

Was Antonio Fernandes Morally Justified in Blowing the Whistle in the Fernandes-Netcom Case?

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The first recorded usage of the phrase “whistleblowing” occurred during the famous Otto Otopka case in 1963 (Petersen and Farrell 1986) and the highly intriguing and complex phenomena has been growing steadily in both its frequency and media coverage ever since. There are many definitions of the concept within the literature, many of which are either overly complex, or conversely, somewhat diluted and simplified. For the purposes of clarity of understanding within this paper, the definition of whistleblowing to be referred to is that of “the act of disclosing any information that an employee reasonably believes evidences a violation of any law, rule or regulation, mismanagement, corruption, abuse of authority, or threat to public health and safety at the worksite” (Peters and Branch, 1972).

The term itself is believed to have been derived from the act of a referee, in a sport, such as football or rugby, blowing the whistle to indicate a passage of play which has broken the rules of the game, or in which some foul-play has taken place. This would seem a fairly straightforward analogy, but on closer inspection, it can be seen that there is quite some difference between a referee and an employee. As Duska (2000) points out, a referee is an impartial and neutral observer with no emotional or psychological attachment to the sporting environment or teams he or she is overseeing. Conversely, it could reasonably be argued that employees are much more deeply involved than this and so their act of calling foul play is much more personal and emotionally and psychologically knotty.

Before the ethical issues attached to whistleblowing are considered, it is essential to clarify the associated psychological issues. It is a strange fact of life that “telling tales” is regarded by the vast majority of individuals as being morally wrong (Larmer 1992). As children, we are scolded by our parents when we “tell” on our siblings, and by teachers when we inform them of a fellow pupil’s misdemeanours. Returning to the sporting analogy suggested by Duska (ibid), it is considered extremely bad morals, by players, coaches and spectators alike, when one player informs the referee of another’s rule breaking in order to get him or her, or their team, punished in some way. Away from the sporting arena, informing can be seen to be highly undesirable in some sections of society. For example, the act of “grassing” is often reprimanded with violence in the underworlds of the UK and under the “code” of the Italian Mafia, it is usually met with a certain and particularly gruesome death. Whistleblowers have also earned themselves many other disparaging monikers, such as “rat-rink”, “snitch” and “tattletale” (Ettore 1994) and this can possibly be attributed to a collective mindset on the concept of informing versus loyalty, as reported in much of the literature, most notably by Vinten (2000) and Soeken and Soeken (1987). This dislike of informing is a reflection of the very English trait of secrecy, where individuals would rather keep the misdemeanours of others secret or “to themselves”, which is discussed in some detail in both Minkley and Legassick (2000) and Vincent (1999).

It would appear that society in general has an inbuilt expectation of underhand dealings in both life and business. The great playwright Shakespeare noted in his book *King Lear*, “This is the excellent foppery of the world ... we make guilty of our disasters the sun, the moon and the stars, as if we were villains by necessity, fools by heavenly compulsion, knaves, thieves and treachers by spherical predominance, drunkards, liars, and adulterers by an enforced obedience of planetary influence”. This apparent ingrained tendency to accept a certain amount of foul play as being acceptable or beyond our human control, is mirrored in the more recent literature. Ditton (1977) and Mars (1982), both suggest that wrongdoings and underhand dealings are “part of everyday jobs”, and that such practices are swept under the corporate carpet with the use of such “light-hearted” phrases as “the fiddle”, “pilfering” and “skimming”.

