

COLLECTIVE ETHICS AND THE RIGHTS AND OBLIGATIONS OF
WHISTLEBLOWERS

Thesis submitted to the faculty of
San Francisco State University
In partial fulfillment of
the requirements for
the Degree

Master of Arts
In
Philosophy

by

Josef Rashty
San Francisco, California
Fall Semester 2016

Thesis Committee

Shelly Wilcox, PhD, Professor of Philosophy and Committee's Chair

Justin Tiwald, PhD, Professor and Assistant Chair of Philosophy Department

This thesis does not contain any studies with human participants or animals performed by the author.

ACKNOWLEDGEMENT

I am greatly indebted to Dr. Shelly Wilcox for completion of this project. She was extremely supportive of it early on and provided continued guidance and direction throughout the project.

TABLE OF CONTENTS

Background Information.....	5
Introduction.....	7
1. Collectives.....	11
1.1. Collective Belief.....	12
1.2. Collective Cognition.....	14
1.2.1. Division of Labor.....	15
1.2.2. Condorcet's Jury Theorem.....	16
1.2.3. Page's Aggregation Theory.....	17
1.2.4. Nozick's Invisible Hand.....	18
1.2.5. Nozick's Hidden Hand.....	19
1.3. Collective Virtue.....	21
2. Corporations.....	23
2.1. Joint Commitment.....	23
2.2. Right of Contestability.....	25
2.3. Epistemic Accuracy.....	27
2.3.1. Coherence Challenge.....	27
2.3.2. Internet of Things (IOT).....	29
2.3.3. Corporate Vices.....	30
2.3.3.1. Malice.....	31
2.3.3.2. Greed.....	32
2.3.3.3. Faulty Corporate Structure.....	34
3. Whistleblowers.....	34
3.1. Whistleblowers' Rights.....	35
3.1.1. Servitude.....	36
3.1.2. Meaningful work.....	37
3.2. Whistleblowers' Obligations.....	38
3.2.1. Retaliation.....	39
3.2.2. Alienation.....	40
3.2.3. Despair.....	42
3.2.4. Bounty Effects.....	43
3.3. Whistleblowers' Quandary.....	43
Final Remarks.....	46

Collective Ethics and the Rights and Obligations of Whistleblowers

Josef Rashty
San Francisco, California
2016

Background Information

The idea of the corporate whistleblower initially emerged as a result of the Watergate scandal in the late 1970s. The revelation that President Nixon had used corporate funds to finance illegal reelection campaign activities led to an even more startling revelation that public corporations had been making illegal payments (or outright bribes) to foreign individuals and entities, amounting to hundreds of million of dollars. In response to these events, Congress passed the Foreign Corrupt Practices Act of 1977 (FCPA), which requires public corporations to maintain systems of internal controls, including internal whistleblowing provisions (Vega, 2012, pp. 494-496).

The federal whistleblower program went through a transformation subsequent to the Enron, MCI/WorldCom, and Andersen scandals and the 2000 dot-com bust. To address these events, Congress passed the Sarbanes-Oxley Act of 2002 (SOX). Among many other things, SOX expands on the FCPA requirement for public corporations to maintain a system of internal controls and implement whistleblower programs. Under SOX, whistleblowers have direct access to the board of directors via telephone or email to report any ethical violations. SOX also provides for the protection of whistleblowers against any form of retaliation. It even explicitly mandates whistleblowing for certain individuals; for example, it requires certain insiders, including corporate in-house lawyers and chief executive officers, to function as whistleblowers if they come across any

violations. SOX considers whistleblowers as heroes who fulfill an important gatekeeping function within corporations (Vega, 2012, pp. 494-496).

The whistleblower program went through its final transformation subsequent to the 2008 financial crisis, the collapse of Lehman Brothers, and the discovery of Bernie Madoff's illicit operations. As part of the 2010 Dodd-Frank Act (Dodd-Frank), Congress authorized a revised bounty program for whistleblowers. In 2011, the Securities and Exchange Commission (SEC) issued *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934* (SEC 2011), which sets forth financial rewards for whistleblowers who provide the SEC with "original information" leading to the imposition of monetary sanctions greater than \$1 million on corporations. Such rewards usually range between 10% and 30% of the SEC's monetary sanction against corporations for amounts exceeding \$1 million (Vega, 2012, P. 496-499).

This bounty program was not a completely new idea for the SEC, as Congress authorized the SEC to award a bounty of up to 10% of the civil penalty recovered in insider trading cases in 1988. However, the new program was notable because it had a much wider scope and covered all forms of corporate irregularities. Under Dodd-Frank, whistleblowers can either report violations to their employers first or bypass their employers' internal control systems altogether, reporting violations directly to the SEC for a financial reward. In its 2015 report to Congress, the SEC disclosed that it had received 4,000 tips from whistleblowers, a 30% increase over the number of tips that it received in 2012 (SEC 2015).

Introduction

People are generally convinced that the U.S. has one of the best economies in the world because of its higher living standards and prosperity, but the frequency and severity of corporate wrongdoings in recent years have constantly perplexed them. The causes of the last two recent economic breakdowns (the dot-com bust of 2000 and the financial meltdown of 2008) were deeply rooted in corporate corruption due to malice and greed. In most instances, the same players that brought economic prosperity and technological innovations to our economy also caused it to crash. With each economic downturn, many people lose their jobs and their livelihoods, and many never recover fully. In some key ways, it appears that what has made the U.S. economy great is what causes it to occasionally collapse.

Hardly a day goes by without a well-recognized and highly respected corporation being found guilty of some sort of malfeasance. On May 26, 2016, alone, for instance, the *Wall Street Journal (WSJ)* reported on Lending Club's inadequate loan sales disclosures and the departure of its CEO and other executives, accompanied by a plunge in its stock price; Alibaba's questionable accounting practices and the SEC probe into those practices; the ongoing investigation into the operations of medical technology company Theranos; Countrywide's criminal and civil cases and convictions; golf star Phil Michelson's insider trading scandal; and the recent tendency of financial institutions to reengage with risky business similar to the practices that led to the 2008 crisis. The *WSJ's* foreshadowing of financial institutions' reengagement with risky business came to light when, on September 20, 2016, it reported on the Wells Fargo Bank's consumer accounts

scandal and commented that Wells Fargo is not much of an outlier when it comes to complaints associated with cross-selling and other sales practice abuses. Wells Fargo was always considered a reliable Main Street lender in the past and largely passed through the financial crisis unscathed. The *WSJ* reports almost daily on such irregularities, with such stories very often making its front page.

If the number of corporate wrongdoings is any indication, we are heading for another financial breakdown. The various outside government agencies (such as SEC, FBI, and others) are often not very effective in detecting corporate wrongdoings and irregularities; rather, it seems that whistleblowers are the most reliable and effective gatekeepers in corporations.

As outlined earlier, the emergence of whistleblowers has been one of the most significant developments in corporate governance for the past 50 years; however, corporate ethics and the rights of whistleblowers have received relatively little scholarly attention. Most of the existing literature focuses on whistleblowers' purported unwillingness to reveal corporate malfeasance or the impediments that they face in doing so. The objective of this paper is to expand this whistleblower analysis beyond such prudential concerns, focusing on corporate ethics and the responsibilities and obligations of employee whistleblowers.

During the past few decades, corporate whistleblowing has evolved from a heroic, voluntary act to a reward-seeking adventure. Currently, employee whistleblowers fall into one of the following three categories: (1) Voluntary whistleblowers who report violations internally and through the proper corporate internal-control channels. These

whistleblowers may end up reporting the violation to the SEC if they cannot get their issues resolved through corporate channels; (2) Insider whistleblowers who are legally obligated to report ethical violations to the authorities under SOX; or (3) Bounty hunter whistleblowers who bypass corporate channels to report any corporate violations directly to the SEC for financial rewards made possible under Dodd-Frank.

