Track 4 – Breaking the silence. Historical and cross-cultural perspectives on whistleblowing and responsible innovation of organizational transparency

(Kristian Alm, BI, Oslo, Norway; Heidi Karlsen, BI, Oslo, Norway)

Wednesday 28th 13:30-15:30 – Session 1 – Chair: Heidi Carlsen

Wednesday 28th 17:00-18:15 – Session 2 – Chair: Kristian Alm

Session 2
Chair: Kristian Alm, Norwegian Business School (BI), Oslo, Norway

Abstracts

Defining whistleblowing in context: a French case study

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Ongoing debates about definitions and terminology are a feature of many fields, but in whistleblowing research the definition offered by Near & Miceli (1985) at a very early stage in the development of the field ('disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action') quickly became and remains widely accepted. This reflects the broad but precise nature of the definition itself, but also implies that scholars assume whistleblowing is a universal and constant phenomenon (i.e. essentially the same in all places and at all times). In this paper we explore the limitations of grounding whistleblowing research within this implicit general model. We argue that what whistleblowing means to lay people is influenced by environment, context and culture. Taking the case of France as an example, we examine the unique cultural, legal, and historical features that shape the French understanding of whistleblowing, illustrated by data from a study of workers within French international development charities. We suggest future research should consider the dynamic aspects of a working definition of whistleblowing to gain a better understanding of the needs of whistleblowers.

Runaway Trains and Persecuted Whistleblowers: The Consequences of Innovation without an Effective Regulator

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This paper examines the importance of whistleblowing in preventing innovation from being used as an excuse for dangerous shortcuts in manufacturing or other processes. Canada's experience in the delegation of regulatory enforcement of safety in the transportation industry serves as an example. Starting in the 1990s, industry actors in aviation and marine transportation began advocating for greater freedoms in meeting safety and security standards. The regulatory framework at the time was prescriptive, requiring operators to meet strict requirements. Inspectors walked the rails, patrolled the airports, and entered facilities to ensure minimum requirements were being met. This was regarded as expensive and inefficient by industry, which advocated for a shift to performance-based regulation – one which sets standards but gives operators the freedom to determine the manner in which they are accomplished.

The government of Canada embraced this proposal, in part because of anticipated cost savings. This led to the adoption of Safety Management Systems (SMS). Under SMS, the responsible ministry, Transport Canada, shifted its role from inspector to auditor, in theory ensuring that the SMS developed by operators was in place. As error and misconduct are inevitable in human endeavours, and to replace the close oversight of government inspectors, SMS systems must be able to identify, report, and correct defects, errors, and misconduct. When fully integrated into the culture of an organization, this may be the result of a speak-up culture. Where it is not, it may require whistleblowing. Indeed, under SMS, whistleblowers become crucial to informing the public of the risks and dangers. For insiders to be willing to step up, however, research suggests that they should first be convinced that they will be protected and that the wrongdoing will be corrected.

Then, in 2013, a freight train carrying crude oil derailed and exploded in the town Lac Mégantic, Quebec. Forty-seven people died. In 2015, an Air Canada flight made a "hard landing" in Halifax – the aircraft was destroyed, but no lives were lost. Similar incidences in different fields such as food safety show that the problem was not isolated. Inadequate whistleblower protection both in industry and within the regulator was identified as a key cause of the disasters. Subsequent investigations and studies revealed that industry actors were indeed using the excuse of innovation to cut corners in their safety processes, and had ignored or attacked whistleblowers within their organizations. Worse still, whistleblowers within government were also being silenced when they attempted to raise concerns.

Studying this and other cases through the lens of historical and rational choice institutional theories suggests that they arose in large part because long-standing internal institutional government norms, structures, processes, and incentives were at odds with whistleblowing. More specifically, key assumptions in the logic of existing whistleblowing mechanisms in Canadian government are not met. This gave industry actors the freedom to make dangerous changes, unchallenged even when government personnel attempted to raise the alarm. Industry whistleblowers were viewed with the same suspicion. Unfortunately, it does not appear that these disasters have led to any changes: In the wake of the Lac Mégantic tragedy, the government's priority was preserving its reputation. No lasting changes were made to law or practice. This experience serves as a cautionary tale in the hazards of uncritically accepting industry promises on the merits of innovation in crucial areas such as safety and health.

Understanding whistleblowing in developing countries: A case of whistleblower protection policies in Africa

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Whistleblowing, the act of an employee speaking up against ethical failures either internally or externally to persons who can affect action (Near & Micelli, 1985) is not a new concept. Research (Andrade, 2016; Culiberg & Mihelic, 2017; Vandekerkchove & Lewis, 2011) on whistleblowing has interrogated its drivers and disenablers, including the influence of the institutional environment. In developed economies, with century-old democracies and relatively more mature legal institutions, laws to support whistleblowing have been in existence for decades and over the years these regulations have evolved to ensure that public and private sector organisations enable employees to speak up against illegal and immoral actions (Onyango 2021).

Contrary to developed economies, African nations have only experienced political independence since the 1950s and 1960s undergoing significant periods of undemocratic military rule in the succeeding three decades, and only returning to sustained democratic dispensations in the 1990s (Rothchild & Gyimah-Boadi, 1981: Meredith, 2005). This new democratic era led to heightened expectations of transparency and accountability in both the public and private sectors (Yeboah-Assiamah et al., 2016; Meredith, 2005). The introduction of the African Peer Review Mechanism, an instrument for members of the African Union to voluntarily accede to an African self-monitoring mechanism suggests commitment to improving transparency and accountability. These initiatives inspired some African countries to develop whistleblowing and anti-corruption policies, with others going a step further to pass whistleblowing legislation. Nevertheless, whistleblower protection laws vary in quality and effectiveness (Domfeh & Bawole, 2011). Despite these developments existing literature has not sufficiently interrogated whistleblower legislation on the continent. In our study we evaluate the legal instruments and their implementation in African countries.

Whistleblower protection laws are necessary to enable a culture of speaking up against ethical failures, as they provide legal and institutional mechanisms to safeguard citizens and employees who choose to disclose misconduct. Even though all African nations but Eritrea are signed onto the United Nations Convention against corruption (UNCAC) which requires that states protect whistleblowers according to their domestic legislation, only seven African countries have explicit domestic legislation to protect whistleblowers from retaliation, harassment and discrimination. In some cases, despite the whistleblower protection laws, whistleblowers are still not protected. A case in point is in South Africa, where the Protected Disclosures Act (PDA) 26 of 2000 has largely failed in its protection of whistleblowers. The recent killing of the Chief Financial Officer of the Gauteng Provincial Health Department, Babita Deokaran, who blew the whistle against the Covid PPE procurement scandal in the health system brings to the fore the question of the effectiveness of whistleblowing protection laws in weak institutional environments.

A detailed examination of whistleblowing legislation (or the lack thereof) in Africa and related strengths and weaknesses is necessary for a nuanced understanding of the research

on whistleblowing. Our comparative analysis seeks to contribute to the research on whistleblowing by identifying aspects of the genealogy and functioning of whistleblowing legislation.

Our research explores the legal and institutional context for whistleblowing in Africa. We seek to understand the clarity, precision, and articulation of whistleblower protection laws in Africa, cognisant of the levels of democratic independence and maturity across the continent. We also explore how institutional dynamics influence the formulation and implementation of whistleblower protection laws.

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