1. Whistleblowing, its importance and the state of the research

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WHY WHISTLEBLOWING?

To the uninitiated or the foolish, ‘whistleblowing’ may readily seem like a niche, almost boutique issue for research and policy making. The ‘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’ (Near and Miceli 1985: 4), sounds like a very specific, perhaps even narrow or technical field of study. And yet, in the modern age of institutions, whistleblowing is now established as one of the most important processes – if not the single most important process – by which governments and corporations are kept accountable to the societies they are meant to serve and service. The ability for organizational ‘insiders’ to speak up about wrongdoing, and what happens afterwards in terms of corrective responses and treatment of the people involved, lies at the very heart of the health of all institutions and modern regulatory processes, right across society. In many ways, therefore, the subject could also not be broader, nor more far-reaching in terms of its complexities and consequences.

This Handbook provides researchers and policy makers from around the world with a comprehensive overview of the state of our knowledge regarding this vital process, in light of the last 30 years of progressively more systematic research into whistleblowing. As well, it provides cutting-edge analysis of the conceptual and practical challenges that researchers should confront in the next decade, if our knowledge is to develop so as to better inform the way that whistleblowing is understood and responded to by organizations, regulatory authorities and governments. The Handbook follows and draws upon some important previous stocktakes of coverage and gaps in existing research (e.g., Mesmer-Magnus and Viswesvaran 2005; Miceli et al. 2008), and observations on the limitations of inconsistent and uncoordinated research (Miceli and Near 2013) as well as closely related fields like employee voice (Burke and Cooper 2013). The book also comes at a time when the reform of
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institutions, policies and laws to better recognize whistleblowing, and protect whistleblowers, has evolved into a global policy issue, supported by commitments from governments through international instruments from the United Nations Convention Against Corruption (UNCAC) to the G20 Anti-Corruption Action Plans (see, for instance, Calland and Dehn 2004a, 2004b; Lewis 2010).

But for all its importance, whistleblowing is no simple issue. Its implications are felt from the micro to the macro levels of our institutions; from the coalface of frontline human resource management and organizational justice, to the complex politics of modern regulation aimed at ensuring integrity and responsibility in the behavior of particular institutions and industries, to the high politics of accountability and corruption affecting entire governments. To meet modern reform needs, research must therefore be both theoretically grounded and applied. Above all, it must be interdisciplinary, which is why this Handbook brings together scholars and policy practitioners not from any single field, but from sociology, political science, psychology, information systems, media studies, business, management, criminology, public policy and several branches of law. As will be seen, research into whistleblowing is becoming increasingly ‘mainstream’ in all these disciplines, which only increases the challenge of maintaining the relationships between them.

In all these fields and on almost every major topic reviewed in the book, the approach to researching whistleblowing also faces a significant ‘fork in the road’. We reflect further on the outlook for whistleblowing research in the concluding chapter, drawing together these shifts and departures; but as we will see through the rest of this Introduction, there is almost no aspect of current knowledge which is free from policy or theoretical contention, or which does not cry out for a more sophisticated empirical approach. This makes whistleblowing a fertile field for a new generation of researchers. Moreover, although they contain plenty of conceptual meat, the problems are not just theoretical and academic. They reflect a real demand from institutions and regulators for better, more reliable evidence regarding the value of whistleblowing and the options for recognizing and maximizing that value. As a result, not only is there both scope and likelihood for expansions in applied empirical research, but every major new research project has the potential to help break new ground.

This Handbook is structured so as to provide something of a road-map, both to these fields of research and to these new opportunities and challenges. While many chapters focus on research conducted in a particular country, or undertake comparison between a number of studies
and countries, there is no geographic structure to the book. Nor is the book divided according to the different types of whistleblowing or whistleblowing policies that might be found in the public and private sectors. It is clear that in most of its aspects, whistleblowing does vary between countries, sectors and even industries or policy areas, whether this is in terms of basic understandings, attitudes to wrongdoing, the desirability and methods of reporting it or legal protection obligations or the machinery for regulatory oversight. However, existing research suggests these differences represent important variations on more consistent themes, based on the reality that corruption and malpractice can arise in any institutional setting, as can the reporting of it. Instead, the Handbook is concerned with the overall need to better understand the complex inter-relationships between the different elements of the whistleblowing process, in any or all settings, including not only the nature of the whistleblower and the form of wrongdoing, but the method of reporting, the likelihood of wrongdoing being rectified, the incidence of retaliation, and the cultural, organizational and institutional arrangements that influence management and regulatory responses.

As a result, the three parts of the Handbook each contain six chapters devoted to major topics which are central to whistleblowing research and policy making, anywhere and everywhere. Part I deals with ‘Research Fundamentals’, a set of essential issues regarding how the phenomenon of whistleblowing is defined and understood for the purposes of all research and policy making. Part II is a step more applied, dealing with ‘Organizational Culture and Responsiveness’. These chapters show how when it comes to actually undertaking research into whistleblowing, on each major element or dimension of the whistleblowing process, there are serious design issues to be confronted and solutions found for the new and better ways that more insightful data can be gathered. Part III is more applied again, dealing with ‘Research in Action’, by looking at what we know about legal and policy responses of societies to whistleblowing. These chapters emphasize how little policy making has been informed, to date, by good research and evidence about what works or what does not at institutional levels. These chapters reinforce not only the academic, but practical importance of research which addresses the challenges set out in Parts I and II.

We begin by introducing these topics, beginning with the fundamental question, ‘what is whistleblowing?’ and demonstrating, along the way, why it is important. In the course of painting this landscape, we introduce each chapter in turn, showing how each topic fits with these basic questions. As Terry Dworkin reminds us in the Foreword to this book, while good whistleblowing research involves many disciplines and technicalities, it is
all also fundamentally about people. Accordingly, we will include some prominent examples of whistleblowing incidents and individuals, before turning to final reflections on how the Handbook should be used.

WHAT IS WHISTLEBLOWING?

A whistleblower is fundamentally an organizational or institutional ‘insider’ who reveals wrongdoing within or by that organization or institution, to someone else, with the intention or effect that action should then be taken to address it. This definition is essentially a paraphrase of the most widely used definition in whistleblowing research, cited at the beginning of this chapter (Near and Miceli 1985: 4). Tried and tested over many years, it is the departure point for most chapters in this book. However, the variety of definitions in different policy settings, public discussion and legislation reflect the different approaches that can be taken to this topic.

In some cases, other definitions may be narrow. Few doubt that employees who disclose wrongdoing about their employing organization fit the definition; hence, the International Labour Organization simply describes whistleblowing as ‘the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers’ (ILO Thesaurus 2005). However, at the heart of the Near and Miceli definition, ‘organization members’ can plainly fill broader categories of ‘insiders’, with these and even broader categories occupying a serious debate when it comes to policy making and law reform (see, e.g., Brown 2013: 160–5; see also Figure 1.1). In much public debate, the term ‘whistleblower’ is easily applied to anyone who discloses wrongdoing and who may require (on someone’s account) support or protection for having done so. The Parliamentary Assembly of the Council of Europe’s Committee on Legal Affairs and Human Rights (COER 2010) regarded ‘whistleblowing’ as: ‘concerned individuals sounding the alarm in order to stop wrongdoings that place fellow human beings at risk’. The US Government Accountability Project defines whistleblowers as ‘individuals who use free-speech rights to challenge abuses of power that betray the public trust’ (see Devine and Massarani 2011: 4). Transparency International takes a middle path of a slightly broader basic definition based on Near and Miceli (‘the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organizations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action’), but also goes on to make clear its
view that a whistleblower is an insider for whom the organization has responsibility:

a whistleblower is any public or private sector employee or worker who discloses information [as defined above] ... and who is at risk of retribution. This includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers, student workers, temporary workers, and former employees. (Worth 2013: 87; see also Osterhaus and Fagan 2009: 44–5)

These definitional variations show that debate is alive and well regarding the reasons for, and nature of, the recognition that societies are giving to the role of individual citizens in reporting wrongdoing by or within their organizations and institutions. Underpinning these debates are two issues: a growing recognition that individuals are in need of support and protection for playing this role; and the value of the information that they can provide, as the trigger for institutional, regulatory and societal responses to deal with wrongdoing. The focus on ‘insiders’, especially but not limited to employees, reinforces these issues. As will be seen throughout the book, it is insiders who often possess the most crucial such information – but they may not be the only ones. It is also insiders who, due to their position within and dependency on the institution concerned, are seen as requiring assistance, incentives or even compulsion to speak up, and who may face the worst kinds of reprisals and consequences – but again, they may not be the only ones.

