

# Introduction

What are ‘good reasons’ to protect whistleblowers? The first answer that comes to you when going through the numerous case studies is that because whistleblowers disclose information in the public interest, they deserve to be protected against organizational retaliations. As I will be showing in this book, the early literature on whistleblowing gives you the same answer but also points at a dilemma in disclosing information: the public has a right to know but organizations require loyalty and secrecy. That was the conflict between ‘society’ and ‘organization’ that the whistleblowing activism of Ralph Nader in the early 1970s addressed. Nader challenged the norm of the ‘organization man’, which required employees to have an undivided loyalty to their employers. It is that conflict, between the public interest and the interests of the organization, which fires any discussion about an appropriate policy towards whistleblowing and whistleblowers. This book is about those discussions and how they have changed in the past 30 years.

The overall shift that has taken place – and of which the appearance of whistleblowing as an issue was one of the earliest signals – is that organizations have become less ‘black boxes’ that generate welfare for society’s well-being. Organization and society are looked upon today as having a direct interdependent relationship. As the quest for efficiency has set the tone and even citizens have become customers, the distinction between private versus public sector organization has become blurred. Today, business, non-profit organizations as well as government agencies are expected to explicitly address their relation with the societies they operate in. They need to be clear on their Organizational Social Responsibility, whether they are corporations or charities.

This book, and the research it is based on, is very timely. When I had the idea for this book the first time, in 1998, the US, Australia and the UK had legislation specifically aimed at protecting whistleblowers. Meanwhile, new whistleblowing policies have been legislated in the US, Australia, South Africa, New Zealand, Japan, Belgium and initiatives towards legislation have been undertaken in Ireland, the Netherlands, India, and Canada. Clearly, we are experiencing a momentum of whistleblowing legislation all over the world. Different parts of that world and different cultures might discuss the issue in different terms, but having to deal with the issue seems to have become a global thing. There is no way to avoid the discussion. Whistleblower protection is coming!

And so, this is an excellent time to reflect upon the ‘good reasons’ to protect whistleblowers and how these ‘good reasons’ might be put into policy. This book does just that and it is unique in doing so. The research it is based on inquires into how whistleblowing policies are legitimated. How are they advocated and what reasons are considered as ‘good’ ones to pass laws protecting whistleblowers? This kind of research has not been done before. While there is literature comparing

whistleblowing legislation, the focus is on the effectiveness of a particular aspect of a scheme, not on the way in which these policies are legitimated and hence not on the ethics of whistleblowing policies.

What is of concern in this book is the ethics of whistleblowing policies, with the kind of whistleblowing these policies protect and their implications for the relation between the organization, the individual and society, hence the ethical inquiry. To do that, I screen whistleblowing policies on three elements that make up the conditions for offering protection to the whistleblower: 1) the actor element (who can blow the whistle); 2) the subject element (about what can the whistle be blown); and 3) the recipient element (to whom must the whistle be blown). Part of this book develops the framework to perform such a screening. The period covered in this research (1970–2005) is also the time-span in which what we today call ‘globalization’ has risen, has ‘defeated’ the cold war constellation, has promised us everything but has also gained massive critique from the end of the 1990s on. That globalization of a private capital oriented economy entails a strong normative discourse. A discourse is a specific set of concepts used to describe a reality but which immediately also entails norms and goals about reality. Likewise, the discourse of globalization puts forward an image of societal goals, of what is possible, desirable and necessary. Hence, researching ‘good reasons’ to protect whistleblowers cannot be carried out without putting it into the context of globalization.

Thus, this book is a story about two evolutions in discourse. The first concerns whistleblowing. Whereas in the early 1970s the discourse on whistleblowing raised a dilemma and posed a problem – the conflict between society and organization – by 2005 a large number of whistleblowing policies have developed that succeeded in legitimating whistleblowing. The second evolution in discourse concerns globalization. From the discontent with labour discipline at the end of the 1960s grew ideas about individuation and identity. These became picked up and mobilized in restructuring the world and hence the local as well as the global production relationships. By the 1990s a ‘globalization semantic’ had developed. The term ‘semantic’ denotes words gaining their meaning through their connections to other words. Thus, a semantic is a network of words that refer to one another in a specific way and it is that specific way that turns the words into concepts, or words-with-meaning. A semantic too, just like a discourse, is descriptive as well as normative, but discourse emphasizes power whereas semantic emphasizes words within a referring network of other words. Nevertheless, it is through words-with-meaning that we make sense of what we experience, that we render reality a meaning and that our actions become meaningful. The ‘globalization semantic’ that has developed is a semantic network of words such as ‘flexibility’, ‘competition’, ‘decentralization’, ‘uncertainty’, ‘governance’, ‘network’, and ‘stakeholder’. The framework to perform the screening that is developed in this book connects both evolutions.