Regardless of the complex reasons behind the human stance on the issues of informing on others, there is sizeable and compelling evidence within the literature of the consequences experienced

by any individual who happens to take the plunge and blow the whistle. The literature is awash with reports of whistleblowers finding their lives and careers completely wrecked. Recent notable examples of this appear in short reports by Estell (2002) and Daniels (2002), which state that up to 90% of whistleblowers face extremely harrowing abuse by ex colleagues and superiors, some 50% suffer grave relationship and marriage problems and a further handful actually face emotionally crippling occurrences such as divorce and the loss of their children. These are, without doubt, tragic and compelling figures yet it does, unbelievably, get even worse. Soeken and Soeken (ibid) report that an astonishing 10% of whistleblowers are so tormented that they attempt to take their own lives to escape the living nightmares they become trapped in. However, it seems it doesn't stop there either. There is a considerable body of evidence within the literature that states that whistleblowers are "blacklisted" for considerable lengths of time following their perceived acts of disloyalty, both Qusquas and Kleiner (2001) and Glazer and Glazer (1989) report that upto 68% of all whistleblowers experience great difficulties in finding new employment, even in industries removed from the ones they previously worked in.

It may be noted, however, that support for whistleblowers seems to be gathering some momentum within both the public domain and in the literature. The long established attitude that whistleblowers are all "vengeful malcontents" (Ettore 1994), is gradually being eroded by those who are caring to delve beneath not only the surface of the associated stories, but also their own moral and ethical selves. Perhaps this swing may be due to the fact that recent research, such as that by Figg (2002) reporting that a sizeable 76% of all whistleblowing cases are shown to be truthful and accurate, is beginning to make people stop and contemplate. Two very notable recent articles (Colvin 2002) and (Schooner 2002), are both very open in giving a great deal of support and praise to individuals involved in recent high profile whistleblowing incidences and Colvin (ibid) goes as far as to bravely suggest that in some cases whistleblowers are the courageous paragons of virtue our society so desperately needs.

The particular case in question in this paper is that of the Fernandes-Netcom case that took place over 1999 and 2000. Mr Fernandes, the chief accountant for the UK arm of Netcom Consultants found himself deep in a moral and ethical quagmire. Over a period of time, which saw him coerced and "bullied", he had sanctioned the release of £371,000 without receipts, from company accounts, to be used as payment for personal expenses by the UK Chief Executive, Mr Stephen Woodhouse. Following a period of soul searching and consultation with others (outside the organisation), Mr Fernandes decided that it was his moral duty to blow the whistle on Woodhouse's behaviour. Fernandes wrote to the US Chairman to divulge the information he had thus far kept to himself. Only three weeks later, Fernandes was released from employment without any form of payment, under the guise of misconduct for not paying the associated tax and pension funds appropriately. Mr Woodhouse, regardless of his dishonesty and bullying tactics, was permitted to keep his job. Woodhouse has since resigned. The ensuing court case saw Fernandes fully backed by the courts, under the Public Interest Disclosure Act 1998, where he was awarded the sizeable sum of £293,441 in compensation (Mason 2000) and (Eaglesham 2000). Fernandes' show of morality has since earned him many accolades in the literature and recently he had even been shortlisted for Goan (his place of birth) Man of the Year (Barbosa 2001).

Clearly, this case, like many other whistleblowing cases is composed of a set of extremely knotted ethical issues. Some of the issues that need to be addressed would include, was it wrong of Woodhouse to act as he did?, was it wrong of Fernandes to display disloyalty to his organisation?, should Fernandes have ignored Woodhouse's behaviour or did he have an obligation to stakeholders to expose him?, do the same ethical and moral rules we live by in everyday life apply to business dealings or is business just a game, a game with it's own rules and ways of behaviour?. These questions pose considerable problems for any ethicist and depending on individual stance the outcomes would be different. There are countless ethical and philosophical theories that we may turn in our search for the definitive answer, yet they are merely that- just theories for our own individual consumption and consideration. This paper will now turn its attention to the infinitely complex world of ethics and

morality in attempt to unravel this case and provide a meaningful insight into what the actual outcome should be- that is, was Fernandes right to blow the whistle?