In this paper, I will answer two specific questions: (1) should corporations provide for a democratic corporate governance structure such that employees can express their views and bring up their grievances to top management, and (2) should corporate whistleblowing be mainly based on moral principles or economic interest. I will not take a position on whether Dodd-Frank has been successful in promoting or achieving any collective or individual good; rather, I seek to investigate its effects on whistleblowing activities.

I will argue that the best form of corporate governance is a democratic system in which employees can be heard whenever their beliefs come into opposition with those of their employers. I will also argue that employees have an ethical responsibility to report any ethical violations through the proper channels within their organizations. If they report the alleged violations to an authority solely to collect a financial reward, it would be degrading to them and would not contribute to their Aristotelian excellence. Additionally, such a bounty-hunting response would harm their employers and the corporation's stakeholders. Thus, it is in the best interest of both whistleblowers and corporations to encourage voluntary, internal reporting of violations.

The first two parts of this paper deal primarily with collective and corporate ethics, while the third part focuses on whistleblowers' rights and obligations. In the first part, I will discuss the collectives in general and formal collectives and corporations in particular. I will argue that collectives can form beliefs and judgments distinct from those of their members and will conclude that corporations can be virtuous or vicious in collaboration with but independent of their members. This argument is important because a disparity between collective belief and individual beliefs often results in the emergence of whistleblowers.

In the second part, I will argue that employment is a joint commitment with mutual obligations between an employer and its employees for the common good of both—that is, employers benefit from the services of their employees while, at the same time, employees exercise their talents to find fulfillment in their work beyond their compensation. I will argue that formal collectives (institutions in general and corporations in particular) can be wise and achieve epistemic accuracy in their beliefs and judgments, in collaboration with but independent from their members. I will further argue that collective wisdom exists, and properly structured collectives can outperform their members, achieving a higher level of epistemic accuracy. However, there are several conditions that may distort their epistemic accuracy (i.e., their judgments may not be coherent or may be at fault due to malice and greed on the part of individual members). Finally, I will argue that democratic corporate governance plays an important role in achieving epistemic accuracy. Corporations that do not have a participative management style usually fail at a higher rate than their peers.

In the third part, I will argue that an employee whistleblower has an obligation to report any alleged ethical violation through proper channels in his or her organization. I will also discuss the reasons that employees are often reluctant to participate in the democratic process within their organizations, even if such a process exists and is properly administered. I conclude that bounty hunter whistleblowers who bypass their corporate governance structure to report an ethical violation for financial rewards violate their joint commitments and harm their employer and its stakeholders, ultimately failing to reap the greater benefits of their whistleblowing action and do not achieve the Aristotelian excellence in their lives.

1. Collectives

Fricker describes three forms of collectives: First, a number of individuals getting together to form a weak collective or a group (such as a group of friends who go for a daily morning run). In this example, the group is reducible to its members. Second, informal collectives that lack formal structures, but nevertheless they follow certain protocols. Informal collectives are generally not reducible to their members (such as a book club). Third, formal collectives or institutions that have formal structures and are governed by certain bylaws and codes of governance and are non-reducible to their members (such as corporations) (Fricker, 2010, p. 236).

The most intriguing characteristic of collectives (particularly the formal collectives and, to a lesser degree, informal collectives) is that they can form beliefs and judgments independent of their members and exercise virtues and vices even though they

lack consciousness and will. This characteristic plays a key role in the behavior and actions of corporations as a form of collective. In the remainder of this part, I will discuss how collectives in general, and corporations in particular, form their beliefs and exercise virtues and vices independent of their members.

1.1. Collective Belief

The common view is that collective belief is summative; that is, for a group to believe that p is logically necessary, all or most members of the group must believe that p is required (Gilbert, 1987, p. 187). We often attribute beliefs to collectives in our daily conversations. For example, we may claim that the police force of a particular community is brutal and prejudiced; however, this claim does not literally mean that every single member of the society believes that the police force is brutal and prejudiced. Lahroodi, based on Gilbert's views, argues against summativism on the premise that there is a crucial disanalogy between individual beliefs and collective traits (Lahroodi, 2007, p. 286). Lahroodi uses the term "trait" instead of "belief" in relation to collectives to disassociate any "spooky" or metaphysical ideas from collectives, but for simplicity, I will use Gilbert's term "belief" in reference to both collectives and individuals.

Lahroodi gives the example of an administrative committee of a church that is vehemently hostile to gay rights. He claims that we can certainly conceive of the existence of such a narrow-minded church committee, but we can also envision that it is plausible that most (or perhaps all) of the members of this church committee could potentially be open-minded about gay rights as individuals (Lahroodi, 2007, p. 287). This

example reflects rather neatly that collective beliefs are dissimilar from individual beliefs and summativism is fallacious. Thus, it is not a necessary condition of a group's belief p that most members of the group believe p .

Gilbert sums up the characteristics of a collective belief as follows: (1) a collective belief is jointly accepted by the members of the group; (2) collective belief may indirectly impact the thinking of the members of that collective, such that the members of that collective understand that their behavior is subject to certain constraints as long as they are part of that given collective; (3) however, the individual beliefs of members may remain different from the collective belief (the collective mind is independent of the minds of its members); and (4) collective belief is not a matter of logic. For example, an unopposed forceful statement by an influential and outspoken member of a collective can potentially establish that collective's view. Thus, in Gilbert's collective model as in Lahroodi's example, a group can in principle believe p even though members personally may believe the opposite. This raises the issue that conflicts may arise between members' personal beliefs and the collective belief. If so, a dissident member may either come into conflict with the collective or may modify her belief to accommodate the collective belief (Gilbert, 1987, pp. 200-202).

Akira Kurosawa's 1954 movie *Seven Samurai* is an example of a collective that manifests a feature or attribute that is lacked by every single of its member. In this movie, seven men join together and form an unlikely alliance to save a village from a group of bandits and outlaws and manifest a character trait as a group that each single individual lacks. In this movie, the collective has a belief independent of its members but

nevertheless its members follow it. This is based on the premise that once a collective believes p , then, *ceteris paribus*, collective members are personally obliged not to deny p or say things that presuppose the denial of p . Any conflict between personal beliefs and collective beliefs may have several results, such as whistleblowing, accepting the collective belief, or even separation of the member from the collective. Nevertheless, formation of beliefs requires some sort of cognitive ability that collectives clearly do not have. To resolve this paradox, I next examine the formation of collective beliefs.

1.2. Collective Cognition

Lahroodi argues that mainstream epistemology has been mostly concerned with individual human cognizers and knowers, but collectives can be cognizers like humans (Lahroodi, 2007, pp. 281-282). We often speak of collectives as if they have epistemic cognition: for example, when we say that, “The review board was courageous in questioning what everyone took for granted,” we are actually crediting the board for its courage in asking tough questions (Lahroodi, 2007, pp. 282-283). When we attribute cognition to collectives, it implies that they can form beliefs or judgments as proto-agents. In general, a well-organized formal collective, such as a corporation, is a good candidate to be considered as a proto-agent—or perhaps even a full-fledged agent, as these collectives can form beliefs and judgments. But how do non-sentient entities such as collectives form such beliefs?

Collectives form their beliefs and judgments with the help of several mechanisms (List, 2012, p. 205). I will discuss five major doctrines on the formation of collective

cognition in the remainder of this section even though there are other views in addition to these five, but I believe these five are more applicable to corporations and formal collectives. These doctrines are not mutually exclusive and, indeed, may all simultaneously be present in a formal collective.

