing moral obligations?

Because bioethicists find work in a host of different institutional settings, there will not be any straightforward answer to this question. Moreover, bioethicists' institutional arrangements are increasingly complex, involving multiple streams of funding from a combination of public and private sources. I do not expect to reach any final conclusion on this matter, but I do want to suggest some relevant considerations for several common employment arrangements of professional bioethicists.

At one end of the spectrum are bioethicists who are unequivocally public employees. I expect this includes bioethicists working for government agencies, state-funded academic institutions, and those at private institutions that are funded fully by governmental grants of some kind. The author of this article, for example, is currently in this position. These bioethicists actually *are* public employees, and so little further discussion of their obligations is necessary. They experience obligations only to the public, and insofar as they discern these accurately, these obligations will not conflict with obligations to their employer.

All the way at the other end of the spectrum are those ethicists employed by for-profit hospitals, hospital systems, or drug companies. It may initially seem that these bioethicists are identical to the average employee at a private firm. We should pause to consider this further, however.

It has been questioned before whether such bioethicists should be understood to merely play the advisory role that is sometimes claimed.[17] Although it has been claimed that a corporation's strong interest in receiving the best ethical advice available justifies sometimes hefty sums paid to consultants[18] or full-time hospital ethicists, it is likely that these organizations also benefit (whether consciously or not) from the appearance that someone at the organization represents values other than those of the employer's self-interest.

It is difficult to say exactly what these values would be—"ethical" values, perhaps, but what would the representation of "ethical" values mean? One plausible meaning is that these ethicists represent, in some way, the *public interest*[19]—that is, the interests of the community at large, the group of persons that have no direct ties to the fortunes of the employing organization. But it turns out that it is very difficult to say precisely what it means for bioethicists to represent the public interest. This is complicated by the fact, for example, that bioethicists themselves debate how to distinguish between acceptable private interests and the public interest, or even what the public interest is.[20] The important point here, however, does not require there to be some obvious or easy definition of the public interest available. Rather, the point is merely that the role of the bioethicist is virtually universally understood to include making *independent* determinations—that is, determinations independent of the employer's own evaluations—about the acceptable limitations of a company's private interests and, consequently, about the public's legitimate interest. So, although most private employees are obligated to defer to the judgment of their employer about acceptable public risks, bioethicists are obligated to make independent determinations about acceptable risks to the public or about what constitutes wrongdoing as an integral part of their professional role.

In fact, it is likely only because bioethicists appear capable of making such independent determinations that it is in a company's self-interest to hire a bioethicist in the first place. It is unlikely that positions for professional bioethicists would exist were it not for the fact that they are perceived to give independent evaluation of a company's otherwise self-interested behaviors. The bioethicist is widely perceived as a check on these self-interested behaviors, and if a bioethicist does not play this role, then both the bioethicist and the company are effectively using the position of the bioethicist to mislead the public into thinking the company has the public interest at heart.

If it is true that private corporations do hire bioethicists in part to appear that they are exposing themselves to an independent evaluation of whether their actions risk legitimate public interests or involve them in wrongdoing, and if these corporations benefit from this appearance, then presumably bioethicists that are hired under such circumstances will have a duty to make independent determinations about wrongdoing and risks to legitimate public interests (however defined). Consequently, they should not consider themselves to be the subject of competing obligations of loyalty to employer and public: they will, like their compatriots in the public employ, have no prima facie obligation to defer to an institutional superior's judgment about risk or wrongdoing and will be required to pursue the matter until it has been made public or the risk of harm has been eliminated.

There are myriad other institutional organizations within which bioethicists are employed, but I suspect that most fall somewhere on the public-private spectrum between the two just mentioned. The answer to the question posed at the beginning

of this section, then, seems to be that bioethicists are more similar to public employees than private employees, even when privately employed. This leaves many difficult questions unresolved—there is still the difficult moral question about whether the public interest will always be strong enough to justify risking the personal disaster that follows from getting fired; there is still the thorny problem of whether it is possible to give a truly independent evaluation of one's own employer; and there is still the conceptually difficult question about what, exactly, is in the "public interest." We cannot resolve these here. But if, as I have argued, bioethicists do not have a conflict of moral duties when they consider making their independent judgments about their employer's risky activities public, this simplifies the question about the bioethicists' moral duties to a considerable extent.

Conclusion

We began with the question as to whether bioethicists have special duties to whistleblow when they encounter wrongdoing at their employing organization. Our discussion shows the question is, in some ways, badly put, because it assumes that employees have a straightforward obligation to whistleblow. For private employees, at least, the decision about whether to whistleblow is usually a moral dilemma, involving competing moral obligations.

