

# RECONCEPTUALISING WHISTLEBLOWING IN A COMPLEX WORLD.

## ABSTRACT

This paper explores the ethical dilemma of conflicting loyalties found in whistleblowing. Central to this dilemma is the internal/external disclosure dichotomy; disclosure of organisational wrongdoing to an external recipient is seen as disloyal while disclosure to an internal recipient is seen as loyal. Understanding how the organisation and society have dealt with these problems over the last thirty years is undertaken through an analysis of Wim Vandekerckhove's(2006) project, which seeks to place the normative legitimisations of whistleblowing legislation and organisational whistleblowing policies within a globalisation semantic able to contain this conflict between society and the organisation. This project fails, it is argued, because of Vandekerckhove's particular understanding of the organisation as an autopoietic system, i.e. an operationally closed system. A case is made to understand organisations as complex systems, i.e. operationally open systems. Critical Complexity theory sees the identity of systems and components as coterminous. In the context of the organisation this means that the identity of the corporation and its corporate members arise and die together. The whistleblower's disclosure reconfigures the organisation by forcing the organisation to open up and make its boundaries flexible, making the designation 'internal' or 'external' to the organisation, and therefore who qualifies as a recipient of a disclosure of wrongdoing, flexible. The organisation is restrained from retaliating against the whistleblower because their identities are coterminous. Furthermore, as the disclosure cannot be categorically defined as either internal or external, the question of whether an external disclosure can qualify as an act of organisational loyalty becomes moot.

**KEY WORDS:** Whistleblowing, organisational loyalty, internal/external disclosure, autopoietic systems, Critical Complexity, corporate responsibility, relational responsiveness.

## INTRODUCTION

C. Fred Alford (2001, p.35) remarks that “the fate of the whistleblower is not the worst problem our society faces, but it illuminates many others.” In light of the continuing economic, political and social aftershocks felt around the globe in response to the financial crisis triggered by the implosion of the US housing market in 2007; as well as the approach of several environmental tipping points – changing weather patterns, exhausted fishing stocks – it can be argued that the continued separation of business and ethics counts among the worst problems facing society. Opposing that separation is the whistleblower, who risks retaliation and reprisals by the organisation whose wrongdoing it seeks to expose. Conventionally the whistleblower has either been scorned or praised; polar attitudes that reflect the central dilemma of whistleblowing: conflicting loyalties. What these, opposing, attitudes betray is a belief that the whistleblower is an anomaly, someone who does not, and cannot fit into the organisation. This paper however, argues that the whistleblower is firmly part of the organisation, indeed, fundamentally part of the organisation. Accordingly, the whistleblower should no longer be seen as “someone from the inside [who] represents the interests of the outside” (Alford, 2001, p.29), but as someone whose actions constitute the very boundary of the organisation, the *ethical* boundary.

One of the key aspects of whistleblowing procedure is to specify who is eligible as a recipient of a disclosure of wrongdoing. Internal disclosure is a disclosure made to a person, or group of persons, who are deemed part of the organisation; external disclosure is a disclosure made to a person, or group of persons, who are not deemed to be part of the organisation. Disclosure to an internal recipient is not usually perceived as being disloyal to the organisation because it allows the firm to rectify harmful actions, procedures or policies before “it is charged in public” DeGeorge (1986, p.232). However, if the organisation does nothing to correct the harms arising from its actions then the whistleblower may feel that because s/he has a higher loyalty to society and the public interest, s/he needs to disclose that to a recipient outside the organisation.

The internal/external disclosure dichotomy is however, problematic. Where does one locate the boundary of the organisation? Who decides who is part of the organisation

and who is not, and as such is privy to information that may affect his/her interests? The whistleblower who discloses 'externally' is thus a "boundary violator" (Alford, 2001, p.99). What this organisational fear - of having its boundaries violated - represents, is the more general organisational distrust of dissent: if there is disagreement on which corporate activities constitute a public harm, or which stakeholder forms part of the organisation such that it can be the recipient of a disclosure, then the organisation will lose its identity and purpose.

This paper is divided into two parts. In the first part of the paper I critically examine loyalty and dissent, and their bearing on the internal/external disclosure dichotomy. This analysis then continues through a critical evaluation of Wim Vandekerckhove's (2006) project to map the normative legitimisations of whistleblowing policies around the globe today. Vandekerckhove traces how certain global trends in legitimising whistleblowing policies attempt to eliminate the conflict between the organisation and society.

I will argue that, what Vandekerckhove calls the OSR (Organisational Social Responsibility) normative legitimisation, fails to eliminate the conflict between the organisation and society because Vandekerckhove uses the concept of autopoiesis to support a network perspective. Autopoietic systems, although autonomous and self-reproducing, are systems that are operationally closed to their environment. I will demonstrate that it is this understanding of the organisation as an autopoietic system that frustrates Vandekerckhove's (2006, p.313) attempt to move past the crucial paradox he identifies: "openness of the recipient element [external disclosure] requires, as well as makes a strong civil society". In other words, effective whistleblowing policies need an organisational and societal culture characterised by the absence of abuse of power in highly independent and transparent organisations. However, to assume such a culture annuls the need for whistleblowing.