1.2.1. Division of Labor

Gilbert argues that when individual faculties are pooled together, they form an *as-if* collective faculty or a *collective subject*. Gilbert's notion of pooling individual faculties leaves it open as to how these faculties may be combined to form collective faculties.

One intuitive form of collective faculty is division of labor (Fricker, 2010, pp. 241-242).

Fricker argues that Gilbert's notion of *collective subject* provides a template for collective cognition and that there is nothing metaphysical or spooky about the cognitive ability of collectives. She gives the example of a night-watch team of four soldiers who sensibly pool their faculties by dividing their labor such that one consistently looks north, another south, another east, and the other west. Alternatively, and presumably less efficiently, they could all constantly shift their gazes in any of these four directions randomly to spot the enemy. Fricker's night-watch team reflects how a collective cognition may emerge in collectives and form a collective belief. In this example, none of the soldiers has complete information on their situation, but the collective has complete and presumably correct information (Fricker, 2010, p. 243). Thus, in the night watch example, individual agents simply communicate and exchange information to form a collective belief.

However, division of labor may not fully explain the behaviors of today's complex economic enterprises. To add to our understanding of how collectives may engage in collective cognition, I will additionally discuss Condorcet's Jury Theorem, Page's Aggregation doctrine, and Nozick's Invisible-Hand and Hidden-Hand theories.

1.2.2. Condorcet's Jury Theorem

The Marquis de Condorcet first argued his *Condorcet's Jury Theorem* as a political science doctrine about the relative probability of a given group of individuals arriving at a correct decision. In its simplest form, the theorem states that where a group votes on two opposing alternatives, the collective is slightly more likely to be right than wrong than is each individual, and as the number of voting members increase, the probability for the majority vote to be correct tends to get even higher (Vermeule, 2012, p. 343). Under this doctrine, agents pool their intellectual resources together to come up with resolutions that they hope are better than those they would have reached individually.

With Fricker's night-watch team, a very different model emerges. In her model, each night-watch soldier gets an imperfect signal: he may or may not know the direction from which enemy is approaching (the answer that the collective is seeking). However, the group collectively has the epistemically accurate information. This scenario recalls the story of the blind men and the elephant. None of the blind men can possibly deduce the shape of the whole elephant just by touching its leg or trunk or other parts; to deduce the truth, they must compose their separate perspectives collectively, thus arriving at an accurate epistemic answer. The Condorcet doctrine, on the contrary, believes that under

certain circumstances, each member may think he or she has the complete and correct answer—but through collective deliberations, group members may be able to find a better answer. Generally, a large number of participants with cognitive diversity are more likely to produce a more epistemically fruitful result since diversity initiates dialectics, and dialectics feed into *Condorcet's Jury Theorem* and produce more epistemically accurate results.

The Condorcet doctrine clearly plays an important role in the structural design of democratic corporate governance, where a participative, rather than authoritative, style of management is preferable.

1.2.3. Page's Aggregation Theory

There is another process of collective intelligence in which individual agents, far from deliberating or exchanging any information or making any argument, simply provide their opinions and an aggregating algorithm or mechanism tabulates their views and opinions; the majority prevails. The probability that a majority vote is the correct answer becomes more certain as the number of members who vote increases (Vermuele, 2012, p. 343). Page argues that a straightforward mathematical calculation demonstrates that the average prediction of a crowd always outperforms the prediction of the crowd's average member (Page, et al, 2012, p. 56). The prevailing majority vote does not guarantee that the collective view is an epistemic accurate answer in all instances, but it is statistically more likely to be so. The best example of this claim is performance of the stock market;

crowds frequently predict an upcoming economic recession or recovery six months ahead of its actual occurrence.

The main reason for the failure of aggregation theory is that, for an assortment of reasons, the public may not form unbiased beliefs. Another reason is a lack of direct participation; for example, in corporations, shareholders and boards of directors are expected to vote for the governance rules and the majority view prevails in most, if not all, instances. However, Page's argument may not work in this case, as most of the votes in public companies are cast through proxy votes¹. It appears that at least in some instances, the Condorcet and aggregation doctrines support a weak form of summativism in formal collectives, but the reality is that from the mix of individual beliefs, a new property—one which is more than a summation of individual epistemic beliefs—emerges.

1.2.4. Nozick's Invisible Hand

Nozick, following Adam Smith's macro-economic invisible-hand doctrine, articulates another theory regarding the formation of cognitive beliefs in collectives. He argues for an "invisible hand" that guides the beliefs of collectives in a micro-economic environment. Nozick offers an evolutionary explanation based on two arguments: first, a filtering process must exist, where some mechanism within a collective eliminates the

¹ Proxy voting is a form of voting whereby some members of a decision-making body may delegate their voting power to other members of the same body to vote in their absence, and/or to select additional representatives. Proxy voting is a particularly important practice with respect to corporations in the United States, as investment advisers often vote on behalf of their client accounts.

elements that do not fit certain patterns and cannot accommodate certain behavior.

Second, each member must adjust to local conditions and while simultaneously changing the local environment, such that a continuous and consistent pattern gradually develops within a collective (Nozick, 1994, p. 314).

Fricker advances a similar argument suggesting that certain members in a collective are *passengers*—they lack the motive and/or skills to initiate beliefs but simply go along by minimally acting in the group, as required by circumstances (Fricker, 2010, p. 247). Gilbert similarly argues that there are effectively two routes that members may take as part of a joint commitment: (1) via their personal belief *p*, or (2) via a mere going-along or letting stand of *p* (Fricker, 2010, p. 246).

1.2.5. Nozick's Hidden Hand

Nozick also argues for the existence of a “hidden hand” (the opposite of an invisible hand) that follows a different path and mechanism. This doctrine holds that collective decisions and beliefs tend toward the ruling class and promote their views. The hidden hand coordinates the efforts of a collective to serve the interests of certain individuals; the members of the collective may also benefit from the arrangement, but to a lesser extent than do the elites (Nozick, 1994, p. 314).

The Volkswagen AG (VW) diesel scandal is an example of Nozick's invisible-hand and hidden-hand arguments. In November 2015, irregularities were revealed in VW's measurement of carbon dioxide emission levels, an issue affecting millions of diesel vehicles sold. The initial investigation confirmed that VW had a chain of

management command that approved fitting cheating devices or software to the engines of diesel vehicles. Allegedly, the sophisticated software that was able to report false but acceptable emissions levels was developed by a group of engineers in the Silicon Valley area in the U.S. Clearly, many executives and managers worldwide were involved in this scheme, and rank and file employees simply followed suit. They all had knowledge of this irregularity for many years but did not say anything (Hotten, 2015).

Nozick argues that not every pattern that arises by an invisible-hand process is desirable and not every pattern that arises by a hidden hand is undesirable (Nozick, 1994, p. 314). For example, it is common knowledge that Steve Jobs, the late cofounder of Apple, had a very authoritative and mercurial style of management and rank and file employees followed his directions obediently and blindly, but nevertheless Apple was, and still is, one of the most successful and ethical corporations in the U.S. In contrast, in the VW scandal, and probably in other instances of corporate scandals (such as Enron, WorldCom, and others), it is likely that both Nozick's invisible hand and hidden hand were at play, to disastrous results.

I have argued so far that collectives can form beliefs independent of their members, even though they lack cognitive faculty. From this, I argued that certain mechanisms exist in collectives that function as cognitive abilities. In particular, I discussed Fricker's division of labor, the Marquis de Condorcet's Jury Theorem, Page's aggregation theory, and Nozick's invisible hand and hidden hand. I argued that all or some combination of these mechanisms exists in formal collectives at any given time,

and that they contribute to the formation of collective beliefs and judgments. In the next section, I will argue that we can also attribute virtues and vices to collectives.