The research fundamentals dealt with by the first chapters in the book revolve around these basic issues. The recognition of whistleblowing as a topic for public policy, management and law reform stems from the consequences of the conflicting values, judgments and reactions that attach to individuals who report wrongdoing. Any such process of disclosure may provoke these conflicts, if it comes as a challenge to the power, authority or interests of others. And these conflicts in values and judgment will necessarily vary depending not only on those battling interests, but the particular cultural context: whether we are talking about organizational, industrial, professional or societal culture. It is for this reason that, even in an employment context but also more broadly, debate around whistleblowing often plays out in terms of issues of loyalty. Another presumption shared by most whistleblowing research, and most if not all authors in this book, is that higher social and public interests trump this debate, because whistleblowing can and should be understood as a ‘pro-social’ process (Dozier and Miceli 1985; Brief and Motowidlo 1986). This means behavior that is ‘defined by some significant segment of society and/or one’s social group as generally beneficial to other
people’ (Penner et al. 2005: 366), irrespective of what particular objectives were intended or outcomes caused in the individual case. But even in societies where this diagnosis now has strong support in policy and law, not all commentators have approved of whistleblowing. In 1971, in the United States, the Chairman of General Motors, James Roche, stated:

Some of the enemies of business now encourage an employee to be disloyal to the enterprise. They want to create suspicion and disharmony and pry into the proprietary interests of the business. However this is labelled – industrial espionage, whistleblowing or professional responsibility – it is another tactic for spreading disunity and creating conflict. (Walters 1975: 27)

Subsequently, such views have been criticized for placing silent loyalty to organizations who engage in wrongdoing above any ethical or social duty. It is a positive sign that many today would view whistleblowing as an act of loyalty, rather than disloyalty to an employer. For example, where an organization has stated that its staff are expected to report suspected wrongdoing, the failure to do so may be regarded as disloyal. Indeed, if workers have a legal obligation to raise concerns, not doing so may be treated as misconduct (Lewis 2011a). In carrying out research on whistleblowing, we need to be conscious that individuals may well have conflicting loyalties within the organization. In some situations, loyalty to an employer may not be perceived as consistent with that owed to others, for example, the family, work colleagues, a supervisor, a union or wider society – with the impacts of these conflicting loyalties on a person’s willingness to report wrongdoing, or how they do so, or the consequences that follow, representing important topics for research.

From country to country, not only may these perceptions of loyalty differ, but it may be difficult to locate any term or concept that equates to the positive, pro-social concept of whistleblowing introduced above. Even in the United States, the management guru Peter Drucker was of the opinion that whistleblowing was simply another word for ‘informing’ (cited in Benson 1992). Indeed, most whistleblowing laws avoid using the word ‘whistleblower’ in their actual text, instead describing the circumstances in which people are entitled or encouraged to expose wrongdoing and be protected for doing so. One reason for not using the expression ‘whistleblower’ is its negative historical connotations, in many settings, alongside or overwhelming any positive ones, particularly in countries where oppressive governments have encouraged citizens to denounce the activities of political opponents.

For all these reasons, this Handbook does not propose any new universal definition of whistleblowing, but encourages research that
works with existing definitions; is explicit about the assumptions in those definitions; and tests out their practical implications and boundaries. We begin with two chapters setting out key elements of this definitional landscape in greater detail. In Chapter 2, ‘Understandings of Whistleblowing: Dilemmas of Societal Culture’, Wim Vandekerckhove, Tina Uys, Michael T. Rehg and A.J. Brown explore the complexity of researching the impact of culture on whistleblowing, giving specifics on how various cultures view the act of reporting wrongdoing through a variety of perspectives and preconceptions. They present a review of prior cross-cultural whistleblowing studies, as well as a guide to improving the foundations of future studies. The chapter notes that most cultural studies of whistleblowing use a single framework, developed by Hofstede, to examine cultural dimensions, but argues that by itself, Hofstede’s framework is too limited to give a powerful explanation of the interaction between culture and whistleblowing, because it focuses on a mythical, omnipresent national culture that either does or does not lead to whistleblowing behavior. Instead, after presenting results from a new study comparing public attitudes towards whistleblowing in the United Kingdom and Australia, Chapter 2 asserts that a better approach may be required and outlines newer cultural theories that could support more nuanced future study. It also contains important practical advice on the conduct of cross-cultural research.

In any given cultural context, however, we still have the challenge of being clear on who it is whose reporting behavior is being analyzed. In Chapter 3, ‘Outsider “Whistleblowers”: Conceptualizing and Distinguishing “Bell-Ringing Behavior”’, Marcia P. Miceli, Suelette Dreyfus and Janet P. Near tackle the problem thrown up by the apparently increasing application of the term ‘whistleblower’ to persons who are not members of the organization responsible for the wrongdoing, and thus fall outside the traditional definition. They posit that rather than subsuming all reporting behavior under the term whistleblowing, there are distinctions between ‘insider’ and ‘outsider’ reporting that can lead to variations between the two groups and require different if related research approaches. In particular, the chapter discusses potential differences based on how the disclosers acquire information; the channels they use; whether they demand anonymity; and their motivations for reporting wrongdoing. As a result, the authors suggest a different label for ‘outsider’ reporters: ‘bell-ringers’ (see also Figure 1.1). They provide real world examples of bell-ringers, such as Harry Markopolos, who made public attempts to have the US Securities and Exchange Commission deal with the alleged Ponzi scheme of Bernard Madoff, which saw thousands of investors defrauded of US$65 billion. Despite often being called a whistleblower, Markopolos
Figure 1.1 An indicative guide to classifying whistleblowers, complainants, witnesses and victims of organizational wrongdoing
was not a member of staff and thus could not raise his concerns within Bernard Madoff’s organization, nor did he have that status when he approached regulators. This important chapter will influence the way future researchers think about the differences between various types of reporters, and support new parallel research into bell-ringing, to develop a ‘better understanding of incidents and processes that may seem similar to whistleblowing, but which are actually different, and about which currently much less is known’.

WHAT IS WHISTLEBLOWING ABOUT?

The next most fundamental element of whistleblowing is the subjects that it concerns – the wrongdoing that whistleblowers perceive and reveal. Arguably, this is the most important element since it defines the key benefits of whistleblowing for society. It is because whistleblowers disclose suspected wrongdoing that the pro-social value of the process becomes clear, and their treatment by organizations and society becomes so important. No matter how complex, the benefits of whistleblowing to democratic societies are increasingly recognized. It has been argued that whistleblowing laws can be used as a measure of ‘the democratic maturity as well as the humaneness of a country’ (Vinten 1994: 4). Governments are encouraging the reporting of wrongdoing because it advances the interests of openness, transparency and public integrity generally. Wrongdoing may be fraud or maladministration by public agencies, or it may be illegalities that have not been dealt with internally by private organizations. It may be corruption, the global cost of which was estimated by the World Bank in 2004 at US$1 trillion, and which is a major obstacle in the world fight against poverty. Less corruption would enable monies meant for infrastructure and capacity-building in developing countries to be spent on what it was meant for, rather than lining the pockets of politicians, civil servants and contractors (Carr and Lewis 2010). Because corruption is notoriously difficult to detect and address through formal channels, especially in developing countries, whistleblowing is an important means by which it can be exposed.

Whistleblowing may also be about other types of wrongdoing, such as the health and safety of the general public, for example, in relation to hazardous industries or terrorist activity. Indeed, it may be about any breaches of law, morals or accepted institutional practice where the impacts on others can be seen to be ‘wrong’. Part of the growing utility of whistleblowing stems from moves away from state regulation to self-regulation in most countries, leaving organizations and industries free to monitor their own compliance with regulatory requirements, but
also giving whistleblowers a key role as ‘internal antennae’ for problems (Pemberton et al. 2012). As Figure 1.1 shows, perceived wrongdoing can theoretically be spread on a continuum between wrongdoing that only affects individual, private or personal interests and ‘wrongdoing that threatens wider organizational and/or public integrity, above and beyond any outcomes for affected individuals (public interest)’ (Brown and Donkin 2008: 9). Such distinctions may be important for the different complaint avenues, institutional and regulatory responses and protections that can or should be triggered by whistleblowing. However, as recognized throughout this book, such distinctions can be difficult to operationalize in practice and also difficult to research (see also Brown and Donkin 2008: 15). In some cases, a personal grievance about bullying, harassment or favoritism may be entirely that, or it may indicate more general problems in a workplace, or be so serious that it represents a breach of criminal law, or be so systemic that it affects the integrity and performance of the entire institution.

