Title:

'There's a price to pay in order not to have a price':

whistleblowing and the employment relationship

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Abstract

Whistleblowing is a typical and widespread phenomenon in contemporary societies and it has the potential to illuminate many of the issues that today affect the workplace. By recounting the story of an Italian whistleblower who suffered harsh professional retaliations and severe personal consequences because of his disclosure of accounting malpractices in his employing organization, this article aims to furnish a series of insights and stimulate avenues for future research. In particular, the account yields rich insights into current pervasive forms of managerial control of the workforce, the role of traditional and new actors in influencing the power dynamics of the employment relationship, and the interplay between the organizational and institutional levels in the regulation of labour relations.

Keywords:

control, employment relationship, labour regulation, new employment relations actors, power, whistleblowing

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Introduction

The literature on organisation studies and business ethics has recently paid close attention to the topic of whistleblowing (e.g. Andrade, 2014; Contu, 2014; Kenny et al., 2018; Weiskopf and Tobias-Miersch, 2016). In light of this interest, Olesen (2018: 2) notes that, surprisingly, the sociological literature has to date paid scant attention to this, in many respects, illuminating phenomenon of contemporary society and that "not even in a specialized journal such as Work, Employment and Society [...] does the whistleblower appear with any prominence", while being only very recently mentioned by Currie et al., 2019, in relation to professional work. In a similar vein, the employment relations literature seems to have largely overlooked the topic. The few existing studies on the subject in employment relations journals have focused, on the one hand, on the organisational and individual-level factors that predict whistleblowing (e.g. Davis et al., 2017; Fieger and Rice, 2018), and on the other, on how companies can establish effective procedures to manage whistleblowers (e.g. Lewis, 1997; Lewis et al., 2015). However, the great potential for research and theorization offered by whistleblowing has not yet been fully explored.

Whistleblowing is the act of disclosing information about illegal, immoral, or illegitimate practices happening at the workplace, to a party that may be able to take action and stop the wrongdoing (Near and Miceli, 1985; Olesen, 2018). As a research subject, whistleblowing is a critical case, a sort of litmus test, for many of the issues that today affect the workplace. The stories often characterized by human drama, injustice and struggle of whistleblowers can in fact furnish original insights into the power dynamics that are a central focus of sociological analyses of the employment relationship (Blyton and Turnbull, 2004; Edwards, 2003; Fox, 1974). Through the story of 'Q' (a pseudonym), therefore, we aim to stimulate insights and avenues for future research on a number of currently debated topics in the sociology of work and employment relations literature.

In this article, we elaborate on three key areas in which whistleblowing can make innovative contributions to extant research.

First whistleblowers, given their weak and easily blackmailable position at the workplace (Mansbach, 2009), usually suffer considerable retaliation as a result of their disclosures. Whistleblowers' stories thus often relate to dark sides of contemporary organisations such as victimization, slander, demotion, social exclusion, bullying (Park, 2018; Weiskopf and Tobias-Miersch, 2016), and new sophisticated forms of managerial control, such as allegations of mental instability (e.g. Kenny et al., 2018), which are of interest for the sociology of work and employment relations. A focus on whistleblowing can furnish opportunities for deeper investigation of these issues. In this regard, the story of Q shows how various forms of retaliation come about gradually and concomitantly, in an escalation of attacks aimed at both silencing the dissenting individual and re-aligning the rest of employees with the company (Kenny, 2018). Furthermore, the long period of unemployment suffered by Q after the termination of his employment contract, signals how managerial control extends beyond the boundaries of the organization. Indeed, in many cases whistleblowers, despite having good credentials and years of positive evaluations, are blacklisted and excluded from selection procedures because they are considered "troublemakers" that nobody wants to hire (Kenny, 2018; Uys, 2000). This is a pervasive new way to discipline the workforce on which a focus on whistleblowing could help to shed light. Second, whistleblowing can help to foster debate on the changing role of traditional actors, and the role of new actors in influencing the power dynamics of the employment relationship. As regards traditional actors, Q was subject to severe pressures without any active support from actors which, given their roles in the organisation, could have assisted him. Rather, HR managers even appear as agents of organizational retaliation in Q's story. In this regard, future research could explore the dilemmas and challenges that whistleblowers pose for HR managers, or how whistleblowing could be turned into an opportunity to concretize the contested rhetoric about HR managers as employee champions and ethical stewards (Thompson, 2011). On the other hand, nor did union representatives give Q any support. Also to be investigated, therefore, is how company-level unions deal with whistleblowers. For example, how can they support this individualized source of critique against corporate power, even at the risk of compromising their positive relations with the management which