1.3. Collective Virtue

Virtue is a disposition, which harmonizes with understanding and helps us to see things as they are, while vice distorts appreciation of the qualities of the relevant situations. I argue that it is possible to attribute both motivation-based Aristotelian virtues (e.g., kindness, compassion, charity, and generosity) and skill-based Platonic virtues, (e.g., vigilance, honesty, justice, and inventiveness) to collectives. For example, a corporation can contribute generously to certain charities, or a research team can be diligent in its commitment to excellence and thoroughness. In these examples, the collective's members do not necessarily need to possess these particular epistemic or moral virtues individually; rather, by jointly committing to the collective, they each come to possess them qua membership in that group (Fricker, 2010, p. 241). It takes certain philosophical efforts to attribute virtues and vices to collectives, as formal collectives are not reducible to their members. Here, I focus mainly on means of attributing virtues and vices to formal collectives, although most of the arguments can be applied to informal collectives as well.

Mackie argues that formal collectives or institutions have rules and principles of action that resemble the game of chess in that they consist of abstract principles and concepts. However, playing chess involves more than applying these abstract principles and concepts—it is a social practice consisting of a sequence of moves made by chess-

players depending on many factors that exist beyond those abstract principles and concepts. Similarly, the behaviors of formal collectives consist of abstract rules and principles in addition to the normative content of such behaviors, which is impacted by social expectations and the approvals, disapprovals, and demands of the social environment (Mackie, 1977, Kindle 1296).

Fricker argues that collective vices arise due to several factors: (1) collectives within an institution are negligent in realization of their institutional procedures and structures (e.g., the human resources department is negligent); (2) individual members of collectives are negligent in realization of the institutional procedures and structures (e.g., the vice president of human resources is negligent); or (3) the institutional procedural structures themselves are faulty. Fricker holds that we can only attribute virtues and vices to formal collectives in combination with individuals who work within the structural procedures of these collectives (Fricker, 2010, p. 249), as collectives in general are not agents and lack will.

Procedural structures of institutions must encourage virtue and discourage vice, but most importantly, the members must bring to life virtues imbedded in such structural procedures. Most of the irregularities in corporate environments can be attributed to chess-players (usually the top executive level, referred to as the C-suite²). The rank and file employees simply follow as passengers the invisible or hidden hands of corporations.

² C-suite is a widely used slang term deriving from the concept of the “corporate suite.” It collectively refers to a corporation’s top-level senior executives.

In the first part of this paper, I argued that collective beliefs exist. I also argued that even though collectives lack the faculty of cognition, there are mechanisms in place that enable them to form beliefs and judgments independent of their members. Finally, I concluded that we could attribute virtues and vices to formal collectives only in combination with individuals who work within the structural procedures of the formal collectives. In the next part, I will discuss how formal collectives are formed, how they may achieve virtue, and what may distort their judgments.

2. Corporations

The formation of formal collectives is based on joint commitment; that is, collectives have certain obligations and their members have commitments to do or refrain from doing certain things. As I have established that collectives can be virtuous only in combination with individuals, in this section I will argue for democratic corporate governance, in which employees with diverse views have the chance to be fairly heard. Finally, I will discuss reasons why corporations may go wrong or perceive things incorrectly and conclude that there is a correlation between epistemic virtue and epistemic accuracy.

2.1. Joint Commitment

Gilbert defines a collective as a group of individuals who, under a condition of common knowledge, jointly commit to a goal or belief. When individuals join collectives or form a collective, they commit to do or refrain from doing certain things. There is

always a *quid pro quo* involved in joint commitment that creates obligations for both collectives and their members. Gilbert argues that a joint commitment locks each party into a course of action, and at least two keys are needed to open the lock. Each party holds only one of the keys, with the second key being held by the other party (Gilbert, 1993, p. 694).

Employment agreements are joint commitments between employers and employees that create certain obligations for both parties: no party is committed until all others are committed and no party can rescind from the agreement unless all others have (Gilbert, 1993, p. 693). These obligations are simultaneous and interdependent between the employer and its employees. For example, employees become obligated to follow their employer's code of ethics and bylaws, and employers are obligated to compensate their employees for their services and create an environment in which employees can exercise their talents and find fulfillment in their work.

Once a collective is formed through a joint commitment (regardless of its type), its subject becomes the *collective subject* rather than the subject of the individual members. Of course, not every joint commitment creates a collective, but if one is formed, a *collective subject* emerges. This may be true even for informal collectives and groups. For example, if John decides to go for a 10-mile run, he can decide to discontinue his run at any time and go for a cup of coffee instead. However, if John makes a joint commitment with Nancy to go for a 10-mile run together, they thereby create an informal collective; if John suddenly breaks off without any warning in the middle of the run and goes for a cup of coffee, Nancy will be at least surprised, if not miffed.

Thus, parties involved in a joint commitment are no longer separate individuals, but rather members of a collective with a jointly decided agenda. This agenda consists of a collective goal, a collective belief, and a common social convention (Gilbert, 1993, p. 692). In order for parties to become part of a joint commitment, they must express their willingness and consent, but no party is committed until the others have made their commitments. The characteristics of a joint commitment can be summed up as follows: (1) there is a conceptual connection between joint commitments and obligations, (2) obligations create reasons for action, (3) obligations of parties involved in joint commitments are interdependent and simultaneous, (4) a collective subject (rather than individual members) develops the agenda for the joint commitment, and finally, (5) mutual consent is required to change the agenda of a joint commitment.

In the following section, I will argue that as part of a joint commitment, corporations must provide for the right of contestability, by which employees can express their views and grievances without any fear of retaliation.

2.2. Right of Contestability

I established earlier that collectives that pool individual intellectual resources together are often more intelligent and wiser than their individual members (e.g., Fricker's night-watch team). I also argued that collective beliefs are different from their members' beliefs, and the beliefs of individual members may occasionally come into conflict with collective views. Collectives often benefit from a diversity of views among

their members and become wiser and more intelligent by providing the right of contestability to their members.

Fricker gives the example of a woman who marries a man in a legal system that technically gives him the right to rape her, as that legal system does not recognize the category of rape within marriage. Even if the husband is a good man who would never hurt her in that manner, this woman loses her dignity and freedom in such a system because she does not have the right of contestability (Fricker, 2010, p. 250). Similarly, members of a formal collective must always have the right of contestability so that they can speak up if they come across any injustice. The hearer, ideally a group, must possess the virtue of “testimonial justice”. Fricker holds that an agent is testimonial just if she is capable to reliably neutralize the impact of prejudice in her judgments of speakers’ credibility (Fricker, 2010, p. 250). Fricker argues that a formal collective that lacks the virtue of testimonial justice effectively subjects its members to injustice (Fricker, 2010, p. 251).

Both SOX and Dodd-Frank have provided for Fricker’s concept of testimonial justice by stipulating that employees have access to the highest authority in the organization (i.e., the board of directors) to communicate their grievances or the injustice that they have encountered because of institutional procedures or improper execution of such procedures. What is contentious in today’s corporate environment is that employees are reluctant to exercise their contestability rights in some instances or completely bypass Fricker’s testimonial justice and report any alleged ethical violation to an outside authority in exchange for rewards.