Nevertheless, a stronger focus on the wrongdoing revealed by whistleblowers, and what is done about it, has become a major research shift, supported by this Handbook. Almost 20 years ago, Near and Miceli (1995: 681) defined ‘effective whistleblowing’ as ‘the extent to which the questionable or wrongful practice (or omission) is terminated at least partly because of whistleblowing and within a reasonable time frame’ – and noted the surprising lack of systematic research on this basic measure of the impact, and therefore the value, of whistleblowing. This may be because, once upon a time, it was hard to find prominent examples of where institutions or regulators were actually listening to whistleblowers. More recently, apparently in line with changing social and official attitudes, this is changing. For example, Cynthia Cooper, a vice-president of internal audit at US company WorldCom, took her evidence of suspicious activities to the company’s board of directors, leading to corrective action to deal with the corporate fraud. She was one of three US whistleblowers recognized by Time Magazine as its 2002 Persons of the Year. In the United Kingdom, Gary Brown was a marketing executive at Abbey National, who suspected that his director, Michael Doyle, was defrauding the bank of hundreds of thousands of pounds. Brown found another job before taking his concerns to the board of Abbey National, leading to internal and police investigations which saw Doyle sentenced to eight years in jail, in 1997, for fraud totalling about UK£1 million. Brown received a UK£25,000 reward from the bank for the stress he had been through and returned to Abbey National in a more senior role.
There are other examples. In Europe, Paul van Buitenen was a Dutch assistant auditor in the European Commission’s Financial Control Directorate who, in 1998, drew the attention of a member of the European Parliament to fraud and mismanagement within the Commission. Although he was suspended and had his salary cut, van Buitenen’s revelations together with the public reaction to his treatment ultimately led to the resignation of the entire Commission, and he eventually returned to the European Commission in a different capacity. In Australia, nurse manager Toni Hoffman raised doubts about the competence of a surgeon, Jayant Patel, at Bundaberg Hospital. After she brought the matter to the attention of her local MP as a last resort, who made it public, it emerged that Patel had faced disciplinary action for medical negligence in the United States. A 2005 Commission of Inquiry commended Hoffman for her professionalism, senior managers were sacked, major institutional changes followed, and Patel was prosecuted for manslaughter over a number of patient deaths. Back in the United Kingdom, Stephen Bolsin, a consultant anaesthetist at the Bristol Royal Infirmary, established that too many babies were dying during heart surgery. His six years of effort to improve the service led to a dramatic fall in mortality rates, but also led to confrontation with paediatric cardiac surgeons; it was only after he eventually took his concerns to the media that a major government inquiry made wide-ranging recommendations about reform of clinical governance in hospitals in the United Kingdom (see Bristol Royal Infirmary Inquiry 2001).

Empirical research has also finally begun to turn towards more systematic evidence of the primary outcomes of whistleblowing. In 2006, the major Australian study, ‘Whistling While They Work’, surveyed 7,763 employees from 118 public sector organizations. Due to its scope and scale, this research is mentioned in many chapters of this book. Two-thirds (63 per cent) of all those who reported wrongdoing, including 56 per cent of public interest whistleblowers, believed their report was investigated; and about half (31 per cent of all whistleblowers) considered that things became ‘better’ as a result (Brown, Mazurski and Olsen 2008: 42; Smith and Brown 2008: 111–12). Whether this is a high result or a low one will depend on further comparative and longitudinal research; but it is now clearer that whistleblowing can be, and often is, highly effective in addressing wrongdoing.

To properly measure whistleblowing and its impacts, decisions have to be made about how wrongdoing itself is defined. In Chapter 4, ‘Wrongdoing: Definitions, Identification and Categorizations’, Marit Skivenes and Sissel C. Trygstad provide an essential overview of this important and necessary definitional prerequisite to any whistleblowing behavior.
While our basic definition of whistleblowing refers to ‘illegal, illegitimate, or immoral’ conduct (Near and Miceli 1985: 4), this chapter examines the concept in detail by exploring the cultural, organizational, social, legal and personal contexts that impact whether a potential whistleblower recognizes wrongdoing as such. Skivenes and Trygstad identify six dimensions that influence the definition of wrongdoing across these contexts and evaluate the numerous legal definitions of the types of wrongdoing required by law to be reported in order for a whistleblower to receive protection from reprisal. They also examine the costs and benefits of a narrow versus a broad definition of wrongdoing and explore the impact that labor norms may have on the types of wrongdoing that organizations and the law encourage to be reported. Ultimately, they demonstrate why researchers should pay more attention to the essential concept of defining the types of misconduct society wants insiders to report.

Recognizing the organizational and social value of whistleblowing, through the wrongdoing uncovered, also raises other fundamental definitional problems. Once, whistleblowing was regarded as an entirely voluntary process, with concepts of support and protection geared towards those who ‘went out of their way’ to report wrongdoing when others did not. Increasingly, the value of whistleblowing is being recognized not only by new encouragements, but new expectations that insiders will report wrongdoing. In Chapter 5, ‘Whistleblowing Duties’, Jos Leys and Wim Vandekerckhove explore the implications of the growing categories of individuals who have a ‘role-prescribed’ duty to blow the whistle, as opposed to acting voluntarily. Although this mandatory obligation may arise ostensibly from company codes of conduct, statutes, regulations or societal norms and expectations, Vandekerckhove and Leys develop a detailed taxonomy of wrongdoing and of various roles within an organization to argue that determining one’s duty to blow the whistle depends upon a combination of these factors. Their in-depth analysis adds significant theoretical depth to the ways that different types of whistleblowing should be defined for research purposes, as well as assisting with the design and evaluation of whistleblowing policies that purport to create whistleblowing duties.

HOW TO FRAME WHISTLEBLOWING RESEARCH

The trend towards more systematic research into whistleblowing also raises fundamental questions about what should be the focus of whistleblowing studies, with important lessons for past studies that should not
be lost. When systematic, survey-based research into whistleblowing began to expand in Western countries in the 1990s, it often focused on levels of employee awareness of whistleblowing laws and policies, and on employee intention or ‘propensity’ to blow the whistle, with fewer studies into how many employees actually did so, and the nature of the outcomes. Just as public attitude research is showing a higher-than-anticipated level of public sympathy for whistleblowing, research has long indicated that a majority of employees consider that they should and would report wrongdoing, if they observed it; but whether they actually perceive it, and what they then do, may be a different matter.

In Chapter 6, ‘On the Appropriateness of Research Design: Intended and Actual Whistleblowing’, Brita Bjørkelo and Hege Høivik Bye discuss the difference between studies that focus on actual whistleblowing and those that focus on intended whistleblowing. They re-examine conclusions from Mesmer-Magnus and Viswesvaran’s meta-study (2005: 288–9) that many variables used in whistleblowing studies were stronger correlates of intent to blow the whistle rather than actual whistleblowing, and whistleblowing intent and actual whistleblowing may even be unrelated phenomena. Bjørkelo and Bye assert that the differences Mesmer-Magnus and Viswesvaran found can be traced more to methodological differences between studies, rather than to substantive differences between the two concepts. After reviewing more recent literature, they conclude that the ‘intended–actual whistleblowing relationship is under-investigated … and the research that exists is likely to underestimate the relationship due to the timing of measurement’ of key variables. They suggest future research should focus on this relationship by using the ‘reasoned action’ approach promoted by Fishbein and Ajzen (2010), which Bjørkelo and Bye believe can show the relationship between salient beliefs about a variety of factors (such as individual, social and organizational norms) and better link evidence of intended whistleblowing with actual whistleblowing.

A final fundamental issue which is central to all whistleblowing research is the role of power. In systematic social-scientific research, as opposed to case study and anecdotal accounts, the qualitative dimensions of whistleblowing incidents and experiences easily become submerged under a sea of statistics. Surprising statistical results, such as that a majority of whistleblowers are not ignored, or that not all whistleblowers necessarily suffer, may obscure the great risks, conflicts and tensions that remain intrinsic to whistleblowing, depending on who and what interests stand to be challenged by revelations of wrongdoing, how they are made and the power of whistleblowers relative to those responding to, or
affected by, their disclosures. Were it not so, whistleblowing would not remain such a vexed policy issue.