might mean better working conditions for their wider membership? As recently suggested by Lewis and Vandekerckhove (2018), unions could indeed turn whistleblowing into an opportunity to expand their role and further enhance employee voice and a culture of open communication in the workplace. Conversely, Q received support from several figures external to the company. In light of this part of the story, we suggest that investigating the role performed by those actors often involved in whistleblowing cases, such as media, lawyers, NGOs and social movements (De Maria, 2008; Munro, 2019), could add new insights to the debate about the role of new actors in rebalancing the power distribution within the employment relationship (Cooke and Wood, 2014; Heery and Frege, 2006). In addition, still to be investigated is the possible coalition building strategies that could lead to alliances between traditional actors, such as the unions, and new actors, such as social movements (Cooke and Wood, 2014; Lewis and Vandekerckhove, 2018), in campaigning for more transparent, open to criticism, and 'ethical' workplaces.

Third, discussing whistleblowing cases makes it possible to reflect on the interplay between the organisational and the institutional levels in the regulation of the employment relationship. In part stimulated by legislative interventions, companies in several countries are now implementing internal procedures to manage whistleblowers. However, one may ask, in translating legislative frameworks into organizational procedures, to what extent are companies implementing new means to empower employees, and to what extent are these instead tools to control internal dissent (Andrade, 2014; Contu, 2014)? More in general, can all these institutional and organizational arrangements be effective in the context of a general decline of individual rights in the workplace and labour protection (Crouch, 2014)? Q's is also a story of a whistleblower who acted as an institutional entrepreneur, while taking an active role in cultural and institutional change. We thus call for future research to explore under what conditions whistleblowers can influence the organizational and institutional norms that pertain to one of the most supervised and regulated sites of society - the workplace (De Maria, 2008).

All these questions at the moment remain unanswered: opening up the debate is therefore essential. Q's troubled story presents many of the most negative aspects reported in the literature about whistleblowing (e.g. Kenny, 2018; Park, 2018; Weiskopf and Tobias-Miersch, 2016). It can thus be considered an 'intense case' (Patton, 2002: 234) - i.e. a rich example of the phenomenon of interest, but not an extreme or highly unusual one - which stimulates insights and avenues for future research on a number of currently debated topics in the sociology of work and employment relations literature.

Contextual background of the story

As evidenced by Skivenes and Trygstad (2010), the cultural-institutional context matters when discussing whistleblowing.

Before November 2017, the formal protection measures dedicated to whistleblowers in the Italian law were limited, as was common in several other European countries until recently (Worth et al., 2018). The new rules on whistleblowing (Law no. 179, approved on 30th November 2017) specify the legal discipline introduced with article 1.51 of Law no. 190 of 2012, adopted to implement the United Nations Convention against Corruption of 2003 (Fraschini et al., 2011), and extend the protection to employees in the private sector.

The outcome of Q's disclosure might have been different if Law 179/2017 had been in place at that time. Indeed, in regard to protection of the whistleblower, the Law now states that her/his identity must remain confidential in the disciplinary, criminal and administrative procedure; access to the whistleblower's file is prohibited; a number of possible recipients and reporting procedures are identified by the Law, including a digital system designed *ad hoc* that should be privileged in view of its protection of confidentiality; discriminatory actions towards the whistleblower are forbidden and the author/s of retaliatory measures against the whistleblower can incur severe pecuniary sanction; the burden of proof in the case of alleged discriminatory action is on the employer. Furthermore, the new law provides that the submission of a whistleblower's complaint is a "just

motive" to overcome the professional, scientific, and industrial secrecy and the obligation of loyalty to the employer.