2.3. Epistemic Accuracy

Although not frequently thought of by the average observer, epistemic accuracy is probably the most important, if not the only, gauge to use to determine the success of a corporation. Through epistemic accuracy, corporations can achieve their primary goals, whether that is a focus on increasing shareholders' value or accomplishing a humanitarian goal. An epistemically accurate collective is also a wise collective, and a wise collective is a virtuous collective. A wise collective achieves epistemic intelligence via deliberation and engages its members in its decision-making process. List argues that wisdom is the ability to give all factors their due weight to reach an epistemically accurate conclusion. He argues that collective wisdom exists, and properly structured collectives, such as corporations, can outperform their members and achieve a higher level of epistemic accuracy (List, 2012, P. 203). Once corporations fail to achieve or maintain epistemic accuracy, they may become engaged in activities that not only harm the economic enterprise but also its stakeholders.

Corporations, like other collectives, use a variety of techniques to achieve epistemic accuracy: Fricker's division of labor, Condorcet's Jury Theorem, Page's aggregation theory, and Nozick's invisible and hidden hands. However, also like other formal collectives, corporations run the risk of falling into the fallacy of composition or becoming subject to intentional wrongdoings due to malice and greed on the part of their members.

2.3.1. Coherence Challenge

List argues that collectives can face the coherence challenge in their judgments

(List, 2012, p. 203). The following example clarifies the concept:

p *Health insurance coverage for rank and file employees improves employees' morale.*

q *Increases shareholders' value.*

If p then q *Improving employees' morale results in increased shareholders' value.*

Let us assume that the board of directors of a company consists of three board members, and the CEO of the company makes the proposal that health insurance coverage will improve employees' morale, which will result in an increase in shareholders' value.

- *The first board member agrees with the proposal.*
- *The second board member agrees that improving employees' morale increases shareholders' value, but does not believe that providing health insurance coverage to rank and file employees necessarily improves employees' morale.*
- *The third board member believes that even though providing health insurance improves employees' morale, increased morale does not necessarily result in additional shareholders' value.*

The following truth table reflects the logical result of the above scenario:

	<i>P</i>	<i>If p then q</i>	<i>Q</i>
First board member	True	True	True
Second board member	False	True	False
Third board member	True	False	False
Aggregation	True	True	False

Thus, the aggregation does not meet List's coherence challenge due to its lack of consistency (even though that the outcome is expected to be "true," the aggregation result is "false"). This inconsistency can be avoided if the board members simply vote on q and ignore the proposition of *If p then q* . List's argument is another confirmation of Gilbert's earlier argument that collective belief is not logical in all instances.

So far, I have discussed the interaction of agents and collectives and the emergence of collective cognition. If I am correct, collective beliefs exist and outperform the members' beliefs in most instances—List's coherence challenge is a noted exception in this claim. I argued earlier that collectives can achieve epistemic accuracy only in combination with their members; however, as a result of recent technological innovations, collectives may obtain knowledge and achieve epistemic accuracy without a human's interference or help.

2.3.2. Internet of Things (IOT)

The phrase "Internet of Things" was first coined in 1999 to describe the network of everyday physical objects that surround us. These objects are increasingly embedded with communicative capacities that operate within the technology that powers the Internet. They collect and transmit data about their use and their surroundings. The possibilities of such a network are enormous, and the technology industry has so far only scratched the surface of "machine-to-machine" (M2M) interconnectivity and its astounding potential. The IOT has applications in homes as well as in the corporate sphere. However, the lion's share of the IOT market lies in corporate and business

applications. For example, IOT sensors placed throughout a factory can determine when machines require maintenance or keep environmental conditions such as temperature and humidity constant throughout the day to preserve the inventory. M2M and the IOT technologies increasingly provide information to collectives that may help them to form their beliefs and develop their cognition independent of human judgments.

For example, in my earlier example, the IOT simply votes on q and ignores the proposition of *If p then q* . It does not matter if p improves the morale of the employees or not. What matters is that p (health insurance coverage) results in q (additional shareholders' value), and that is exactly what the IOT is doing, it will tell the subject that how to get to q with no concern about the *if p then q* proposition. This resolves List's coherence challenge, but it may not always be a good thing in all circumstances. For example, do we always want to increase shareholders' value with no regard to employees' morale or do we need to consider the interests of a broader population (e.g., the stakeholders' value instead of shareholders' value)?

2.3.3. Corporate Vices

I established earlier that based on Fricker's view, collective virtues and vices occur in combination with the beliefs and values of individual members. Collective members' actions due to malice and greed may drag corporations into wrongdoings. In addition to members' malice and greed, the corporate structure itself might be the cause of corporate wrongdoings. In the following sections, I will examine how these scenarios may occur.

2.3.3.1. Malice

Earlier, in section 1.3, I quoted Fricker's assertion that collective virtues and vices arise for several reasons: (1) collectives within institutions are negligent in realization of otherwise proper institutional procedures and structures; (2) individual members of institutions are negligent in realization of otherwise proper institutional procedures and structures; or (3) the procedural structures of institutions are faulty. In recent corporate scandals, most instances of corporate wrongdoing have been due to individual negligence and malice; Theranos is the one of the latest such incidents.

Elizabeth Holmes is a Stanford University dropout with striking good looks, eloquence, and charisma. She founded Theranos, a medical technology company, in 2003 in Palo Alto, California, when she was only 19 years old. She wore black turtlenecks (reminiscent of Steve Jobs) and demonstrated many of the personality traits and management styles of the late Apple cofounder. She even kept a picture of the late Jobs on her desk. One of the hallmarks of Theranos was its secrecy and tendency to keep its employees in the dark—just as Jobs was famous for keeping Apple's products under tight wraps.

Theranos claimed that it had developed a blood-testing device named "Edison" that used microfluidics technology and could accurately test a few drops of blood obtained via a finger-stick, rather than requiring the vials of blood obtained via traditional venipuncture. The company was valued at \$9 billion before its testing device was ever subject to a peer-review study. In October 2015, a *Wall Street Journal* investigative

reporter revealed that Theranos might have exaggerated the reach and reliability of its technology, a claim that Holmes vehemently denied. Several clinical pathologists and other medical experts also expressed skepticism about Theranos' technology. A week later, the Food and Drug Administration (FDA) stated that the company's miniature blood containers were unapproved for any test other than that for herpes. In 2014, Forbes estimated CEO Holmes' net worth to be approximately \$4.5 billion, revising this estimate to zero in mid-2016 after the revelation of inaccurate presentations and claims. The *WSJ* reported on July 11, 2016, that the Centers for Medicare and Medicaid Services had revoked Theranos' certificate and banned Elizabeth Holmes from the blood-testing business for at least two years. On October 6, 2016, The *WSJ* reported that Theranos would shut down its blood-testing facilities and shrink its workforce by more than 40%. The U.S. Attorney General's office in San Francisco and the SEC are currently investigating Theranos for charges related to misleading investors.

Theranos is a good example of Nozick's invisible and hidden hands. Nozick is right that the influence of invisible and hidden hands may yield either good outcomes (Apple and its cofounder Jobs) or bad (Theranos and its founder Elizabeth Holmes). Theranos is also a good example of Fricker's first and second vice scenarios, in which faulty individuals drag institutional collectives into wrongdoing. Theranos lost its epistemic accuracy early on and eventually lost its virtue as a collective.