Attention should first be focused upon Woodhouse. In using a substantial sum of company money for the financing of his own personal pleasure, has he actually acted unethically?. First reactions from the majority of individuals would be of course he has. However, both hedonists and ethical egoists would dispute this. Woodhouse has put his own “pleasure” above that of others, and as the hedonistic theory points out, pleasure can only be good. Further to this, if Woodhouse has been “disloyal”, then to whom or what has he actually been disloyal?. Friedman (1970), suggests that businesses are not tangible, they do not have feelings and hence there should never be any human need to feel any loyalty or disloyalty to them. Friedman (ibid) goes on to eloquently point out that the function of any business is to make profit, and in playing this game, the business will show no real loyalty to its employees, as they are simply a means to an end. Businesses do not show real “social responsibility”, so what moral obligation is there for an employee to show any of their own towards the employer? If this anti-Kantian approach is correct, then has Woodhouse really committed a moral sin?. Other ethical theories would greatly dispute the stance taken by Friedman. Utilitarianists such as Bentham and Mill, would condemn the behaviour displayed by Woodhouse. Utilitarianism preaches that humans must seek the “greatest good for the greatest number” and attempt to minimize pain, whilst maximising pleasure, for the majority. Clearly, Woodhouse does not possess a utilitarian streak, his actions have centred firmly on himself and his own hedonistic and egoistic pursuit of pleasure, and clearly he has also dismissed or forgotten the importance of the Aristotelian view on temperance and justice. There is little doubt that Woodhouse’s actions have contributed to the weakening of the group as a whole and he has exhibited behaviour that stinks of betrayal of trust and dishonesty. The evidence regarding Woodhouse’s behaviour can not be denied, he has strived for his own personal state of eudaimonia through a “might is right” mindset, but disregarded the virtue ethics theories which underpin such a state. The question of whether he has acted wrongly or unethically however, is still infinitely debatable depending upon individual morality.

The second area for consideration is that of whether Fernandes was “disloyal” to his colleague and his organisation when he decided to internally blow the whistle. The concept of loyalty is another incredible moral labyrinth. Firstly, it must be pointed out that in blowing the whistle, Fernandes has, in the long term at least, actually helped the organisation. Netcom will without doubt save money in the future as a result of being tipped off. Isn’t this in fact an act of loyalty on behalf of Fernandes and not, as if often portrayed in such cases, and act of disloyalty?. Hasn’t Fernandes, in fact, stayed loyal to the “us” mindset, and despite his submissive character (bullied, coerced etc), shown an act of loyalty and duty to the group as a whole?. This new approach to examining the loyalty issue is mirrored in a short article in the January 12th edition of the US Economist (author undisclosed) and in Bentley (2002) which both champion the loyalty of the whistleblower by suggesting that whistleblowers provide an invaluable public service. However, having “signed away” his right to do this in his contract, Fernandes has shown disloyalty to both his contract and his organisation simultaneously and thus gone against the theory of contractualism. This raises the dilemma of which is right, or more morally powerful- the right, through informing, to attempt to put something right, the power of the unflinching loyalty to the contract or loyalty to the whole group?. Utilitarians would suggest that Fernandes’ “disloyalty” to Woodhouse is well placed, he has contributed towards securing the greatest good for the greatest number and the part eradication of selfishness and personal greed. Fernandes has clearly taken the route, as have many others (Adams 2001), of moral subjectivism, which chooses loyalty to himself, his own mind, morals and character and “feeling” above his loyalty to Woodhouse- and who is to say whether that course of action is right or wrong?

Analysis of the reasons for Fernandes’ actions is also necessary. Morality is a fine thing to possess and exercise, but if it is employed for less than selfless reasons, does it lose some of its goodness?. In this instance, has Fernandes informed for an ulterior reason? Has he done so in pursuit of an altruistic outcome or in fact something not so noticeable on the surface?. It could be the case that he has informed on Woodhouse in order to reflect attention away from his own poor performance or