Law 179/2017 thus represents a significant improvement on the previous discipline. However, much still needs to be done, as shown by those countries in the world where whistleblowing-protection laws are present but ineffective (Halpin and Dundon, 2017). First, the law needs to be applied correctly and efficiently by both public and private organizations. In addition, the law is only a first step for a cultural shift in society, that is, a long process to which many individual and collective actors can contribute, as the story of Q shows.

Q's story

Blowing the whistle

In 2011, I heard that a public holding company that operates mainly in the transport industry in Northern Italy had a position open in the audit office. I thought that that position was coherent with my previous career in the Carabinieri¹ and with my educational background: I have a master's degree in law. I thus applied and I was hired by the company.

In my new job, I had to check that my company didn't commit felonies and that all the organizational conditions for preventing them were in place. During the first three years I worked there, I also tried to develop CSR activities such as the sustainability report, and I organized a course on anti-corruption, in collaboration with an international NGO.

Initially, my work proceeded relatively smoothly. However, in 2014 a colleague and I noticed numerous irregularities in the invoices and reimbursement requests presented by the CEO, who was also the president of the company at the time: several of his expenses had been paid by the company even if not eligible for any reimbursement. Clearly, he was stealing money from the company and using it for personal purchases and gifts. In addition, he fraudulently made the company pay twice for the same purchase: first, when he used the company credit card and, second, when he asked for reimbursement. I repeatedly presented evidence to my boss, but he never took action and he was

always extremely evasive about my claims. Me and a colleague of mine thus drafted a report and I presented it to the audit and risk committee. During the meeting, however, it was decided to emend the report and to set it aside: it had never to be sent to the board. The chairman of the board of statutory auditors even suggested to me: "Use the information to obtain something for yourself". I felt sick: I immediately refused to re-write a softened version of the report and, because I couldn't stand the decision of the committee, I went to the police that same day and lodged a signed complaint. It was 10 February 2015.

In that moment, I recall I felt terribly irritated, but I don't think that I played fast and loose. Indeed, I was sure of my means, I had all the proofs and arguments to sustain my accusations. Furthermore, I had been a Carabiniere officer and I have always had a certain familiarity with legal procedures, including their drawbacks and pitfalls. Therefore, I can't say that I was ingenuous either. Rather, I voluntarily closed my eyes to the potential difficulties. I knew that my decision could have negative consequences, especially for myself. I knew that my career could be destroyed, and I could have compiled an anonymous report to protect myself. Nevertheless, I preferred to lodge a signed complaint: it was more consistent with my personal beliefs. I had nothing to hide. My reasoning was "If I lose my job, I could find another one, while if I lose my dignity and freedom, and I deny myself, it's over".

Following my report, from the beginning of March we had the police conducting investigations throughout the company. At that point, they knew in the company that someone, probably in the audit office, had raised concerns externally, but I could say nothing because of the ongoing investigations. In April, a new managing director was appointed to the audit office. He was a former consultant, chosen by the CEO and the board of directors from outside the company: a clear sign of distrust in the internal staff. The new manager immediately started an internal procedure to verify whether all the company protocols had been respected by us. In the same days, I and my colleagues received several threats in order to make us tell who had blown the whistle. It was a real witch-hunt. People came to us, trying to get information, probably to pass them on to the top management. I felt unsecure,

I didn't know who I could rely on and, to protect myself, I started recording the conversations I had with some managers. At the end of the investigations, the warrants were issued on 18 May 2015. Immediately afterwards, the CEO and the chairman of the statutory auditors resigned. The day after, the case went public: my name was in all the newspapers.

Experiencing retaliations

At first there were enthusiastic reactions within the company. I was congratulated by all the staff of the audit office, but also by other colleagues, like, for example, the HR manager in charge of selection and training. The secretary of the (former) CEO came to my office the same morning, she kissed me and loudly said "Yes, we made it!". I was astonished because I was thinking "Who filed all those reimbursement requests of the CEO?". However, the cheering by colleagues lasted just two or three days.