2.3.3.2. Greed

Charles Ferguson's 2010 documentary *Inside Job* is about the Wall Street capitalists who brought down the U.S. economy in 2008 with the help of certain politicians. The global financial meltdown took place in the fall of 2008, causing millions of job and home losses. It plunged the United States into its deepest economic recession since 1929–33. Through a wide range of interviews, this documentary provides a detailed examination of the elements that led to the economic collapse. Ferguson raises a few key points: first, most of the greedy Wall Street capitalists walked away unharmed and were treated very leniently by the judicial system. Although it is true that Bernie Madoff and a few executives of Enron and WorldCom are serving times in jail, most of the top-level executives responsible for the economic crash simply walked away unscathed. Second, very little has changed in the past eight years. There are still corrupt and greedy executives managing today's corporations and the level of corporate corruption and greed is at an all-time high. Third, greed was widespread among many, including those in academia. In exchange for hefty fees, a few well-known professors at Ivy League schools prepared faulty research reports defending the business models of companies that collapsed a year or two later.

According to Ferguson's documentary, greedy management teams led many corporations during the period leading up to the 2008 financial crisis. These individuals were pursuing their own financial interests and personal goals, and as a result, corporations went down the wrong path. The results were devastating not only for corporate stakeholders but also for the nation—and, indeed, the world—as a whole.

2.3.3.3. Faulty Corporate Structure

Fricker's third scenario of faulty corporate structures and procedures has actually been quite rare in contemporary corporate scandals, but there are a few examples, Madoff's Ponzi scheme is probably the most notable one. Bernard "Bernie" Madoff founded his investment firm based on a Ponzi scheme³ and recruited a number of trusted family members to his firm with the intention of defrauding investors. His sales pitch was that his firm's investment strategy consisted of purchasing blue-chip stocks and taking out options contracts on them, a technique sometimes called a split-strike conversion or a collar. In his guilty plea after the collapse of his investment firm in 2008, Madoff admitted that he had not actually traded any securities since the early 1990s and had fabricated his firm's returns.

3. Whistleblowers

Thus far, I have argued that a wise corporation adopts democratic corporate governance and provides for testimonial justice. I have also discussed how a corporation might err and lose its epistemic accuracy and, as a result, its virtue. In the third and final part of this paper, I will argue for the rights and obligations of whistleblower employees. I will discuss the rights of employees and what prohibits them from participating in the governance of their organizations. I will also argue that employee whistleblowers have certain obligations that go with their rights as employees. Finally, I will discuss the

³ A Ponzi scheme (named after Charles Ponzi) is a fraudulent investment operation in which the operator, an individual or organization, pays returns to its investors from new capital paid to the operators by new investors, rather than from profit earned through legitimate sources.

whistleblowers' quandary and the frustration that employees face when working in a malfeasant environment.

3.1. Whistleblowers' Rights

A corporate governance policy spells out the collective interests of all stakeholders in its bylaws. Hsieh argues that there are two doctrines that deal with the question of corporate governance: instrumental and non-instrumental considerations (Hsieh, 2006, p. 262). Instrumental considerations reflect the idea that the interests of particular given stakeholders (e.g., shareholders) must be furthered, whereas non-instrumental considerations reflect the idea that certain activities must be respected even though there may be no direct benefit to a given stakeholder. For example, a corporation may perform certain activities to protect the environment or do certain philanthropic endeavors to enhance the well-being of its employees and of society as a whole (Hsieh, 2006, p. 262), and shareholders may not receive an immediate benefit from these activities. Hsieh, based on Rawls' *Theory of Justice*, argues that business ethics generally invokes the concept of justice in relation to non-instrumental considerations.

However, there are arguments that the direct application of Rawls' concept of justice to the governance of an economic enterprise is problematic (Hsieh, 2006, p. 262). The main argument is that an economic enterprise usually has a limited life, whereas Rawls assumes a political society under the governance of a state with an infinite life. This is a valid argument, but nevertheless, we can draw certain parallels between the position of citizens in relation to a state and the position of employees in relation to an economic

enterprise. Employers and states both possess power, whereas employees and citizens are subordinated to these institutions, dependent upon them for their livelihood.

Application of Rawls' theory of justice in an economic enterprise requires that employees not to be in a position of servitude at work and that they have meaningful work (Hsieh, 2009, p. 397). I argue that the imposition of a servitude relationship and lack of meaningful work are the main two factors that impede employees from participating in their corporate governance.

3.1.1. Servitude

Hsieh argues that an economic enterprise must provide for a democratic workplace; that is, one in which workers can participate in an organization's decision-making process (Hsieh, 2009, p. 400). Hsieh, based on Rawls' concept of *justice as fairness*, argues that workers are concerned with more than their income and wages and care about the enjoyment of certain liberties in their workplace environment (Hsieh, 2009, p. 403). Fricker similarly advances the necessity of testimonial justice, where employees' grievances or any injustice that they have encountered because of institutional procedures or improper execution of such procedures can be heard.

The structural design of an economic enterprise must be based on Condorcet's doctrine, where each member believes that he or she has the complete and correct answer. I established earlier (1.2.3) that based on Page's aggregation argument, the probability that the majority has the correct answer increases as the number of the members who participate in the process and vote increases. The majority vote does not necessarily

guarantee that the collective's views are epistemically accurate in all instances; nonetheless, it increases the odds that they are.

There are several objections to the implementation of a democratic workplace, as the concept of an economic enterprise is different from that of a state. Opponents argue that in an economic enterprise, management should be able to exercise certain discretion; otherwise, the constant or abrupt participation of employees in corporate governance can lead to inefficiencies (Hsieh, 2007, p. 352). This argument is valid, but management can always exercise justice and fairness and maintain a balance between occasional use of its discretion and proper exercise of democratic measures.

3.1.2. Meaningful Work

Hsieh argues that excessive division of labor deprives employees of meaningful work (Hsieh, 2007, p. 352). An excessive division of labor prevents employees from fully comprehending and conceptualizing their work and exercising proper judgment in carrying it out. For example, in Fricker's night watch example, the guards are simply looking in one direction to make a judgment about whether the enemy is approaching and to report this to their commander without having any concept of who the enemy is and why it exercises enmity toward them. Avoiding the excessive division of labor may not be an easy task in today's technological environment, which privileges specialization, but an economic enterprise has other options to overcome that hurdle, such as providing cross-training to its employees and rotating their jobs.

If Hsieh is right, the conditions that help ground a citizen's right to participate in a democratic society also exist in the governance of an economic enterprise (Hsieh, 2013, p. 759). If meaningful work can overcome the excessive division of labor and the economic enterprise can exercise a democratic management style, and if Rawls' account of a political society is aligned with the structure of an economic enterprise, then a corporation's employees have an obligation to participate in the governance of their organization and to express their views and bring forward their grievances similar to how a democratic political process operates in a free society. Both SOX and Dodd-Frank have provided employees with a path to address the highest level in their organization to express concerns and grievances, but many employees are reluctant to exercise their right of contestability. In the following section, I will discuss the reasons that employees may be reluctant to participate in the democratic process within their organization.

3.2. Whistleblowers' Obligations

Employment is a joint commitment with mutual obligations between an employer and its employees for the common good of both; employers benefit from the services of their employees and, at the same time, employees exercise their talents to find fulfillment in their work in addition to their compensation. Within this joint commitment, whistleblowers' immediate obligation is to report any alleged ethical violations through the proper channels in their organizations. Bounty hunter whistleblowers who bypass the corporate governance of their organizations to report an alleged ethical violation to

collect financial rewards harm their employers and their stakeholders and do not achieve Aristotelian excellence in their lives.

If employees bypass a corporate governance system that provides for testimonial justice and fair hearing to report an alleged unethical violation to an outsider (in this case, the SEC) for financial rewards, they have rescinded from the collaborative and cooperative relationship of a joint commitment without the consent of the other party. As Gilbert argues, in a joint commitment, both parties are locked into a course of action, and two keys are needed to open the lock. In the remainder of this section, I will discuss the reasons that employees may be reluctant to participate in corporate governance: retaliation, alienation, despair, and financial reward.