malpractices. Reports of such behaviour are not uncommon within the literature, De George (1999 a) and Grant (2002) suggest recent examples, and must be taken into account when weighing up the moral merits of specific whistleblowing cases. Also, Fernandes may have pursued this course of action for other reasons such as dislike of Woodhouse, the desire to impress his superiors or for the opportunity of substantial financial gain. In a recent and strangely intriguing paper, Berenbeim (2002), points out that some whistleblowers do so in order to attain fame and celebrity status, and that some do so because they wish to be colourfully and unforgettably ingrained in national histories and public memories for eternity. If such psychological issues do exist and come into the Fernandes equation, then surely the value of the morals he has employed in his decision to whistleblow, are at least worthy of deeper scrutiny and maybe deserving of less favour. The important issue here is whether his whistleblowing was powered by the right ideals, in which case he is somewhat justified, or by ulterior and selfish motives, in which case we should possibly look upon him with less celebration. Did Fernandes look upon his decision with utilitarian eyes or did he approach exercising only selfishness? If Fernandes has attempted to make an exception of himself for purely personal reasons, then regardless of the right or wrong of his actions, he has possibly acted in a way that many Kantians would describe as immoral, because he has in some way perhaps, used Woodhouse as a means to his own ends.

Now that the essential issues and the associated theories of this ethically difficult case have been considered, it is apparent that some exploration of the applied theories must be undertaken. Each of the theoretically driven questions and answers that have appeared thus far within this paper have indicated that given appropriate thought, the theories can be pulled apart and exposed as incomplete. Utilitarianism and Kantianism have opened the debate up somewhat, yet they both can be criticised. With regards to Utilitarianism, one could ask how the “greater good” is computed into a universal form?, do people sometimes have rights that cant be overridden by the goal of the best consequences for all concerned? Or do we always have the time to consider the consequences of our actions before we act?. One could also ask of the theory, are we to place emphasis on the good of the greatest number or on the greatest sum of good?. The theory also fails to fit if one thinks about real life examples. Consider, for example, there is a 95 year old man who has lived as a hermit for 50 years, his family have all died out and he has absolutely no friends, or even people who care for his existence. Let us imagine that five murderers break into his home and brutally murder him, for their own sadistic and deranged pleasure. The murderers have brought great pleasure to themselves and caused absolutely no harm or displeasure to anybody but the old man. Under Utilitarianism this would be acceptable, yet as humans we consider that murder is *prima facie* wrong. Clearly, this theory has its limits.

Let us now consider Kantian theory. One could ask of the theory, if it is actually always wrong to treat individuals as means to ends?, is it true that having good intentions is the only thing that counts morally?, or would one person’s idea of the categorical imperative be the same as another’s?. Let us consider, for example, how it may sometimes be acceptable to treat another person as a means to an end. Consider, as an example, a 12 year old homeless girl, who is being fed drugs, beaten and prostituted out by an evil pimp. A wealthy man sees her plight and takes her away to live with him. He gets her off the drugs, provides a beautiful home and feeds and clothes her. However, in order to stay in this nice new environment, she must act as his (non-sexual) household slave. Clearly, he is treating the girl as a “tool” and not a person, yet he has simultaneously improved her life immensely. He is treating her merely as a means to an ends, which Kantians would disprove of, yet undeniably, he has helped to improve her overall situation, is this somehow wrong?. Furthermore, the idea that Kantians allude to, that there are universal duties, is questionable. How could each and every individual on the planet have a universal sense of duty? What about the strong and undeniable effects of environment, religion (divine command theory), upbringing and personal circumstances?, surely they exert great power over our sense of duty?. It would seem that both Utilitarianism and Kantianism fail to address and consider the all important factor of individuality. It also seems somewhat out of place to apply a theory which suggests it is wrong to treat people merely as a means to an end to an area such as business, when that is exactly how business itself actually works. It is difficult to persuasively argue that in business, employees, suppliers, customers and partners are anything more than simply means to ends.

Clearly, the theory of altruism is somewhat limited also. Being altruistic is a warm ideal, yet it is simply impractical. It goes against the basic human instinct of self-survival. Altruists suggest that they put the happiness of others before their own, yet on reflection, if this were the case, altruists would soon die out. They would simply be giving away all their food to the starving and all their money to the poor or homeless and their pursuit of this would see them on a very slippery slope to self-destruction.