The conundrums have always been most visible in the outcomes that can befall whistleblowers who expose serious political wrongdoing, especially in areas where the politics is ‘high stakes’ and information is normally tightly controlled, such as national security. These are not new issues. For example, one of the world’s most famous, modern whistleblowers was Daniel Ellsberg who, in 1969, secretly made copies of classified US government documents to which he had access as an employee of the RAND Corporation. The ‘Pentagon Papers’, as they became known, demonstrated that the Johnson Government had lied to both Congress and the public about the likely outcome and effects of the Vietnam War. In 1971, after Ellsberg leaked the documents to the Washington Post and other newspapers, attracting charges under the Espionage Act 1917 as well as of theft and conspiracy, US National Security Advisor Henry Kissinger labelled him ‘the most dangerous man in America’. In 1984, Clive Ponting was a senior civil servant at the UK Ministry of Defence who sent documents to an MP relating to the sinking of an Argentine warship during the Falklands War, demonstrating that the ship had been sighted a day earlier than officially reported and was outside the naval exclusion zone when attacked. Charged with a criminal breach of the Official Secrets Act 1911, Ponting claimed by way of defense that he acted in the public interest and that his disclosure was protected by parliamentary privilege, and was acquitted by the jury – but this was despite the judge’s direction that ‘the public interest is what the government of the day says it is’.¹

In 1986, Israeli nuclear technician Mordechai Vanunu was sentenced to 18 years’ imprisonment for revealing details of Israel’s secret nuclear weapons programme to British newspapers. However, such treatment is not simply a Cold War phenomenon. Even since his release in 2004, Vanunu has continued to suffer restrictions of liberty and other official repercussions. In 2003, Katharine Gun, a former translator at the UK Government Communications Headquarters (GCHQ), leaked an email to a newspaper which contained top secret information about illegal activities by the United States in relation to obtaining UN approval for the invasion of Iraq. Her employment was terminated and she was charged with an offense under the Official Secrets Act 1989, although the case was dropped after her lawyers sought evidence of the UK Government’s advice about the legality of the invasion. In July 2013, former US Army Private Bradley (now Chelsea) Manning was sentenced to 35 years’ imprisonment by a military court for theft, espionage and other military offenses, after providing WikiLeaks with large volumes of classified
information, including wrongdoing in the conduct of the Iraq and Afghanistan wars (O’Brien 2013; Hartmann 2013). At the time of writing, US security contractor Edward Snowden is in hiding in Russia, after revealing details of extensive and intrusive surveillance activity by the National Security Agency.

These high profile examples are not typical of all whistleblowing activity, and all involve public rather than internal whistleblowing – an issue discussed further below. However, they highlight a key element of what is true about all whistleblowing circumstances or situations where we might have wished for the whistle to be blown, even if only internally or to regulatory agencies. For example, in the United Kingdom, after 167 lives were lost in the North Sea’s 1988 Piper Alpha oil platform disaster, the Cullen Inquiry (1990) found that the disaster could have been averted, but ‘workers did not want to put their continued employment in jeopardy through raising a safety issue that might embarrass management’. The staff had short fixed-term contracts and there was a lack of alternative employment in the region. In other words, the fundamental issue was one of power.

In Chapter 7, ‘Whistleblowing and Power’, Kim Loyens and Jeroen Maesschalck show how this issue needs to be remembered in all empirical research, by re-examining the traditional relationship between power and whistleblowing. They call for a robust, new examination of the complex factors affecting the decision to blow the whistle, including the need to supplement the classic ‘reporting-silence’ dichotomy used in most whistleblowing studies with alternative responses to organizational misconduct, including sabotage, secret sharing and confrontation of the wrongdoer. They also argue that a context-specific approach should be used to examine the decision to blow the whistle, rather than the ‘locus of control’ approach used in most current research. They conclude with specific methodological suggestions to strengthen the depth and complexity of research related to the connection between whistleblowing and power.

RESEARCHING WHISTLEBLOWING IN CONTEXT

From the discussion so far, it is clear that research into whistleblowing is important, but has faced many challenges and continues to do so. From understandings to date, nevertheless, the shift from broad stereotypes towards a more context-specific approach to research is not only possible, but underway. Each of the last two chapters of Part I highlight the need to move beyond over-simplistic conceptual dichotomies in the way research
is approached. It is also now clearer that applied research into whistleblowing, as a process, raises as many or more questions about the culture and responsiveness of institutions to whistleblowing, as it does about the behavior and experience of whistleblowers themselves.

Part II of the book thus moves to a range of issues that are central to understanding whistleblowing, and its outcomes, in its organizational and institutional context, beginning with three further areas in which simplistic dichotomies are starting to be broken down. Following on from the last chapter, a road-map for moving beyond the ‘reporting-silence’ dichotomy is provided by Jane Olsen in Chapter 8, ‘Reporting Versus Inaction: How Much is There, What Explains the Differences and What to Measure’. She highlights the growing body of empirical research on the incidence of whistleblowing in and about organizations, but also its limitations, including the difficulties of interpreting different results gained through different research methods. While there are broad similarities between large-scale studies in comparable contexts, greater precision about the reality and significance of similarities and differences, as well as any longitudinal changes, depends on a more consistent research approach. For example, studies by the US Merit Systems Protection Board suggest that half or more of federal public servants have observed organizational wrongdoing and about 30 per cent reported it (Miceli et al. 2008; MSPB 2011). However, surveys of US private sector employees indicate that while about 50 per cent similarly observed wrongdoing, as few as 40 per cent acted on that knowledge (ERC 2010a). Using different methods again, the Australian ‘Whistling While They Work’ surveys recorded 71 per cent of respondents as having observed serious wrongdoing, and 28 per cent as having reported (Brown, Mazurski and Olsen 2008: 38).

Just as importantly, while such research may start out as seeking to understand levels of whistleblowing, it rapidly becomes obvious that the underlying need is just as much to understand why many people who observe wrongdoing do not blow the whistle – or ‘inactive observation’ (Miceli and Near 1988). Time and again, political recognition of the value of whistleblowing comes in the wake of revelations that people in organizations knew about wrongdoing which subsequently exploded, but did not reveal it. The United Kingdom’s Piper Alpha oil platform disaster has just been mentioned. More recently in the United Kingdom, after it was uncovered that Harold Shipman, a general medical practitioner, had murdered over 250 of his patients, the inquiry report highlighted the perennial problem of junior clinical staff being unwilling to raise concerns about senior colleagues, for fear of blighting their careers (Fifth
Report of the Shipman Inquiry 2004: para. 11.79). In Australia, whistleblowing law reform was spawned by the extent of revelations by the Fitzgerald Inquiry into official corruption in Queensland (1987–1989), that honest police personnel had observed corruption but felt powerless to act. In 2002, the Sarbanes-Oxley whistleblower provisions in the United States were in direct response to Congress’s concern about the ‘corporate code of silence’ that encouraged insiders to remain silent in the face of massive corporate fraud (Moberly 2012a: 3). Therefore, as Olsen shows, an increasingly important task for researchers is to examine not only why people blow the whistle, but why those who observe wrongdoing choose not to disclose it.

Moreover, as Loyens and Maesschalck emphasize, the options faced and taken up by observers of wrongdoing are more than simply formal reporting and silent inaction. As documented in the literature on ‘employee voice’, there is at least one other path routinely taken up by insiders with concerns: exit. A typical example where exit should itself have triggered reform was the case of Joy Cawthorne, who resigned as an instructor at a UK outdoor activity centre in protest over its safety standards. This was not enough to prevent the deaths of four children in a canoeing accident in Lyme Bay, England; subsequently, Cawthorne gave evidence against her former employer, who was convicted of manslaughter and sentenced to three years’ imprisonment. In Chapter 8, Olsen describes how the Australian ‘Whistling While They Work’ research took a first major step towards more effective measurement of organizational responsiveness to wrongdoing, by focusing not only on rates of whistleblowing or reporting in an organization, but also on ‘inaction rates’, defined as the proportion of employees who observed wrongdoing they considered serious, but who did not report it, nor took any other action, in circumstances where no one else had reported it.

Secondly, simplistic impressions are also being broken down by research into the motivations for whistleblowing. On one level, research has moved away from diagnosis of motives, because contrary to many stereotypes and some legal regimes, a discloser’s motive is simply not relevant to the core issue raised by the reporting of wrongdoing, which is whether that wrongdoing should be investigated and dealt with. Moreover, focusing on motives can encourage unhelpful stereotypes of whistleblowers as either generally altruistic and heroic, or as predominantly disgruntled employees with a vengeance or an ‘axe to grind’ – when neither is accurate or useful as a general description. Apart from the problem of ascertaining a person’s motive at any particular time, research suggests that many whistleblowers intend to benefit both themselves and others, and that their motives do not substantially influence
the decision to report (Miceli and Near 2010: 77). Indeed, the increasing
diversity of obligations on individuals to blow the whistle, discussed
earlier, are intended to trigger self-interested motives (such as avoiding
disciplinary action) as well as encourage altruistic ones. Whistleblowers
who do not exhaust internal channels may be regarded as irresponsible.
As we will see below, the book also discusses the success of financial
incentives for whistleblowing. Under the model of whistleblowing as a
pro-social activity, motives become a secondary consideration.