Rather than assuming these semantic shifts took place along a predetermined master-plan, Niklas Luhmann’s evolutionary view on the dynamics of the

semantic seemed much more plausible. In Luhmann's view, semantic evolution takes place through endogenous processes of variation, selection and stabilization. We constantly produce conceptual variation. But the whole of variations is under selection pressure, of which the stabilizing potential of a particular variation is the criteria. Stabilization points at the need for humans to make sense of experiences of reality, hence to the continuation in meaning-making. In that evolutionary process, Luhmann links ideas and meaning with societal structures, but says the question which of the two are primordial is unanswerable – of importance is that both evolve together.

However, Luhmann's approach is not a 'plug-and-play' theory. Therefore, in order to outline a methodology for this research, I look for inspiration in the work of others. Max Weber's method of interpretation through idealtypes appears adequate because this was the way Weber arrived at non-nomothetic causal explanation. And because whistleblowing, more specifically the retaliation against whistleblowers is an issue of power, I also look at Weber's writings on power. Another perspective that showed potential for my research was the Foucauldian perspective of the power-knowledge-norms triad. Whistleblowing entailed a power issue, but also involved a knowledge issue in the sense that what whistleblowers do, is to disclose information. My fascination with the way whistleblowing is legitimated then also makes the normative aspect of the Foucauldian perspective appropriate. My inquiry into the ethics of whistleblowing policies is thus also an inquiry into what kind of individual subject was being produced through these policies. In connection to Michel Foucault, I also glance at Gilles Deleuze's thinking, specifically the notions of rhizome and lines of flight. It seems that these notions fit well in an approach that takes seriously the semantic, endogenous variation of meaning, unplanned shifts in meaning, self-reference, and dominant meanings exercising selection pressure on variations in terms of stabilization. *If* the whistleblowing advocated in the early 1970s was an attempt to escape the dominant norm of 'organization man' but as time went by whistleblowers started to get protection through legitimate whistleblowing policies, *then* it was very likely that the whistleblowing-public interest-'line of flight' had broken off into different kinds of whistleblowing-'lines of flight'. Finally, I look at Alain Touraine's institutional level in the organizational process to make the notion of 'legitimate organization' clear. What I draw from Touraine is that the conflict between society and organization – a conflict the 1970s discourse on whistleblowing emphasized – must not be overemphasized, but instead we can regard organizations as political actors in the sense that they try to impose on society a concept of society, of societal goals and of societal evolution. Thus, the conflict between society and organization is not so much a conflict between the public interest and organizational goals, but rather a conflict between the individual and the organization over the definition of the public interest.

The framework used for screening the whistleblowing policies, is a heuristic device based on the theoretical approaches I just mentioned. It starts from the 'globalization semantic', which I describe in the book in a self-referring way.

The words in that semantic gain their meaning through mutual reference to each other. That ‘globalization semantic’ can then be used to generate ways in which the protection of whistleblowers can be legitimated today. The possible ways of doing so make up the idealtypes of legitimating whistleblowing policies.

But the assessment of whistleblowing policies carried out in this book is not only descriptive. The policies are evaluated as well. In other words, the research question is not just ‘what are the current trends in legitimating whistleblowing policies?’ but also ‘how ethical are these tendencies?’

As whistleblowing is about an individual disclosing organizational practices and thus involves the categories of the individual and the organization, the ethical criteria involve these categories. The ethical problem in whistleblowing is that whistleblowers get retaliated against by the organization, even when blowing the whistle was the justified thing to do. This points at a specific relationship between the individual and the organization – see the dilemma of the public interest and the ‘organization man’. What whistleblowing policies do, is to protect whistleblowers from such retaliation *if* the whistleblowing meets the conditions set out by the policy. Now, if whistleblowing policies are part of organizational practice, then this too must imply a specific relationship between the individual and the organization.

That is where I situate the ethical criteria. The relation between the individual and the organization is a power relation. My criteria make that power relation ethically relevant. The end of the 1960s and the early 1970s were marked by a surge of criticism of the organizational domination over the individual. The advocacy of whistleblowing can be seen as an exponent of that protest. The question with regard to current trends in whistleblowing policies is whether these policies protect the individual from organizational dominance, or whether the normative discourse of globalization has turned whistleblowing into a mechanism of organizational dominance. I call the first *subjectaffirmation* and the latter *subjectivation*.