The scenarios regarding the Fernandes-Netcom case have so far been discussed in some detail, yet the answer to the question is no clearer or obvious. On reflection, the writer has not been won over by any of the great philosophical theories that have been examined. As stated at the beginning of this paper, these theories are merely that- just theories. Yet these theories are amongst the more popular that ethicists turn to for the answers to moral mazes. The vast array of literature, leads the writer, on reflection, to turn one's attention to two much more realistic ideas, the theory of egoism and the idea of moral subjectivism. As politically incorrect and "wrong" as it may be to suggest this to be the case, human beings are essentially selfish beings. Science shows us that we have an all powerful survival mechanism, we are programmed to be selfish, and ethical egoism theories support this. In the case of Fernandes-Netcom it is without doubt, somewhat likely that both Fernandes and Woodhouse acted egoistically and completely disregarded all other theoretical ideals. Woodhouse to pursue pleasure and hedonism and Fernandes so he would "look good" to others, increase his own self esteem and sense of goodness and gain hero status. Fernandes could argue that his whistleblowing was altruistic or utilitarian, but human nature and psychology suggests this may perhaps be a ploy as to avert others from the real root cause of his actions- selfishness. Woodhouse could argue that his actions are acceptable, by turning to Plato's idea that good is that which fulfils a person's real interests, or by asking the potentially unanswerable question that asks if you can benefit from and get away with immorality (as he had been doing for some time), then why shouldn't you do so?

Still, we have not discovered whether Fernandes was morally justified in his whistleblowing or not. Many scholars, of whom Vinten (2000), DeGeorge (1999 b) and Bok (1980) are notable examples, have attempted to lay down regulations, which govern when whistleblowing is morally permissible. Digestion of these regulations is difficult, for how can these individuals be qualified to decide whether something as infinitely complex as whistleblowing is right or wrong, good or bad?. These regulations are as lacking in reality and sense as arguably much of the thrust of the traditional theories are. Surely, all moral dilemmas, including whistleblowing, are down to moral subjectivism and a factor that is much neglected in the literature, individuality. Such expansive and mind blowing dilemmas, as that faced by Fernandes, have so many sides to them, so many avenues to turn to for the answer, that surely there can be no real and universal answer. Individuals the world over would provide so many different insights into and opinions about this case, that relying on the traditional theorists and modern scholars is both extremely shortsighted and quite possibly an individual sell-out in favour of the opinions of others and political correctness.

Was Fernandes morally justified in whistleblowing?, the writer's application of moral subjectivity would lead to the following conclusions. Woodhouse has demonstrated extreme betrayal of trust, dishonesty, selfishness, misplaced overly dominant behaviour and disregarded what would be best for the group as a whole. Woodhouse has met many of the criteria laid down by Peters and Branch (op cit) which lead to justifiable whistleblowing by another person. Fernandes has demonstrated a sense of true duty to the group as a whole, put the group in a better position to deal with future misdemeanours and rooted out a "bad apple". When placed against the background of society's dislike of "snitches", the well documented severe consequences suffered by whistleblowers, the psychological aspects of "not telling", and Fernandes' (presumed from the evidence) submissive character, he surely has acted in a highly courageous and somewhat righteous way. In this case, Fernandes' whistleblowing has helped the greater good to cancel out and surpass the inappropriate behaviour of Woodhouse. The intentions behind Fernandes' actions are not definable, but whether his intentions were righteous or not, his actions must surely outweigh the intention. Regardless of the intention, the consequences of his whistleblowing have brought more good than harm (to the group as a whole) and so this line of thought

leads the writer to conclude that, at least to a notably significant extent, Fernandes was morally justified in blowing the whistle.