At the same time, the specific mix of motives – real or perceived – for
blowing the whistle in the individual case will necessarily impact on the
process, in terms of how managers and others in the organization will
respond, the level and nature of potential retaliation, and the complexity
of the management responses. Different motives may emerge at, and
impact on, different stages of the process: a personal grievance about
bullying or harassment may be mixed with more public interest reasons
for reporting it, where the harassment is systemic or serious or affects
others; or it may be the real reason for raising other unrelated wrong-
doing; or it may only arise after other wrongdoing has been reported and
the organization fails to respond properly (Brown, Mazurski and Olsen
2008: 36). In Chapter 9, ‘Motivations for Whistleblowing: Personal,
Private and Public Interests’, Peter Roberts presents data from surveys
and interviews conducted as part of the ‘Whistling While They Work’
project to demonstrate the complex spectrum of mixed motivations that is
evident in whistleblowing in practice, as against theory. Although moti-
vations can be roughly divided between altruistic and self-interested
motives, he presents a taxonomy of various motivations in either category
and notes that these may also overlap to some degree, frequently causing
the line between these categories to blur. This complex array of motives
is often not easily captured through the past survey mechanisms, but has
important implications for researchers, organizational leaders and policy
makers, especially with respect to how support or protection are pro-
vided, and workplace relationships managed.

Thirdly, much public debate about whistleblowing has been dominated
by the evidence of the retaliation and adverse outcomes that can befall
those who report wrongdoing, to the extent that some researchers argue
that whistleblowing is synonymous with suffering. Certainly, repercus-
sions for whistleblowers can be dire, as already seen from some of the
examples above. In South Africa, Wendy Addison was an accountant at
LeisureNet Ltd who alleged that the top management had participated in
corruption. Rather than taking remedial action, her employer dismissed
her. In addition to becoming unemployable due to the notoriety of her
case, Addison lost the support of family and friends and received death
threats that caused her to leave the country. This was notwithstanding that she was vindicated: LeisureNet became arguably the biggest corporate disaster in South African history, with jail terms imposed on the wrong-doers in 2007 and upheld on appeal in April 2011. Other examples will be referred to below. At the same time, however, we have already cited more successful examples; and empirical studies support a somewhat surprising conclusion that not all, nor even most, whistleblowers necessarily suffer in these kinds of ways.

One problem is that current measures tend to be simplistic, allowing analyses according to whether whistleblowers have suffered direct retaliation or they haven’t, without recognizing a wider range of factors that may influence good and bad outcomes, including indirect and subjective factors, as well as the relative seriousness of different factors. In Chapter 10, ‘Whistleblowers and suffering’, Rodney Smith examines research on the suffering endured by whistleblowers, explaining that suffering is such an important part of the whistleblower narrative that it is important to understand exactly how much and what kind of suffering occurs and its effects on individuals and organizations. Further, the lesson from existing empirical research that many whistleblowers do not suffer begs further questions, such as what distinguishes whistleblowers who suffer from those who do not? And, do some types of suffering occur more frequently than others? Smith calls for a new generation of studies to delve deeper into the complex questions surrounding the full range of adverse outcomes, what causes them, and what may help limit or prevent them.

WHISTLEBLOWING RECIPIENTS AND RESPONSES

The vast bulk of whistleblowing research to date has focused on whistleblowers: what makes them report, what they report, how many and how often whistleblowers come forward, and what happens to them. But to understand whistleblowing in context, and especially how whistleblowing can be made more effective, it must be recognized that whistleblower and non-whistleblower behavior, characteristics and outcomes are only one part of the puzzle. Increasingly important is the behavior of those who receive whistleblowing disclosures, and what they do about them. Indeed, while the study of whistleblower behavior and outcomes may remain a necessary and often fascinating focus, from a public policy perspective it is the response to disclosures which is actually the more important field of study – but which is in its relative infancy.
Most of the prominent examples of whistleblowing referred to so far involve disclosures about wrongdoing that have made it into the media, and played out in the public domain. In fact, systematic research has confirmed that this type of disclosure represents a small minority of whistleblowing. Studies routinely show that at least in developed countries, less than 10 per cent of disclosures about wrongdoing are ever made to persons outside the organization, with the bulk of internal disclosures not even made to hotlines or auditors, but rather directly to the whistleblower’s supervisor or immediate managers (see e.g., Donkin et al. 2008; ERC 2010a: 5; PCaW 2013). Accordingly, most researchers now reject the view that the raising of a concern only amounts to whistleblowing if there is an external or public disclosure (cf. Jubb 1999; Truelson 2001). None of the definitions referred to above draws a distinction between internal and external whistleblowing. To do so would ignore the reality that public disclosures are usually made as a last resort, after having been first raised internally and/or with regulators (Near et al. 2004). Not surprisingly, therefore, research suggests that internal and external whistleblowers have similar characteristics (Dworkin and Baucus 1998), with ‘few substantial differences in antecedents or outcomes of whistleblowing as a function of type of channel used’ (Miceli et al. 2008: 7). The processes are also related by the fact that risk of external disclosure, if protected or made easy, puts pressure on employers to have policies and procedures which encourage internal reporting in order to avoid that outcome.

All the same, despite being only the public tip of the whistleblowing iceberg, disclosures to the media play an important role in defining social and political responses to whistleblowing and often represent whistleblowing at its highest-stake stage. The protections available to disclosers under common law and statute vary massively for public as opposed to internal or regulatory disclosures. Increasingly, as discussed in Part III of the book, public disclosure is being built into countries’ whistleblowing regimes, as a third ‘tier’ of disclosure if internal or regulatory disclosures fail or are impractical (Vandekerckhove 2010; Brown 2011b). However, often there is no legal recognition for public whistleblowing, leaving it undistinguishable from other ‘leaking’ or unauthorized disclosure of confidential or unpublished information. This includes political and commercial leaks in order to manipulate media coverage, not simply disclosures intended to expose wrongdoing. While some countries provide legal protection for public whistleblowing in specified circumstances, leaking is frequently still tortious and sometimes criminal. It has also been a common feature of leaking that disclosers are anonymous or insist on secrecy, whereas the identity of whistleblowers is often known.
or revealed – although this has changed with the arrival of the Internet, which provides a speedy and efficient way to disseminate information while preserving anonymity. This can be done in isolation, for example, via blogs and Twitter, as well as through platforms like WikiLeaks or GlobalLeaks, which facilitate the uploading of documents.

Studying when and how whistleblowers access the media, and how the media respond to and use whistleblowing disclosures, is therefore important. Yet despite the dominance of disclosures to the media in anecdotal and narrative research about whistleblowing, systematic research on the relationship between whistleblowers and the media is surprisingly rare. There are obvious questions to be pursued about the role that the media plays in supporting whistleblowers, given the tension between assumptions that the media should be a whistleblower’s best friend, and normal commercial news-gathering imperatives. Contrary to a belief that journalists naturally understand whistleblowers, the fact is that the media is ignorant about much whistleblowing because it is being satisfactorily dealt with internally or by regulators. Effective whistleblowing is plainly less newsworthy. The media may also be more interested in the activities and fate of the messenger, than in the message. A content analysis of newspaper coverage in the United Kingdom between 1997 and 2009 found that whistleblowers were mainly covered positively (54 per cent) or neutrally (41 per cent), but such positive representations may be motivated by journalists’ self-interest in creating ‘narratives of whistleblowers as heroic, selfless individuals to establish the legitimacy of their claims of systemic wrongdoing in the public interest’ (Wahl-Jorgensen and Hunt 2012: 1, 9). In other circumstances, the media may contribute to negative public impressions of whistleblowing, as documented by the Shipman Inquiry in the United Kingdom (Fifth Report of the Shipman Inquiry 2004: paras 11.7 and 11.12).