3.2.1. Retaliation

Dodd-Frank provides for a system of financial incentives and protections to encourage employees with information about possible violations of securities and commodities laws to bypass corporate internal controls and structure and report the suspected violations directly to the SEC in exchange for financial rewards.

Subsequent to the promulgation of Dodd-Frank provision, the SEC received many complaints from large corporations (e.g., Google, Microsoft, Honeywell, J.P. Morgan, and Northrop Grumman) and their attorneys, who were highly critical of the law because of its potential to undermine corporations' corporate governance systems (Rashty, 2015, pp. 48-50). Companies soon discovered a quirk in the final SEC regulation that has prompted an unsettled question: Do whistleblowers have to take their complaints to the SEC first to

qualify for protection? As a convenient way to escape any liability for retaliating against whistleblowers, many U.S. corporations are increasingly claiming that tipsters who do not initially report their complaints to the SEC are not protected under Dodd-Frank. This issue regarding the protection of whistleblowers against retaliation soon found its way into the judicial system. Several U.S. district courts have ruled in favor of whistleblowers and their protection against any retaliation by their employers. However, the Eighth Circuit Court of Appeals in *Bussing v. Cor Clearing LLC* and the Fifth Circuit Court of Appeals in *Asadi v. G.E. Energy (USA), LLC* have issued different rulings on two similar cases, and a final Supreme Court ruling should provide the guiding principle.

Furthermore, a federal appeals court in *Liu Meng-Lin v. Siemens AG* ruled that provisions of Dodd-Frank prohibiting retaliation against whistleblowers do not apply to corporations residing outside the U.S. even if they are traded on the U.S. stock exchanges. Moreover, the Eighth Circuit Courts of Appeal in *Beacom v. Oracle Am* recently ruled that an employee plaintiff must show a reasonable belief that the defendant employer has engaged in fraud in order to be protected against employer retaliation. The SEC has been very supportive of whistleblowers and has filed *amicus briefs* to protect them against retaliation, but the controversy continues at present (Rashty, 2015, p. 48).

3.2.2. Alienation

Marxism argues that under capitalism, workers are exploited by the system of wage-labor because they do not receive the full value of what they produce through their

labor. Capitalists own the means of production, and they hire workers if and only if those workers can produce “surplus value” for them. Hsieh argues that under the contemporary account of exploitation, the wage-labor relation is not as much of a concern, as injustice arises later, when distribution in access to the means of production is unfair. That is, the wage-labor relationship is not inherently unjust, but gives rise to injustice when distribution of access to the means of production is unjust (Hsieh, 2013, p. 756).

Hsieh’s argument is based on Rawls’ 1985 essay, “Justice as Fairness,” which argues that under the “original position,” institutions should be designed such that they can benefit all employees and, in particular, the least well-off ones. Our existing corporate structure has totally disregarded the concept of justice in fair distribution of resources: for example, Oracle paid Larry Ellison a total compensation of \$64 million in fiscal year 2015 (Oracle, 2015, p. 48) and Apple paid Tim Cook a total compensation of more than \$10 million in the same year (Apple, 2016, p. 35). Even the most highly educated and talented employees do not typically earn that much compensation throughout their whole working lives. The disparity between the compensation of certain executives and the rest of a corporation’s employees has alienated many rank and file employees.

The SEC, pursuant to Dodd-Frank, has promulgated regulations regarding certain executives’ pay, but the disparity in pay between rank and file employees and the top management persists. Employees question whether the success of their companies will ever trickle down to their ranks or just benefit the top-tier management. As a result, employees are alienated and are reluctant to participate in the governance of their organizations, even if a democratic system for doing so exists.

3.2.3. Despair

In the *Manifesto of Communist Party*, Frederick Engels and Karl Marx argue that under capitalism, individuals become an appendage of a machine. The proletariat loses the charm or appeal of accomplishing meaningful work, because work is organized to maximize profit rather than to nurture an individual's productive capabilities. Charlie Chaplin, in his 1936 classic *Modern Times*, depicts the Little Tramp's various struggles in the modern industrialized world. Chaplin's movie reflects the deplorable employment and financial conditions that people are faced with during economic downturns, depicting how the Little Tramp loses his dignity and identity when working on an assembly line.

Hsieh argues that despair does not occur exclusively in the context of manufacturing and assembly lines, but is equally applicable to the knowledge- and service-based work that is increasingly important in our modern world (Hsieh, 2013, p. 758). Hsieh's claim likely does not hold in all instances in today's economic environment. For example, the employees of some startup technology companies, in particular engineers, are fully content and dedicated to their work—they are willing to work long hours regardless of pay and truly enjoy their jobs. Nevertheless, Hsieh is probably right that many employees are facing despair in today's environment, and these workers become entangled in a vicious cycle just like the Little Tramp in Chaplin's movie, hopping from one job to the next, with prolonged unemployment intervals in between, losing their dignity and identity in their search for meaningful work.

3.2.4. Bounty Effects

A good corporate compliance program promotes a culture in which employees and employers can work together in a collaborative manner for their mutual benefit. Dodd-Frank and the SEC's bounty program, through which employees can bypass the internal control structure of corporations to report violations to the SEC for financial rewards, undermines this arrangement and promotes animosity between employees and their employers. Under Dodd-Frank, whistleblowing is no longer a problem-solving mechanism, but rather promotes employees' greed as a tool to fight against corporations' greed (Vega, 2012, p. 546).

3.3. Whistleblowers' Quandary

Vega argues that Dodd-Frank is fundamentally flawed because it attempts to combat corporate opportunism by encouraging employee opportunism. He argues that Dodd-Frank has opted to avoid the fundamental moral question by using whistleblowers as a mere instrument for prosecutors (Vega, 2012, p. 483). When whistleblowers adopt the character of bounty hunters as a socially acceptable norm, as Sartre has argued, they become separated from the social role that they play, which leads to moral "bad faith" and intellectual confusion.

Vega has effectively argued that successful prosecution of corrupt management does not bring human dignity to whistleblowers' lives (Vega, 2012, p. 540). Furthermore, the Dodd-Frank bounty program harms employers, as it does not give them an opportunity to mitigate their problems. As I established in 3.1, employee whistleblowers have certain

obligations to their employers. It seems that no matter how it is looked at, the bounty hunter whistleblowers who bypass the governance of their employers to collect financial rewards harm themselves and their employers. There is nothing in the bounty hunter style of whistleblowing that promotes Aristotelian excellence in the employee or provides any benefits to the employer.

Aristotle's definition of virtue is a disposition to think, feel, and act "at the right times, with reference to the right objects, toward the right people, with the right aim, and in the right way," while the individual takes pleasure in doing so (Aristotle, 1995, NE 1144 a30'), Badhwar argues that a person with Aristotelian virtue understands the right end and the right means, both for herself and others, as a matter of practical wisdom (Badhwar, 2014, p. 145), and that just as a *eudaimonic* life is the highest prudential good, a virtuous life is the highest moral good (Badhwar, 2014, p. 125).