References:

- Adams, B (2001) *Accountable but Powerless*, *Health Affairs*, Vol.21, Issue 1, p218-223
- Barbosa, A.M. (2000) *Man of the Year*, (online) (URL: <http://www.goa-world.net/goatoday>) September 2000
- Bentley, R (2002) *Firms Benefit From Whistleblowing*, *Computer Weekly*, 29/08/2002, p28-29
- Berenbeim, R.E (2002) *No-one Likes a Tattletale*, *Across the Board*, Vol.39, Issue 5, p61-64
- Bok, S (1980) *Whistleblowing and Professional Responsibility*, *New York University Education Quarterly*, Vol.11, Summer Issue, p2-7
- Colvin, G. (2002) *Wonderwomen of Whistleblowing*, *Fortune*, Vol.146, Issue 3, p56
- Daniels, C. (2002) “It’s a Living Hell” – Whistleblowing Makes for Great TV, but the After-effects Can Be Brutal, *Fortune*, Vol.145, Issue 8, p367-369
- De George, R.T (a) (1999) *Business Ethics* (5th ed.) , p244, Pearson Education: New Jersey
- De George, R.T (b) (1999) *Business Ethics* (5th ed), p250-255, Pearson Education: New Jersey
- Ditton, J. (1977) *Part-time Crime: An Ethnography of Fiddling and Pilferage* Macmillan:London
- Duska, R.F. (2000) *Whistleblowing in the Financial Services Profession*, *Journal of Financial Services Professionals*, Vol.54, Issue 1, p17-20
- Eaglesham, J. (2000) *Accountant in Whistleblowing Case Wins First Round of Claim*, *Financial Times*, 10/03/2000
- Estell, L. (2002) *Whistle into the Wind: Ethical Workers left Unprotected against Employer Paybacks, Incentive*, Vol.176, Issue 10, p6-7
- Ettore, B. (1994) *Whistleblowers: Who’s the Real Bad Guy?* *Management Review*, Vol.83, No.5, p18-24
- Figg, J. (2002) *Whistleblowing*, *The Internal Auditor*, Vol.57, Issue 2, p30-33
- Friedman, M (1970) *The Social Responsibility of Business is to Increase its Profits*, *The New York Times Magazine*, 13/09/1970 p32-126
- Glazer, M and Glazer, P (1989) *The Whistleblowers*, p137 New York:Basic Books
- Grant, C (2002) *Whistleblowers Saints of Secular Culture*, *Journal of Business Ethics*, Vol.39, Issue 5, p391-399
- James, G.G (1995) *In Defense of Whistleblowing* in Shaw, W.H and Vincente, B (ed) *Moral Issues in Business*, (6th.ed) Wadsworth: Belmont, C.A.

- Larmer, R. (1992) Whistleblowing and Employee Loyalty, *Journal of Business Ethics*, Vol.11, Issue 2, p125-128 (suss later)
- Mason, J. (2000) Whistleblower Wins £293,000, *Financial Times*, 11/03/2000
- Mars, G. (1982) *Cheats at Work: An Anthropology of Workplace Crime*, George, Allen and Unwin London and Boston
- Minkley, G and Legassick, M (2000) Not Telling: Secrecy, Lies and History, *History and Theory*, Vol.39, No.4, p1-10
- Petersen, J.C and Farrell, D. (1986) *Whistleblowing: Ethical and Legal Issues in Expressing Dissent* Kendall-Hunt: Dubuque, p2-3
- Quasqas, F and Kleiner, B.H. (2001) The Difficulties of Whistleblowers Finding Employment, *Management Research News*, Vol.24, No.3-4
- Schooner, S.C (2002) Badge of Courage, *Government Executive*, Vol.34, Issue 11, p65-66
- Shakespeare, W. (unknown date) *King Lear*, 1.ii.132
- Soeken, K. and Soeken, D. (1987), *A Survey of Whistleblowers: Their Stressors and Coping Strategies*, Association of Mental Health Specialities, March, Laurel, MD
- Vincent, D (1999), *The Culture of Secrecy in Britain 1832-1998* London.
- Vinten, G. (2000) Whistleblowing Towards Disaster Prevention and Management, *Disaster Prevention and Management*, Vol.9, Issue 1, p18-28
- (Author undisclosed) In praise of whistleblowers; *Corporate Malpractice*, *US Economist*, 12/01/2002