In Chapter 11, ‘Going Public: Researching External Whistleblowing in a New Media Age’, Rachelle Bosua, Simon Milton, Suelette Dreyfus and Reeva Lederman examine these complex relationships between whistleblowers and the media. The authors focus especially on the way that new information technology is altering the traditional relationship, both in how information is delivered between the two as well as the amount and type of information able to be disclosed. Of course, this raises significant problems, such as whether new technology will sufficiently protect the security of the information and the anonymity of the whistleblower. To explore these issues, the authors present new research on the experiences of a group of investigative journalists and whistleblowers in various countries, highlighting many of the key elements of the relationship which stand out for further study.
Even more important is research into what happens when whistle-blowers try to disclose internally or through official channels, as remains the case for the vast bulk of the time. History is full of examples of employees who raised internal concerns about wrongful practices, only to find that the organization had no proper process for recognizing the disclosure. In 1984, the world’s worst industrial disaster in Bhopal, India, saw thousands die as a result of gas escaping the Union Carbide plant. Detailed investigations revealed that cost cutting measures had adversely affected work conditions and the maintenance of safety systems, but warnings and the concerns of workers were disregarded, both by the company and the local authority. Another disastrous case was the sinking of the ferry Herald of Free Enterprise at Zeebrugge in 1987, causing the death of 193 people. The investigation found that employees had aired their concerns on five previous occasions about the ship sailing with its bow doors open, but those sensible suggestions which may have prevented the disaster had not received the ‘serious consideration’ they deserved (Sheen 1987). In 2003, an Australian Customs Officer, Alan Kessing, wrote two reports about lax security at Sydney airport. These included information about drug trafficking and security passes which had been issued to illegal immigrants as well as people with criminal convictions. The reports were buried, but after they were leaked to The Australian newspaper in 2005, an inquiry resulted in an AU$200 million security upgrade. Kessing was prosecuted for the leak, despite denying being the source.

Similarly, in May 2008, at the onset of the global financial crisis, Matthew Lee, a vice president at Lehman Brothers, warned senior management about accounting irregularities. An investigation by the company’s auditor, Ernst & Young, declared Lee’s allegations to be without foundation and he lost his job, even though his suspicions were eventually confirmed in a subsequent bankruptcy examiner’s report. Such cases also raise questions not only about how organizations do or do not recognize disclosures, but also the readiness and accessibility of regulatory agencies as conduits for whistleblowing. There are many cases where internal reporting proved ineffective, and external reporting would clearly have been desirable but did not occur. For example, in the United States, employee Sherron Watkins wrote to the chief executive of Enron about questionable accounting, but the company management sought to remove her rather than confront the issues raised (Sterling 2002). She was subsequently criticized for not raising her concerns externally. But such criticisms hinge on assumptions that regulators are also good at recognizing and acting on disclosures, when this may be variable. In
Australia, Note Printing Australia company secretary Brian Hood questioned payments that turned out to be an extensive system of foreign bribery and was forced out of the government-owned banknote company. Perhaps he too could have been criticized for not taking it further; but when James Shelton, a sales executive in a sister company, Securrency, took even firmer information to the Australian Federal Police, they also initially declined to investigate for lack of evidence. It was only when Shelton became an anonymous media source that effective investigation followed, leading to criminal trials in which both whistleblowers gave evidence and successful convictions (ABC 2013).

Such failures and tardiness can nevertheless obscure the reality that organizations and institutions are also becoming increasingly better at recognizing and receiving disclosures. Research is beginning to reinforce the societal importance of whistleblowing, with evidence of the benefits that accrue to organizations and regulators by facilitating and responding well to whistleblowing. In the Australian public sector, research suggests that employee reporting is the ‘single most important trigger for the uncovering of wrongdoing’ within the integrity and corporate governance systems of organizations (Brown, Mazurski and Olsen 2008: 43–4). While the benefits of early identification of workplace problems may apply across the board, they are increasingly well documented when it comes to controlling fraud. A Price Waterhouse crime survey of more than 5,400 companies in 40 countries found that the average loss from fraud per company was US$3.2 million in 2007, but whistleblower ‘hotlines’ as well as internal and external sources were the initial method of detection in 43 per cent of cases, and ‘tipsters’ (i.e., whistleblowers) were the single most effective source of information in detecting corporate crime (Price Waterhouse Coopers 2007). In 2008, the Association of Certified Fraud Examiners (ACFE) similarly reported that 46 per cent of the 959 fraud cases under review were exposed by whistleblowers, with 58 per cent of the tips coming from employees (ACFE 2008).

However, financial wrongdoing is just the most easily quantifiable area in which whistleblowing pays off; employee reporting can be critical to quality control, risk management and good governance in almost any area. Coming full circle, timely detection of problems through internal disclosures may prevent or reduce the need for regulatory action and help to avoid embarrassing external disclosures in the media.

In Chapter 12, “‘To Persons or Organizations that May be Able to Effect Action’: Whistleblowing Recipients”, Richard Moberly presents a comprehensive examination of the last two decades of research about official complaint recipients. Over 20 years ago, Miceli and Near (1992: 73) declared that no research addressed the role of the person who
receives a whistleblower complaint. Moberly notes that this conclusion is no longer accurate, given studies demonstrating that people who contact their line manager about wrongdoing give them the chance to deal with it before the matter escalates, and that organizations are increasingly recognizing the value of establishing effective internal whistleblowing policies and procedures. Nevertheless, Moberly argues that, despite these studies, the role of the recipient remains under-studied relative to its importance in the whistleblower process. He points out numerous new areas of research that could be conducted to advance our knowledge of how recipients react to whistleblower disclosures and might better protect whistleblowers and ensure the wrongdoing they identify is properly remedied.

In Chapter 13, ‘Managerial Responsiveness to Whistleblowing: Expanding the Research Horizon’, Wim Vandekerckhove, A.J. Brown and Eva Tsahuridu continue this examination of players other than the whistleblower, focusing especially on substantive as opposed to procedural action in response to whistleblowing. The chapter highlights the important shift occurring after 30 years of research, from thinking about how to protect whistleblowers from organizations, to how to protect society from organizations that do not respond effectively to whistleblower warnings. This shift is predicated on the overwhelming evidence that whistleblowers will report internally before blowing the whistle externally – a process which perhaps requires a fundamental rethinking of whistleblower research to examine ‘how the management processes of organizations and whistleblowing interact and interrelate’. Chapter 13 begins this new conversation by discussing two types of organizational response: ‘hearer action’ which addresses the misconduct exposed by the whistleblower, and ‘protector action’ which describes organizational responses that protect a whistleblower from unfair detrimental outcomes. The chapter includes new findings from the Australian ‘Whistling While They Work’ study demonstrating that research can effectively examine managerial responses to whistleblowers, if only the right questions are asked, and concludes by presenting a new theory to study the courage of managers, individually and collectively, to listen to and to protect whistleblowers.

RESEARCH, REGULATION AND REALITY

At the outset, we said these research problems were not just theoretical and academic. They also reflect a real demand from institutions and regulators for better, more reliable evidence regarding the value of
Whistleblowing, its importance and the state of the research

Whistleblowing, and the options for recognizing and maximizing that value. It is because whistleblowing is increasingly recognized as being in the public interest that researchers have focused attention on measures that facilitate the raising and investigation of concerns and the protection of disclosers. From the discussion so far, it is also clear why organizations and institutions support this research, for directly and indirectly detecting and controlling wrongdoing, preventing clashes with regulators and boosting corporate governance.

How research can best support improved regulatory and institutional practice, however, remains an important global challenge. Over the last 30 years, most regulatory and institutional reform, and changes to organizational governance, have been reflected in or driven by legislative reforms aimed at recognizing and protecting whistleblowers. Such legal measures are motivated by a range of objectives, ranging from the utilitarian concerns of detecting and correcting wrongdoing, to justice concerns about the unfair outcomes so often experienced by insiders who report wrongdoing. However in most countries, they also interlace with other pre-existing social norms and legal regimes, going to the same objectives, such as witness protection in criminal justice systems, and legal defenses, exemptions and protections for employees or others whose disclosures about wrongdoing would otherwise breach discipline or confidentiality. Indeed, these conjunctions of policy and legal objectives highlight that the management of whistleblowing involves the juggling of a range of sometimes competing values, interests and objectives, sometimes in general, sometimes in the individual case. While the contributors to this Handbook are clear on the pro-social objectives and value of whistleblowing, all are also well aware that the whistleblowing process can involve these conflicting values. For example, allowing anonymous disclosures and providing assurances about confidentiality may be regarded as consistent with a whistleblower’s rights to privacy and freedom of expression, but be inconsistent with data protection arrangements and an alleged wrongdoer’s right to information. It is possible to reconcile these principles, but it requires clear legal and procedural hierarchies of obligations and rights, capable of being translated into organizational practice.