On September 22, 2014, the *WSJ* reported that the SEC granted its largest-ever award to a whistleblower, a sum of more than \$30 million. A huge monetary reward such as this can bring immediate gratification, but like any other receivers of such a fortune, whistleblowers may soon discover that the monetary reward has actually ruined the life that they have so carefully cultivated throughout the years. A simple Google search reveals the names and stories of hundreds of lottery winners whose lives were ruined after the receipt of a windfall. Undoubtedly, bounty hunter whistleblowers may be subject to the same fate—perhaps more so due to the dubious provenance of their fortune. In addition to committing a morally doubtful act, bounty hunter whistleblowers fail to promote objectively good lives for themselves and others. At some point, such informants

must realize that the well-respected social identity that once they enjoyed as whistleblowers is no longer available to them and that society has transformed them into bounty hunters. A bounty hunter whistleblower who bypasses the corporate governance of her employer to report an alleged violation in exchange for financial rewards puts her immediate interests ahead of others' interests—the interests of her employer and its stakeholders. As Badhwar has argued, a person with Aristotelian virtue understands the right end and the right means, both for himself and others; this cannot be said of a bounty hunter whistleblower who acts to secure personal financial gain at the expense of his or her employer and the employer's stakeholders.

A bounty hunter whistleblower does not achieve well-being because she fails to aim in a right way at the right people. In John Ford's 1940 adaptation of John Steinbeck's 1939 novel *The Grapes of Wrath*, Ma Joad is the most well-off member of the family. She is a middle-aged and physically well-built woman with a warm and good-hearted personality. Ma Joad is kind, poised, and always in control; she keeps the members of her family together on their treacherous journey to California. When the Joads arrive in California, they stop at a gas station to get fuel for their truck. As the truck leaves the station, the attendant turns to his coworker and comments that the Joads are not humans. In the following scene, when the Joads, who are not permitted to stay in town, arrive at a camp on the outskirts of town with no running water, filled with garbage and waste, Ma Joad builds a fire outside their tent to cook the last warm meal that the family can afford. The hungry children of the camp gather around the fire and food. Tom, the Joads' eldest son, scolds them and asks them to leave, but the children stay and stare at the fire and

food. Ma Joad must make a decision; in the end, she makes an Aristotelian choice by reducing the ration of her battered family but serving them first, then feeds the starving children of the camp with whatever is left. A bounty hunter whistleblower behaves more like Tom Joad. She is self centered and does not act with the right aim toward the right people, and as a result harms herself, her employer, and its other stakeholders.

Final Remarks

I have argued that collectives are capable of forming beliefs and judgments even though they lack any cognition faculties. However, vices and virtues in collectives occur only in combination with individuals, as collectives are not agents and cannot form a virtuous or vicious character on their own. I distinguished between formal and informal collectives and argued that the best structural design for formal collectives is a democratic governance system, as it gives them a better chance of achieving epistemic accuracy and wisdom. Under a democratic governance system, employees have the right of contestability. I also argued that employees may be reluctant to participate in corporate governance, even in democratic environments, and articulated for the reasons that might cause them to take such a position.

Furthermore, I argued that if, during the course of their employment, employees encounter any ethical violations by their employers, then they have certain obligations to utilize the internal controls of their organization to report those violations. Arguably, the relationship between employees and their employers should not be based on mistrust and antagonism. Employment is for the common good of both: the employer benefits from

the services of its employees and the employees gain an opportunity to exercise their talents and find fulfillment in their work in addition to their compensation. I concluded that bounty hunter whistleblowers violate their joint commitments to their employers, abandoning the Aristotelian concept of virtue and causing harm to their employers and their stakeholders.

Finally, I conclude that employees face a challenging choice if they are working in a malfeasant environment: they can leave their employers and suffer financially; keep their jobs and sacrifice their emotional well-being; blow the whistle and face retaliation; or seek a bounty and sacrifice their dignity. Mackie has the example of the captain of a wrecked ship who jettisons the cargo to save it from sinking (Mackie, 1977, Kindle 3213). The captain has remained with two alternatives but he has not chosen or intentionally accepted any of them. The despair of the captain resembles the frustration of an employee in a malfeasant environment. Ultimately, virtue is the path to excellence, “The moral excellence is a mean between two vices: one involving excess, the other deficiency. It is no easy task to find the middle, [as] to find the middle of circle is not for everyone but for him who knows (Aristotle, 1995, NE 1109 b20-25).”

References:

- Apple (2016), *Definitive Proxy Statement*, filed on January 6, 2016, 35, Link to this report: <https://www.sec.gov/Archives/edgar/data/320193/000119312516422528/d79474ddef14a.htm>
- Aristotle (1995). In J. Barnes (ed.). *The Complete Works of Aristotle V. 2*. Princeton University Press, New Jersey.
- Badhwar N.K. (2014). *Well Being, Happiness in a Worthwhile Life* (Kindle Edition). Oxford University Press, New York.
- Fricker, M. (2010). Can There Be Institutional Virtues??. In T. Szabo Gendler and J. Hawthorne (eds.), *Oxford Studies in Epistemology* (Oxford University Press) , 235-249.
- Gilbert, M. (1987). Modeling Collective Belief. *Synthesis* 73(1),185-204, Link to this article: <https://www.researchgate.net/publication/228174739>.
- Gilbert M (1993). Agreements, Coercion, and Obligation. *Ethics* 103(4), 679-706.
- Hotten, R. (2015), Volkswagen: The Scandal Explained. BBC News, Link to this article: <http://www.bbc.com/news/business-34324772>.
- Hsieh N. (2006). Justice, Management, and Governance. *Corporate Governance: The International Journal of Business in Society* 6(3), 261-267.
- Hsieh N. (2007). Managers, Workers, and Authority. *Journal of Business Ethics* 71, 347-357.
- Hsieh N. (2009). Justice at Work: Arguing for Property-Owning Democracy. *Journal of Social Philosophy* 40(3), 397-411.
- Hsieh, N. (2013). Work. In G. Gaus and F. D' Agostino (eds.). *The Rutledge Companion to Social and Political Philosophy*, (pp. 755-764). Routledge Tylor & Francis Group, New York.
- Lahroodi, R. (2007). Collective Epistemic Virtues. *Social Epistemology: A Journal of Knowledge, Culture and Policy* 21(3), 281-297, Link to this article: <http://dx.doi.org/10.1080/02691720701674122>.
- List, C. (2012). Collective Wisdom: Lessons from the Theory of Judgment and Aggregation. In Helen Landemore and Jon Elster (eds.), *Collective Wisdom Principles and Mechanics* (Kindle edition), (pp. 203-229). Cambridge University Press, New York.
- Mackie, J. L. (1977). *Ethics: Inventing Right and Wrong* (Kindle edition), Penguin Books, New York.
- Nozick, R. (1994). Invisible-Hand Explanations. *The American Economic Review* 84(2), 314-318.
- Oracle (2015), *Definitive Proxy Statement*, filed on September 25, 2015, 48, Link to this report: <https://www.sec.gov/Archives/edgar/data/1341439/000119312515329073/d31893ddef14a.htm>

[Hong, L. and] Page, S. E. (2012). Some Micro Foundations of Collective Wisdom. In H. Landemore and J. Elster (eds.), *Collective Wisdom Principles and Mechanics* (Kindle edition), (pp. 56-71). Cambridge University Press, New York.

Rashty J. (2015). Corporate Ethics and the Rights of Whistleblowers. *The CPA Journal*, 48-50.

Securities and Exchange Commission (2011). Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Link to this promulgation:
<https://www.sec.gov/rules/final/2011/34-64545.pdf>.

Securities and Exchange Commission (2015), 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program, Link to this promulgation:
<https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2015.pdf>.

Vega, M. A. (2012). Beyond Incentives: Making Corporate Whistleblowing Moral in the New Era of Dodd-Frank Act Bounty Hunting. *Connecticut Law Review* 45(2), 483-547.

Vermeule, A. (2012). Collective Wisdom and Institutional Design. In Helene Landemore and Jon Elster (eds.), *Collective Wisdom Principles and Mechanics* (Kindle edition), (pp. 338-363). Cambridge University Press, New York.