The idealtypes of legitimation of whistleblowing policies must be constructed within the globalization semantic. Within each ideotype, subjectivating and/or subjectaffirming movements must be identified. Then, whistleblowing legislation, proposals and discussions can be screened using the framework of idealtypes. To the extent that idealtypes are matched, current tendencies can be identified. The ethical evaluation can be made by looking at the extent to which idealtypes and movements within idealtypes are not found in the whistleblowing policies.

Here lies another contribution of this research. It draws up legitimization for whistleblowing policies based on the concepts used to describe organizations and organizing in the context of globalization. Hence, it makes explicit the normative implications of a descriptive activity. The research shows that not every possible legitimization is used today.

Also, it is often argued that globalization is double in the sense that it opens possibilities but also poses threats. This research makes that very concrete. It points out in detail what the subjectivating and subjectaffirming movements are within each possible legitimization of whistleblowing policies. It shows the double

possibilities of globalization with regard to whistleblowing, and it also shows which direction we are heading.

Thus, the methodology of this research is able to screen a social phenomenon within its proper context, and to evaluate that screening without getting stuck in ethical relativism.

The findings of this research show a clear tendency in favour of particular kinds of legitimization. They also show some possible legitimization not used today. In general, the subjectivating legitimization possibilities seem more successful and within these legitimization constructs, the subjectivating movements are dominant. Therefore, the conclusion is that current trends in whistleblowing policies entail the ethical risk of subjectivation, of organizational domination over the individual and hence of institutionalizing the employee. In that sense, the advocacy of whistleblowing has experienced a backlash. From an exponent of the protest against labour discipline it seems to have turned into a disciplinary apparatus itself.

The recommendations given at the end of the final chapter are also an important contribution of this research. They are recommendations on how to amend whistleblowing policies in order to avoid the ethical risk of subjectivation. The recommendations too are very concrete, because they are drawn from the same methodological framework as the screening.

In the proceeding chapters of this book, the steps I have just outlined are taken up and worked out in detail. Chapter 1 develops the research questions. The origins and the evolution of the concept of whistleblowing in an organizational context are discussed through a literature review. I also address what the growing attention for whistleblowing might mean and how this research approaches whistleblowing policies. In the literature, there is consensus that whistleblowing is a dissenting voice. However, the consensus is lost when it comes to delineating whistleblowing in an organizational context. Therefore, still in Chapter 2, I offer an overview of possible delineation of whistleblowing. Finally, I point at the limitations of this research and clarify what data was used.

Chapter 2 develops the methodology. It is here that I develop an operationalization of Luhmann's evolutionary approach to semantic dynamic, by looking at the works of Weber, Foucault, some Deleuze, and Touraine. At the end of Chapter 2, I line out the work plan for this research, and I make a first pointer with regard to the ethical criteria.

In Chapter 3, I construct the idealtypes of legitimization of whistleblowing policies. First, I describe the globalization semantic through the mutually referring concepts of flexibility, decentralization, governance, network and stakeholder. It is within that globalization semantic then, that I draw up eight idealtypical legitimization constructs: 1) whistleblowing as a human right; 2) whistleblowing from an OSR-network perspective; and 3) from an OSR-stakeholder perspective; 4) whistleblowing and responsibility; 5) whistleblowing and accountability; 6) whistleblowing and integrity; 7) whistleblowing and loyalty; 8) whistleblowing and organizational efficiency. At the end of Chapter 4, I draw up the screening grid,

consisting of rationales of the idealtypical constructs, dominant ethical theory of the constructs, and the derived actor, subject and recipient elements. I also identify subjectivating and subjectaffirming movements within each idealtypical construct.

Chapter 4 contains the screening of the whistleblowing policies laid down in legislation and the law proposals, and the kind of whistleblowing advocated in the discussions. I do this for the US, Australia, New Zealand, the UK, South Africa, Japan, Belgium, the Netherlands, Ireland, Canada, India, Germany, Switzerland, and for intergovernmental bodies such as the OECD, the European Commission, and the Council of Europe. For each of these, I draw out how the legitimization of whistleblowing policies has evolved, using the set of idealtypes as a heuristic tool.

Chapter 5 then, starts by identifying tendencies in the legitimization of whistleblowing policies, based on the screening performed in Chapter 4. Common constructs are pointed out, as well as combinations of constructs, absence of particular possible constructs and patterns of evolution in legitimization between 1970 and 2005. Then, I take a closer look at the ethical criteria and evaluate the identified tendencies. Finally, from that evaluation, lobbying positions are derived for realizing more ethical whistleblowing policies and suggestions are made for future research.