



Kenny's *Whistleblowing* and Stanger's *Whistleblowers*

Wim Vandekerckhove¹ 

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In 2019 a number of books were published on whistleblowing. A niche topic in business ethics since the early 1980s, whistleblowing has received increasing attention since the start of the twenty-first century. I myself started researching whistleblowing in 1999. I remember having to explain to anyone I talked to what whistleblowing was; my fellow Phd students looked at me like they felt sorry for me, wasting my time and career on such a weird and freaky topic.

But every year I've felt less marginal a scholar than the previous year. That was also true in 2019. There was the EU Directive on whistleblower protection. There was also Trump's threats to an anonymous Ukraine-gate whistleblower. And towards the end of 2019 there was Li Wenliang who tried the Chinese government to take his concerns about a new virus seriously. And in 2019 there was also ... an exceptional number of scholarly books on the topic that got published. I will review two of them here.

Whistleblowing scholarship falls apart in two main schools, which can be characterised by the definition they use. One school focuses on governance, structures and procedures. Their definition is the one by Near and Miceli (1985: 4): whistleblowing is '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'. The book reviewed here, which I see belonging to that school is Alison Stanger's *Whistleblowers* (Stanger, 2019). The other school's definition is the one by Alford (2001, 2007) who defines a whistleblower as someone who speaks out about unethical or illegal behaviour, and who suffers as a result. For this school, how whistleblowers live their experiences and struggles is the central focus.

Kate Kenny's *Whistleblowing* (Kenny, 2019) situates itself in this suffering-school. Her book is based on a decade of interviewing whistleblowers from the financial sector and engaging with civil society organizations. Kenny documents how lives of whistleblowers are determined by structures of power – organizational and beyond – and she theorizes how 'affective recognition' (Kenny's term) constitutes the whistleblower identity, a constitution that takes part in structures of power. Kenny draws on Judith Butler's account of subjectivity, and finds the term 'affective recognition'

✉ Wim Vandekerckhove
w.vandekerckhove@greenwich.ac.uk

¹ Centre for Research on Employment and Work (CREW), University of Greenwich, London UK

usefully draws together aspects of [Butler's] long engagement with poststructuralist, feminist and psychoanalytic theory to show how we as subjects are formed by, and formative of, power. (Kenny, 2019: 33)

Butler is of course the philosopher of precariousness. That is why Kenny's book on whistleblowers approached from a Butlerian perspective is so exceptional. We are used to think about whistleblowers as either heroes or villains. In any case, whistleblowers are individuals who have made up their minds and have enough independence and courage to act upon what they have decided. Right? Well, not so when we take Butler as our guide, as Kenny does in her book. Against the concept of the autonomous independent individual, Butler argues for a mutual constitution as subjects. This renders the subject ek-static; 'what we believe to be our "inner" psyche cannot be seen separate from the social and political "outside" world' (Kenny, 2019: 38). The terms one uses to describe who one is, are thus always, from the start, outside of oneself, and thus ek-static.

It is this Butlerian ontology of the subject that Kenny applies to whistleblowers and calls that her 'new theory' of whistleblowing. The chapters guide us through the transformative process her whistleblowers have lived. Kenny has structured this well, giving each salient phase distinct notions and concepts. For example, chapters four and five describe how people who are persistent in asking the difficult and unwelcome questions, or committed to find someone in their organization that will listen to their concern, can become excluded and expelled. That is, of course, the standard way of narrating the whistleblower story. Kenny takes it further. She asserts that

Taking on the whistleblower position is something that people frequently do *posthoc* and often for tactical reasons. (Kenny, 2019: 97)

One of the implications is that it is precisely this process of subjectification that we need to inquire about. Kenny emphasizes the role of others. In chapter six she shows how public perceptions of people who speak up are important; how a whistleblower is framed in the media 'can make or break a person's campaign' (Kenny, 2019: 118). Most whistleblowers are not even picked up by the media. The majority of whistleblowers are not ever listened to.

Chapter seven describes the process of individualization of the whistleblowers, and how that targets a person. The 'subject position' of whistleblower represents a legitimate target of violence, both within organizations as well as with external whistleblowing. Becoming known as a whistleblower, as someone who speaks out, places a spotlight on an individual, even though others have helped them disclose the wrongdoing. Here, already in the initial transformational stages, we see Kenny's central assertion: whistleblowing is a fundamentally collective phenomenon.

One might argue that is hardly a new theory; rather, it is a dialectic process of how exclusion is inherent to a group dynamic, merely narrated in a different language. Perhaps, but it is my assertion here that this shows how good Kenny writes. The story so far will be familiar to whistleblowing scholars – sure – but the narration of it in Butlerian language allows the reader to accommodate to the Butlerian train-of-thought Kenny will need when she proceeds to open new insights.