Although there may not ordinarily be an uncomplicated moral duty to whistleblow, then, duties to expose an employer's wrongdoing or risky activities may be altered by the moral assumptions behind one's employment. This is paradigmatically true, I argued, in the case of government "whistleblowers." These are not really whistleblowers at all, because their role is conceived of as service to the public, rather than narrowly to their (immediate) employer, and so they cannot whistleblow if whistleblowing is conceived of as going outside their organization. But, similar to government employees, bioethicists also have atypical moral assumptions built into their employment, because the condition of that employment is the widely held supposition that bioethicists do not ultimately defer to an employer's determination about acceptable risks, but rather that they exercise independent judgment on these matters. Consequently, most bioethicists appear to have a special duty to go public with information about their employers, not because their role as ethicists demands that they be more "ethical" than others, but rather because their position assumes that they will not defer to an institutional superior's judgment about what constitutes a risk to legitimate public interests.

Notes

1. There are many definitions of whistleblowing, most of which share the basic elements listed here. For summaries of the controversial aspects to the definition, see Davis M. Whistleblowing. *International Encyclopedia of Ethics* 2013:5456–60; available at http://onlinelibrary.wiley.com/doi/10.1002/9781444367072.wbiee017/abstract (last accessed 27 Apr 2013); Jubb PB. Whistleblowing: A restrictive definition and interpretation. *Journal of Business Ethics* 1999;21(1):77–94.
2. Freedman B. Where are the heroes of bioethics? *The Journal of Clinical Ethics* 1996;7(4):297–99; Baylis F. Heroes in bioethics. *Hastings Center Report* 2000;30(3):34–9.
3. See note 2, Freedman 1996.
4. For another account of what it might mean for personal ethics to be central to the professional ethicist's job, see Baylis F, Brody H. The importance of character for ethics consultants. In: Aulisio MP, Arnold RM, Youngner SJ, eds. *Ethics Consultation: From Theory to Practice*. Baltimore, MD: Johns Hopkins University Press; 2003:37–44.

5. Freedman B. Bringing codes to Newcastle: Ethics for clinical ethicists. In: Hoffmaster CB, Freedman B, Fraser G, eds. *Clinical Ethics: Theory and Practice*. Clifton, NJ: Humana Press; 1989:125–40.
6. See note 1, Jubb 1999; Davis 2013.
7. See note 1, Davis 2013.
8. De George RT. *Business Ethics*. 7th ed. Upper Saddle River, NJ: Pearson Prentice Hall; 2010, at 299.
9. Davis M. Some paradoxes of whistleblowing. *Business & Professional Ethics Journal* 1996:3–19.
10. Viens A, Savulescu J. Introduction to the Olivieri symposium. *Journal of Medical Ethics* 2004;30(1):1–7. Olivieri did, however, later become convinced that the drug is positively harmful and even campaigned against the approval of the drug, especially in Europe (personal communication).
11. See note 8, De George 2010.
12. See note 9, Davis 1996.
13. I treat the obligation of an employee to an employer as paradigmatic, although it may be that other relationships between individuals and organizations also create obligations of loyalty.
14. See note 1, Davis 2013.
15. Davis M. Avoiding the tragedy of whistleblowing. *Business & Professional Ethics Journal* 1989:3–19.
16. In the United States this took the form of the Whistleblowers Protection Act of 1989, which protects only civil servants. Significant legislation protecting private employee whistleblowers was not passed until the Sarbanes-Oxley Act of 2002 (and even this protects only a subset of private-sector whistleblowers). Canada, likewise, passed the Public Accountability Act in 2005 to protect federal employees and has not (as yet) passed any federal legislation protecting private employees acting as whistleblowers.
17. See, e.g., Elliott C. The soul of a new machine: Bioethicists in the bureaucracy. *Cambridge Quarterly of Healthcare Ethics* 2005;14(4):379–84.
18. Brody B, Dubler N, Blustein J, Caplan A, Kahn JP, Kass N, et al. Bioethics consultation in the private sector. *The Hastings Center Report* 2002;32(3):14–20.
19. For a similar view, see Sontag D. What is wrong with "ethics for sale"? An analysis of the many issues that complicate the debate about conflicts of interests in bioethics. *The Journal of Law, Medicine & Ethics* 2007;35(1):175–86.
20. Ashcroft RE. Bioethics and conflicts of interest. *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences* 2004;35(1):155–65.