Similarly, the potential usefulness of public interest disclosures for remedying societal problems, on the one hand, and the vulnerability of the discloser, on the other, has motivated some to elevate whistleblowing to a fundamental right in employment (Lewis 2008). Although this demand has not yet been successful, the expansion of laws which promote public interest disclosures by organizational insiders are moving in this direction; as is growing support for regimes which offer financial
inducements to whistleblowers in certain circumstances. Yet all these trends need to recognize the complexity of circumstances and issues raised by whistleblowing, rather than simply being designed as ‘symbolic’ laws and procedures which state broad objectives that are not implementable, or are only triggered in situations which amount to unrealistic or even fictitious stereotypes. For example, it has been suggested that whistleblowers should be recognized in the British honors system for their good citizenship (Stonefrost 1990). Such suggestions have obvious merit, but the fact is that regimes for encouraging and managing whistleblowing, including protecting whistleblowers from unfair outcomes, simply do not work if only triggered in circumstances where everyone is satisfied that the only motives for whistleblowing were altruism and good faith.

Research that shows how these different values can and should be resolved, in practical ways by managers, regulators and policy makers, is now in hot demand. Internationally, however, there has been a deficit of research which even effectively maps the different legal models that societies are using to recognize whistleblowing. Only recently, Vaughn (2012) has drawn on his experience to make sense of four different perspectives that often inform whistleblowing laws and lead to different, often uncoordinated, legal strategies: employment, open government, market or regulatory perspectives, and human rights (see Figure 1.2). Some of these reflect a greater concern with individual rights, and others with institutional reform; while some are more likely to be pitched at the public rather than at the private sector. Already this model is proving useful to make sense of different legal efforts, and in attempting to explain why many seem so misaligned, misdirected or ineffective. For example, Dworkin and Brown (2013; see also Brown 2013) note that provisions dealing with public or media disclosure are closely related to Vaughn’s human rights and open government perspectives, while institutional or structural approaches to whistleblowing align with Vaughn’s institutional reform dimension, and anti-retaliation approaches can be seen as an aspect of individual rights, including but not limited to employment law perspectives. As Dworkin and Brown acknowledge, the task for researchers is not to reconcile these perspectives and models, but to help policy makers understand that they contain different elements which need to be accommodated if legislation is to be successful both in encouraging whistleblowing and protecting disclosers.

When it comes to translating research into action, therefore, we begin with Chapter 14, ‘Whistleblower Protection: A Comparative Law Perspective’. Björn Fasterling picks up these debates by describing important considerations for scholars engaging in comparative legislative research.
He notes that legislation can also be conveniently separated or mapped using the two dimensions noted earlier: justice and utilitarian dimensions. In other words, laws that recognize and protect whistleblowers’ freedom of expression, and those that aim at increasing the effectiveness of preventing and detecting dangers to wrongdoing and violations of law. Of course, these two categories are themselves interrelated and have some overlap, and Fasterling provides useful analysis of how they may relate to the pictures provided by Vaughn, and Dworkin and Brown. Further, he emphasizes the challenging reality that effective legislative research must look not only to ‘special purpose’ or ‘stand alone’ whistleblower protection laws typical of some English-descended common law countries, but also to whistleblower protections embedded in other laws, ostensibly dealing with other subjects. Fasterling’s analysis provides important guidance for any research that attempts to compare lessons from different legal regimes.

Across the world, nevertheless, there are three bodies of legal responses which are particularly important to analyze for their different effects. The first and arguably most important of these are civil and employment remedies, intended to increase organizational responsiveness to whistleblowing, and deliver justice to whistleblowers who suffer unfair

Source: Vaughn 2012: ch. 15

Figure 1.2 A matrix of perspectives on the nature of whistleblowing provisions

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outcomes, by providing them with access to compensation and other remedies. The importance of these responses is obvious. Early in the chapter, we gave five examples of high profile, effective whistleblowing which was wholly or largely acted on, sooner or later with major positive effects (Cynthia Cooper; Gary Brown; Paul van Buiten; Toni Hoffman; and Stephen Bolsin). However, only the first three of these can also be seen as successful in the sense that the information was acted on without permanent employment consequences for the discloser. Even then, there were many other costs and consequences. Toni Hoffman was neither sacked, demoted nor disciplined, but received compensation for stress and other impacts of the process, together with a stalled career and the impacts of the wrongdoing itself.

Stephen Bolsin fared less well again: as a result of his efforts, he was unable to obtain work in the United Kingdom and emigrated to Australia. There are many other examples for why a diverse range of civil and employment remedies need to be considered. In the United Kingdom, Kate Schroder blew the whistle on a fraud on a government-funded training scheme, providing evidence of serious contractual non-compliance to her managers, and then to an appropriate external agency when she suspected a cover-up was under way. However, her employer then dismissed her for breach of confidentiality, and in the subsequent press coverage, issued a statement which inferred that she herself was involved in fraud. Schroder settled a libel action for UK£25,000 plus costs. While protection and remedies are all the more important in ‘David versus Goliath’ situations, organizational liability for failing to respond properly can become very large where, as is often the case, it is senior managers who blow the whistle. In Japan, Michael Woodford, chief executive of Olympus, had worked for the company for 30 years, but was dismissed in 2011 after issuing warnings about corruption at the top management level and questioning dubious payments. Olympus initially denied the allegations but eventually admitted that it had hidden UK£1.1 billion of losses over 20 years. Woodford initially sought reinstatement but ultimately accepted UK£10 million in settlement of his unfair dismissal claim, which incidentally, he brought not in Japan, but in the United Kingdom.

In Chapter 15, ‘The Key to Protection: Civil and Employment Law Remedies’, David Lewis, Tom Devine and Paul Harpur review the different legal systems intended to make these types of remedies real in the United States, United Kingdom, Australia, Canada and New Zealand. Even in countries with such similar legal traditions, and where ‘special purpose’ whistleblower protection laws are often in place, there is great variation and a mixed track record. This gives plenty of scope for further
and better research on basic issues about the interface between whistleblower protection and employment law, workplace health and safety law, formality of dispute resolution mechanisms, and burdens of proof. The authors note the general problem that it is exceedingly rare for governments to adopt or reform their laws based on any actual empirical research into what types of protections are needed, or are currently provided but not working; the Australian public sector being the most notable recent exception. Such research is, however, increasingly possible.

One of the topics thrown up by Chapter 15 is the apparent success of the reward or bounty model for compensating whistleblowers in the United States, relative to other strategies (see also Dworkin and Brown 2013). In Chapter 16, ‘Because They Have Evidence: Globalizing Financial Incentives for Corporate Fraud Whistleblowers’, Tom Faunce, Kim Crow, Tony Nikolic and Frederick M. Morgan, Jr continue this focus with a global survey of such laws, intended to encourage whistleblowers to report misconduct by providing them with monetary rewards calculated as a percentage of the fraud or financial loss associated with the wrongdoing, or the penalties for wrongdoing imposed through regulatory action. Arguing that the False Claims Act (FCA) in the United States provides the most comprehensive and successful example of such provisions, the authors assert that the FCA could serve as a model for an international system of rewards based on multilateral trade agreements. This chapter is an important new look at whether and how this US version of the bounty model could be expanded to promote whistleblowing about fraud worldwide.

By contrast, in Chapter 17, ‘When It All Goes Bad: Criminal Remedies’, Maureen Spencer and John Spencer discuss an under-studied, under-recognized, and more problematic aspect of how whistleblowing is dealt with in law: the use of criminal law. They do so from two perspectives. First, many countries and jurisdictions have criminal provisions that punish retaliation against whistleblowers specifically, or witnesses to wrongdoing more generally. Spencer and Spencer argue that not much is known about these provisions, but that there are indications the laws are not utilized much to punish retaliators, raising many research questions about their utility or what might be needed to make them more effective. This contrasts with criminal provisions that are used against whistleblowers, such as those prohibiting whistleblowers from disclosing certain information, especially national security matters. Unlike the anti-retaliation criminal provisions, these laws seem to be enforced frequently against whistleblowers, especially in recent years. Chapter 17 ultimately argues that the criminal law has a complex and perhaps
contradictory relationship with the act of whistleblowing, and that scholars should examine the relationship in more depth.

Civil, employment, reward-based and criminal law responses to whistleblowing are all important. Like other elements of legal responses, they are crucial topics for more in-depth research, to better inform policy making. However, in seeking to establish how to better recognize and protect whistleblowing in practice, the focus of research and policy making alike has been on what makes for an effective national legal response. In addition to this vital question, there are two major areas in which even less research has been done.