What are these new insights? Kenny opens new grounds. She articulates that the process from successful professional to suffering whistleblower does not necessarily end there. There is a third act. We can see it in the 'endorsement of influential others' (p 141) that allows whistleblowers to have a public voice. So, is Kenny saying that someone becomes a

whistleblower only when others, known as whistleblowers, name that person a whistleblower? Sort of, yes. This individualization is of course more complex than that. Kenny writes that

Occupying the category of whistleblower causes pain on a number of levels. It hurts to be in this position but ironically, once in the public eye, people can feel compelled to stick with it and to defend themselves as a whistleblower. (Kenny, 2019: 145)

All of this points at the importance – yet thus far scholarly neglected – role of whistleblower support groups and media to the construction of whistleblowing and the naming of whistleblowers. Of particular importance empirically, I believe, is how Kenny describes the relationship between whistleblowers and media. The media gives them an audience but also isolates. Kenny writes that for her whistleblowers, media attention was helpful but had come at a cost. To persuade journalists and TV reporters to give them voice, whistleblowers had to supply photographs, intimate details, and allow others to publicize their personal histories. Common to the whistleblowers' stories Kenny brings, is that it was

essential for whistleblowers to take an active role in turning the focus onto themselves [...] The subject position of public whistleblowers therefor enrolls people in an ongoing game of spin, played out in the public media, from which they cannot escape. (Kenny, 2019: 149)

Kenny opens a whole new area of empirical research on whistleblowing, namely the interactions and dynamics between whistleblowers and those who give support, protection and justice. This potentially moves the field of whistleblowing scholarship beyond studying the relation between whistleblower and those who retaliate against them. I consider myself a whistleblowing scholar and have collaborated with Kenny (e.g. Kenny et al., 2019; Kenny et al. 2020). Yet reading this book surprised me in the sense of 'but of course ... that has always been there but I never saw that.' Hence, yes Kenny does bring a new theory of whistleblowing. One which I expect to bring fascinating insights and allow us to better organizations and institutions.

Although Kenny provides us with a new theory, it is not a theory of a new thing. There is nothing new about the financial sector whistleblowers in Kenny's book. Likewise, there is nothing new about COVID-19 whistleblowers. That, I believe, is the implication of the second whistleblowing book from 2019 I want to review here: Alison Stanger's *Whistleblowers. Honesty in America from Washington to Trump* (Stanger, 2019). Stanger's central thesis is that whistleblowing is fundamental and core to what the USA stands for. Every non-American scholar I've spoken to that had read the book, found this to be a ridiculous assertion. I would, however, caution against such quick and harsh judgement. Stanger provides examples and accounts of whistleblowing long before Ralph Nadar coined the term in 1971 to denote a phenomenon of which Stanger asserts it is 'an important part of what makes American democracy distinctive' (Stanger, 2019: 7).

The aim of Stanger's book is to defuse partisan opinion-making around contemporary whistleblowers in the USA. When Stanger wrote her book, that contemporary whistleblower was Edward Snowden. However, by the time the book was published, that had become the whistleblower who challenged Trump in Ukraine-gate. So yes, Stanger writes for a USA-audience. It is them she tries to unite. The relevance of Stanger's work for those outside the USA lies in the drawing of parallels between episodes of whistleblowing throughout history. Politics across the globe has increasingly become identity-politics, in particular national identities. These always draw on a

historical moment. Showing that whistleblowing was part and partial to that historical moment moves whistleblowing from alien to one's national identity, to central place as a constitutive moment. Thus one cannot say whistleblowing is 'not in our culture'. Having previously argued against cultural uniqueness of whistleblowing and against the universal myth that whistleblowing 'is not in our culture' (Vandekerckhove et al., 2014), I am sympathetic to Stanger's project. I think everyone should do it.

Note that Stanger does not immediately jump into historical cases. If you are going to make a political statement and want it to be heard across the political spectrum, expect to be shot at from all political positions. Stanger is aware of that. She starts off with building a nice conceptual armour. First assertion is that whistleblowing is not the same as political activism: a whistleblower cannot be defined as 'an advocate for the change I'd like to see' (Stanger, 2019: 2). And further

Whistleblowing is not merely a weapon for advancing partisan or personal interests in a fake-news world. Its purpose is not to denigrate others or vindicate our own political biases. (Stanger, 2019: 3)

Instead, Stanger claims that

whistleblowers draw attention to self-interested actions that undermine public trust. (Stanger, 2019: 3)

Stanger further makes a terrific effort at distinguishing whistleblowing both from 'leaking' as well as from 'civil disobedience'. In both instances, the strategy is one of category and sub-category. With regard to leakers Stanger writes that all whistleblowers are leakers but not all leakers are whistleblowers. Both expose secrets, but not all secrets relate to misconduct. Whistleblowers expose secrets that relate to lies and wrongdoing. With regard to civil disobedience, Stanger draws on Hannah Arendt's notion of civil disobedience, when 'the normal channels of change no longer function' (Arendt, 1970). So civil disobedients break laws that they want to see changed.