Because the old board of directors was at the end of its mandate, on 25 May the new board was appointed. Thereafter, the dismantlement of the audit office started. My tasks were assigned to external consultants and I found myself with nothing to do. I started to spend whole days surfing the Web, reading newspapers or novels. I informed the HR director of the situation, but he replied, "Don't worry, there's a reorganization ongoing, you'll be soon assigned to a new office". Because I insisted, he suggested I should relax and focus on an MBA I was attending, "Anyone else would be very happy to be in your shoes", he sardonically added.

Since the appointment of the new board, it became very clear that the climate around me was changing as well. Suddenly, I was no longer the idol of my colleagues: when coming across me, people walked on as if I was a ghost. Those who kept expressing their solidarity with me, they did so silently, in the elevator, but when the sliding doors opened, they went their own way as if nothing had happened. A colleague I used to meet for coffee after lunch started to meet me outside, at a long distance from the company because "I don't want to expose myself", he said. Afterwards, he came up with a lot of excuses and then he completely disappeared. At the coffee machine, nobody wanted to stand close to

me. The same happened at the canteen: no-one wanted to sit at my table except for the colleague who'd discovered the irregularities with me. When he wasn't in the canteen, I was alone. A girl who at the beginning flirted with me, exchanging a lot of texts and complimenting me for my "extraordinary courage", suddenly hardly said "Hi" when we met in the corridor.

Those who initially celebrated me blatantly, were the first ones to openly turn their backs on me. The HR manager of selection and training, who'd initially congratulated me and promised to inform the unions in the event of retaliations, radically changed her attitude and some weeks later told me: "Considering what you've done, you're lucky you've not been fired". I felt alone, like in prison, there was no relief... the situation was crazy, absurd, and it was vilifying: I had to put up with all sorts of mean tricks at work.

In June, the chairman of the compliance committee² gave me a tip: the company was trying to take disciplinary action against me for insider trading and reputational damage. He also said that they wanted to offer me an extra-judicial agreement and a big sum of money in order to leave the company and keep my mouth shut. I replied, "No way". I went to the HR director's office and, standing at the door, I said "There are rumours you want to take disciplinary action against me: I can't wait". He denied everything but he did nothing to support me, as usual. I was fed up with it all. Furthermore, I kept being paid for doing nothing. I wanted to work, but I couldn't stand spending eight hours a day doing nothing: it was against my dignity. I thus decided to make a claim to the Labour Court.

At that time, in Italy, the limited legal protections for whistleblowers were not applicable to my case. So, my lawyer suggested invoking the anti-discrimination legislation that guarantees fair and equal treatment to employees without considering their gender, religion, values, political opinions, and so on, assuming that it could be extended by analogy to my case because I acted on the basis of my moral values and my belief in social justice. Because in Italy legal trials take many years to conclude, my claim proceeded very slowly as was to be expected. In the meantime, I'd been assigned to a newly created office, "Labour Norms and Regulations". When I read the job description, it was total nonsense: they'd put me in a dead end. A colleague taunted me: "You've been fool to pit yourself against power: that's what you get".

An extended support network

In all those months following my report I didn't receive any support from my closer colleagues and superiors inside the company. Also, I was never contacted by company-level union representatives, who certainly knew my story from the news media. I think this was because we have always had good company-level agreements and my impression is that moral issues were not on the agenda of our union representatives. Ethics is not yet considered an essential part of a good working environment, because having good economic conditions for the majority of workers is still valued much more... at least as far as I could see.

However, I must say that I received incredible support from people outside the company. From the very beginning, I received lots of private messages on my Facebook and LinkedIn accounts from total strangers who'd read my story in the news media. Some of them were quite touching: things like "I hope my kids will be like you when they grow up". Even a driver of the company, whom I had never met, wrote to express his solidarity with me.

Of course, the day the accusations went public, on 18 May 2015, all the journalists wanted to talk to me, to have interviews, to invite me on TV shows, radio broadcasts and so on. I was overwhelmed by the public reaction. But I didn't want to make any public statements or give any interviews. First of all, because I didn't see any news story: I'd just done my job. Moreover, I was afraid of the media world, of all the rumours and popularity. I didn't want to become a celebrity, like: "The renowned whistleblower" who goes to all the talk shows. Therefore, at least at the beginning, I didn't collaborate with the media although they kept talking about me: I think that their work was fundamental for building public consensus around my case and, probably, for protecting me a bit from retaliations. Later on, I changed my mind. In March 2016, I was contacted again by a famous Italian TV programme specialized in investigative journalism. They pleaded with me, saying that my story was

important, and that people wanted to hear it. Indeed, also the media talking about my case kept receiving a lot of messages for me. In the end, I reluctantly accepted to participate in the broadcast, which was aired soon afterwards.