The first is the need for a greater transnational and international focus on whistleblowing, in the era of ever-intensifying globalization. This has already been hinted at, in the potential application of reward and *qui tam* laws to transnational companies; and the fact that whistleblowers may already be able to achieve more effective protection under the laws of a jurisdiction other than the one in which either wrongdoing or retaliation occurred, depending on the structure and ownership of the employing corporation. The need for effective whistleblowing regulations and policies in international governmental organizations and programs are perhaps an even more burning priority. The challenge was demonstrated by the case of Kathryn Bolkovac, made famous by the confronting 2010 movie, *The Whistleblower*. Bolkovac was a former Nebraskan (US) police officer who in 1999 joined the UN Police Task Force in post-war Bosnia, employed by DynCorp, a private military contractor. As a human rights investigator, she was shocked to discover that people from her mission were engaged in human trafficking and sexual slavery; but when individuals were implicated, investigations were brought to an end by sending the suspects to another mission or returning them to their country, while surviving victims were repatriated or transported elsewhere so they would not be available for interview. Bolkovac raised the issue with about 50 United Nations staff and officials, as well as DynCorp managers, but was demoted and eventually sacked for allegedly falsifying time sheets. She was vindicated when her whistleblowing was found to be the real reason for her dismissal, but not through any United Nations response; rather, once again, by a UK employment tribunal.

In Chapter 18, ‘Whistleblower Protection in International Governmental Organizations’, Shelley Walden and Bea Edwards explore the complexities of this pressing issue. International governmental organizations (IGOs) exist outside the legal regulations of individual countries and often operate in extreme secrecy, raising the spectre of fraud and abuse. Yet, protections for insiders who come forward with information about
IGO misconduct face uncertain and often insufficient protections. Relying on their extensive experience studying IGOs, the authors examine the numerous flaws in ad hoc IGO whistleblower protection systems and suggest several avenues for further research and evidence-based policy reform in this area.

Secondly, flowing from this, there is surprisingly little research into the nature and effectiveness of practical efforts and strategies aimed at whistleblower protection, more generally within organizations, even where national or subnational laws mean that such strategies are now legally required. Most researchers, policy makers and managers know that legislation, in and of itself, is a blunt instrument for influencing organizational and behavioral change. The question of whether such legislative objectives are being implemented, or what strategies for whistleblower support and protection would be best supported and promoted by legal regimes, depends on knowledge of what actions are actually being taken by organizations and regulators to support whistleblowers in practice. Moreover, these questions depend on how whistleblowers are supported by managers and regulators in a proactive sense, once the disclosure is made, and not simply in reaction to any detrimental outcomes they may begin to suffer. Directly or indirectly, the thrust of whistleblower protection laws relies on organizations learning to embed at least a ‘compliance’ approach, but preferably a ‘beyond compliance’ approach to whistleblowing within their own management culture and systems.

In many circumstances, the benefits to the organization itself are now clear, because without such an approach, any moral or legal obligation to report wrongdoing will continue to be in conflict with, and overaken by, a worker’s self-interest in keeping their head down, in order to retain his or her job. Thus, without intervention, whistleblowing can be seen as a public and organizational good that will continue to be under-produced, unless the economics for the individual whistleblower are rebalanced towards speaking up, rather than staying silent. It can also be argued that employers have an interest in internal disclosure procedures being made mandatory, as this may help to ensure that competitors do not get an unfair advantage through improper behavior that goes undetected for longer. At the same time, the practicalities of whistleblower protection will often also rely on the roles of regulators or oversight agencies. There will always be situations where the problems or challenges raised by a whistleblower may be too great, or too ingrained in the management culture or operations of an organization, for that organization to see the whistleblowing for what it is, in which case they will still deny support. Examples include another whistleblower made famous by the 1999 movie, *The Insider*. Dr Jeffrey Wigand was sacked as vice-president for
research and development at Brown and Williams Tobacco Corporation after objecting to his employer’s attempts to conceal the addictive and toxic nature of its product (Devine and Massarani 2011: xiii). Such concealment was such an endemic part not only of that company’s operations, but the entire tobacco industry, that it was unrealistic to expect the company to support or protect him; the question then becomes, who else will do so?

Chapter 19, ‘Whistleblower Support in Practice: Towards an Integrated Research Model’, highlights the need for, and potential shape of, greater empirical research into the content and operations of disclosure procedures and systems, with a focus on how better whistleblower support strategies might be institutionalized. A.J. Brown, Dan Meyer, Chris Wheeler and Jason Zuckerman (three of them policy practitioners rather than researchers) present a comparison of how whistleblower protection is pursued in the US federal government and the Australian public sector. These are jurisdictions with related, long-standing and recently amended whistleblowing regimes, but quite different institutional approaches. The study highlights that it is only by collecting information regarding what is going on inside organizations that any systematic picture of the effectiveness of whistleblowing regimes can be formed, reinforcing the importance of questions raised in Chapter 13. So far, this research has been at best ‘one off’ rather than ongoing, with official longitudinal data gathering generally limited to levels of perceived wrongdoing and reporting rather than more comprehensive data on the effectiveness of whistleblower protection. The chapter identifies five particular challenges to drive the development of a more integrated research model, beginning with the need for agreed, efficiently gathered, comparable indicators of organizational success, and concluding with the need for performance information which supports more meaningful regulatory oversight. The feasibility of meeting these challenges is also demonstrated, making this chapter a further departure point for a new generation of research.

CONCLUSION

From this range of topics and the chapters that deal with them, it can be seen that the Handbook sets out a rich international stocktake of empirical research, and existing and potential research methods. Our purpose is to equip policy makers, institutional managers and other stakeholders in good governance with better tools for understanding, measuring, managing and harnessing whistleblowing as an organizational and political process. As a result, many chapters point to significant shifts
in focus or research method, especially towards understanding how managers and institutions respond to whistleblowing, rather than simply whistleblowers themselves.

Nevertheless, there would be no such thing as whistleblowing, were it not for whistleblowers. Before concluding the book, Brian Martin therefore returns us to important issues of research focus, design and ethics, in Chapter 20, ‘Research that Whistleblowers Want – and What They Need’. Drawing on decades of personal experience with research, advocacy and support for whistleblowers, Martin sets out the need for research focused on providing practical advice to individuals as they contemplate whether and how to blow the whistle. He gives numerous examples of the type of studies that would be beneficial, particularly focusing on the political and communication skills necessary to bring about organizational change. Martin argues that whistleblowers need ‘practical skills and insights into the ways organizations and society operate’ so that they can navigate the dangerous waters of bureaucratic cultures that easily turn hostile to whistleblowing. His potential research agenda presents an important call to arms for research geared towards helping insiders increase the effectiveness of their own whistleblowing, both in terms of achieving changes that stop and prevent wrongful practices, and their own survival.

Finally, in Chapter 21, ‘Strategic Issues in Whistleblowing Research’, led by Wim Vandekerckhove, we pool key lessons from all the chapters in this book, emphasizing how research into whistleblowing is shifting, and likely to shift further. Throughout, the objectives of our authors have been to interpret and reinforce the importance of whistleblowing, but also to advance debate on key contextual and definitional questions in whistleblowing research, which underpin how research into whistleblowing is currently conducted and might be best conducted in the future. Irrespective of geography or sector, we give an overview of how research is being and can be used to improve organizational, regulatory and political systems. We have also sought to provide current and new researchers with practical insights into how research might be focused to provide new knowledge, as well as reinforce existing findings. And we have sought to demonstrate how and why the best research will be conducted in collaboration with regulators and organizations who want to understand how whistleblowing is working, how it could be managed better, and how whistleblowing laws and policies could be better designed to ‘fit their purpose’. Obviously, we also hope that whistleblowing’s practical importance will see well-designed research win greater support from funding bodies.
We began by asserting that ‘whistleblowing’ may seem like a niche, almost boutique issue for research and policy making – but only to the uninitiated or the foolish. Any researcher or policy maker who has read this introduction, let alone the rest of this Handbook, is no longer in the realm of the uninitiated. But it is in the realpolitik of employment relationships, organizational life and volatile public affairs that greater knowledge about whistleblowing really matters. We hope that an understanding of the current research issues and challenges demonstrates that it is only the foolish manager or decision maker who, having spent any time in their role, could still consider that their response to those who report institutional wrongdoing is either simple or of only passing importance. We hope that the next generation of research into whistleblowing will continue to fill these needs, and strengthen the management and political cultures of our societies, by helping ensure that questions of how to respond to whistleblowing are given the care and attention they deserve.

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