Yet whistleblowers differ from civil disobedients in that they appeal to the law or the Constitution – to the American rule-of-law tradition – for justice, whereas civil disobedients challenge the legitimacy of existing laws. (Stanger, 2019: 4)

Arendt saw civil disobedience as uniquely American because no other language had a word for it; Tocqueville named it America's greatest strength; Stanger writes that the American revolutionaries were whistleblowers: 'The American revolutionaries saw containing corruption as the very foundation of representative democracy' (Stanger, 2019: 21). Stanger is a great writer. I have enjoyed the way she narrates the whistleblowing events throughout American history. It is of course, quite impressive documenting a case from 1777 in which the Rhode Island slave trader Hopkins defies congressional orders when fighting the British, and his crew whistleblowing on him. There is even retaliation against whistleblowers in the story: Hopkins court-martials his critics. Reading the cases in Stanger's book, and in Kenny's book, one realizes not much, if anything, has changed really.

I believe Stanger's book provides a valuable analysis, also for non-Americans. Not that we need to learn a lesson from the American revolutionaries – then or now – but that historical whistleblowing was as complex as current ones. I believe scholars from every culture should search for early examples of whistleblowing within their own cultural heritage. Just so that we can skip the 'we were first' competition. I mean, Stanger claims the first whistleblowing

legislation dates from 1778 when Congress introduced an obligation to report wrongdoing in government. I'm not disputing that holds for the USA. But I remember well discussing whistleblowing at a seminar with Belgian public servants, where the Naopeontic duty to speak was causing a 'catch-22'. Governance ideas were in the air it seems, at both ends of the Atlantic, at the end of the eighteenth century.

But if we are going to do for our own history what Stanger does for American history, then we need to do more than simply finding the historical references. Stanger shows a coherence in the historical actions she puts forward as instances of whistleblowing. So not only did Congress in 1778 legislate the reporting of wrongdoing in government, it also provided legal counsel to whistleblowers to fight libel charges. And if that wasn't enough, Congress also published all records about the wrongdoing. Such commitment to transparency and access to justice for whistleblowers is seldom seen these days, anywhere in the world. A fascinating assertion Stanger makes here is that

The First Amendment grew directly out of the 1778 whistleblower protection law, which had recognized freedom of speech and the press as instruments and reflections of liberty. (Stanger, 2019: 31)

Usually we hear it the other way round. Usually, the argument is that whistleblowing is an instance of free speech; support whistleblowing because it is in line with the First Amendment, i.e. the First Amendment comes before whistleblowing. Stanger turns this around and basically argues that the First Amendment is a abstraction of a specific whistleblowing case.

Stanger continues that line of argument, albeit in a less convincing way. She narrates the history of what the USA is perhaps most famous for in whistleblowing scholarship, namely financial incentives for whistleblowing. She writes about how in the mid-nineteenth century, Lincoln, outraged about gunpowder fraud, backed the House of Representatives to create the Select Committee on Government Contracts, and ultimately Congress passing the False Claims Act in 1863. Unfortunately, *qui tam* laws are not revolutionary. 'Qui tam' is an abbreviation of the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, meaning '[he] who sues in this matter for the king as well as for himself.'

For the USA, *qui tam* does not entail a breaking away from the Brits. Rather, it is an instance of picking up a British idea, which Brits themselves were slowly departing from. Beck (2000) draws on Sir William Blackstone's *Commentaries on the Laws of England* (published between 1765 and 1769) to describe the development and use of *qui tam* laws in England. There is a 1331 *qui tam* statute to help enforce the 1328 Statute of Northampton regulating the length of fairs. There are many other examples throughout the centuries, and each time Parliament adopted a *qui tam* provision when the local enforcement of statutory requirements proved difficult, mainly in the context of commerce and trade, or to 'police the conduct of public officials and to ensure the integrity of governmental processes' (Beck, 2000: 572). The crux of *qui tam* statutes was that a claim could be prosecuted by 'any of the King's subjects' even if the person had not been harmed. Thus, a situation was created in which a private person 'serves as the advocate for public interests that would otherwise be advanced by public officials' (Beck, 2000: 551).

In any case, I have found both Kenny's *Whistleblowing*, and Stanger's *Whistleblowers* very inspirational books. Stanger brings the stories to life that have shaped her nation. Kenny allows us to imagine a dimension of those lived stories that I had not seen before. I recommend reading both books, but read Kenny before you read Stanger.

Compliance with Ethical Standards

Conflict of Interest The author has co-authored work with one of the author's of the books reviewed here, namely Kenny et al. (2019, 2020).

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Wim Vandekerckhove is Reader in Business Ethics and co-director of the Centre for Research on Employment and Work (CREW) at the University of Greenwich, and a Visiting Fellow at the Centre for Governance & Public Policy, Griffith University. He is editor-in-chief of *Philosophy of Management*.