Besides the media and the public audience, another important actor for me was the international NGO with which I'd collaborated back in 2014. After reading my story in the news media, they immediately posted an article on my case on their website. Furthermore, they were plaintiffs in the suit against the company and they never missed a hearing, which is quite exceptional according to me.

In June, I was informed that the judge had rejected my appeal to the Labour Court. We could have tried other legal strategies, but they would have taken time, and I was very tired of the deadlock I was in. That's why I finally accepted the resolution of my employment contract offered by the company. However, I'd always refused and always been clear, also on that occasion, that I wouldn't accept the insertion of any confidentiality clauses in the contract resolution agreement.

On 21 July 2016, at the employers' association offices, in front of my lawyer, a trade unionist and the HR director of the company, I signed the agreement and suddenly found myself unemployed.

Epilogue

Soon after I resigned, my office was unsurprisingly closed. Ironically, they even added to the company's ethical code a clause on whistleblowers' protection.

A long period of unemployment followed. I contacted a headhunting company, but they answered, "We're busy, call us back in four months". By then I had become a public person and, evidently, they knew my story, they knew who I was and what I did. Nevertheless, I didn't give up: I kept sending CVs and applying for jobs, any kind of job... although I received no replies. Imagine: I was never called for a job interview in more than one year. It was strange for me to be punished in that way as well, just for doing my job. I've always been a scrupulous employee; I've always got good performance appraisals but at the same time... I wasn't appealing to any employer. I counted every day: 457 days of unemployment in total. It was very hard for me... because, for example, you meet friends and they ask you: "So, how are you? Any news?", and you don't know what to say, or you make up stories. I just felt ashamed. That's the price I had to pay for my choices. I think that when you're faced by a dilemma like mine and you have the possibility to make the right choice, if you're not willing to pay the price that is owed, in that case the price you didn't pay becomes your price. In Autumn 2016, a publisher asked me to write a book and I accepted: I finally had the chance to tell the story in my own words. Furthermore, it was a way to have something concrete to do, to give my days a purpose.

In October 2017, the former CEO of the transport company I worked for was convicted in the court of first instance for embezzlement and fraud (definitively sentenced in 2019 to two years of imprisonment for embezzlement), and the Chairman of statutory auditors was subsequently fined by the public authorities for his collusive behaviour. In the same months, my book was published, and it was very successful. Since then I've been invited to speak on many public occasions and to present my book in schools, because there are several ongoing projects on legality in Italian schools. The reaction of students has always been exhilarating, they listen with deep interest and many students write me emails or messages on Facebook and Instagram after my talks. My story became widely known in Italy, and I presented my book on many TV programmes. As publicly acknowledged by the president of ANAC – the Italian Anti-Corruption Authority – the great clamour aroused by my story strongly encouraged approval by the Italian Parliament in November 2017 of a new law to protect whistleblowers. Coincidentally, the law entered into force on 29 December 2017, the day of Saint Thomas Becket, martyr for justice.

Realistically speaking, however, the law on its own doesn't suffice and we also need a cultural change in order to make it effective. That's why I keep recounting my story in public events and schools to raise awareness, especially among young people, about the issue of corruption. For the same reason, I have rewritten my book for students aged nine to fifteen years old, which I consider a critical age at which young people can be made aware of how to recognize and stop wrongdoings. Recently, I've been appointed member of the board of a joint venture between my former employing company and another company. This make me think that, four years after my report, the impact of my past decisions and actions is still substantial, not just for myself.

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Notes

¹ Carabinieri is one of the two Italian police forces. It has an autonomous position within the army in comparison with the regular State police.

² A subcommittee of the audit and risk committee.

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