In the second part of the paper I introduce Critical Complexity theory, which describes systems as radically open systems. I make the case to understand organisations as complex systems. This allows moral agency in the organisation to be recast such that dissent within the organisation, which some theorists (Jubb, 1999; Bok, 1980) argue is fundamental to the notion of whistleblowing, can be accommodated. This notion of dissent is examined through Painter-Morland's

conception of 'normative congruence' (2008). Understanding organisations as complex systems, I will argue, requires that the designation 'internal' and 'external' remain open and flexible, such that who counts as a recipient of a disclosure remains open and flexible. Furthermore, as it is posited that the identities of organisations and its corporate members are coterminous - they start and end together (Woermann 2010b) - it follows that the organisation is restrained from retaliating against the whistleblower. Finally, as the disclosure cannot be categorically defined as either internal or external, I conclude that the question of whether an external disclosure can qualify as an act of organisational loyalty becomes moot.

## **I. ORGANISATIONAL LOYALTY, EXTERNAL DISCLOSURE, AND AUTOPOIETIC SYSTEMS**

### **LOYALTY & DISSENT; INTERNAL & EXTERNAL DISCLOSURE**

Traditionally the ethical problem of whistleblowing is seen as conflicting loyalties – the employee's loyalty to his/her organisation, which might require the employee to ignore or overlook actual or potential wrongdoing committed by the organisation, versus their loyalty to society which might require the employee to alert the public of organisational wrongdoing which might harm it. These conflicting loyalties become most apparent when the would-be whistleblower must decide whether to make his/her disclosure to an internal or external recipient. The importance of this internal/external dichotomy is revealed in such whistleblowing research as an empirical study by Dworkin and Baucus (1998, p.1296) which reports that whistleblowers who disclose externally are more effective in bringing about change within the organisation, (partly because the attention of outside stakeholders is brought to bear) increasing pressure on the organisation to respond to the charges (p.1286). However, external whistleblowers are also more likely to be retaliated against (p.1296). The relationship between the internal/external dichotomy and organisational loyalty is explored in what follows.

Prima facie, employees owe loyalty to the organisations they work for: On commencement of employment with an organisation, the employee's duties and

obligations toward the organisation will be laid out in their employment contract, specified *inter alia* in the job description, code of conduct and the corporation's various policies and procedures. However, an employment contract will never be able to exhaustively list every obligation and duty owed by the employee to the organisation. Organisational loyalty seeks to breach that gap, and consists in obedience, confidentiality and avoiding conflicts of interest (Bowie and Duska, 1990, pp.70-72). Obedience involves following reasonable instructions, while the requirement of confidentiality takes cognisance of the organisational need to keep its financial, management and operational data secret from its competitors.

Firmly against this view Ronald Duska (2004, p.306) claims that "one does not have an obligation of loyalty to a company, even a *prima facie* one, because companies are not the kind of things that are the proper objects of loyalty". Corporations exist to make money and employees work primarily to earn a salary, thus the notion of organisational loyalty is incoherent because, Duska (2004, p.308) argues, loyalty depends on "ties that demand self-sacrifice without expectation of reward" such as those found in family relationships or between teammates on a sports team.

However, the object of loyalty, according to Vandekerckhove and Commers (2004, p. 229), lies not in "the physical aspects of the company - buildings, executives, boards, hierarchies, colleagues - but the explicit set of mission statement, goals, value statement and code of conduct of the organization". An organisation in its mission statement, goals etc. hopes to offer to the public, and its employees, not just a description of its purpose, but a legitimation of that purpose. This legitimation can, for example, take the form of incorporating CSR and sustainability principles within the mission statement (2004, p.229). Conceiving of the corporation in this manner dissolves the dilemma of divided loyalties because if the corporation and its activities are considered legitimate by society, then blowing the whistle in order to prevent harm to society can never contradict loyalty to that corporation, "any contradiction between those two duties would imply that the object of my duty is not a legitimate object" (2004, p.230).

Following this, Vandekerckhove and Commers propose that organisational loyalty be considered as 'rational loyalty'. The 'rational' part indicates "the need for the individual to make a deliberation whether or not her acts are a contribution to the

explicit mission, values and goals of the organization she is loyal to” (2004, p.230). Any action performed therefore, as an action emanating from the ‘physicality’ of an organisation - the management structures, functional positions etc. - which is in violation of the explicit mission statement, is thus an act of potential wrongdoing, or what Vandekerckhove and Commers call “goal-displacement” (2004, p.230). Whistleblowing in this case, as an act of ‘rational loyalty’, is not a violation of organisational loyalty. Vandekerckhove and Commers use as an example the Volvo group, whose code of conduct commits it to political neutrality. If a plant manager were to use any of Volvo’s assets to assist his local city councilor in his election campaign then ‘rational loyalty’ would require whistleblowing to realign the goals of the organisational identity and organisational setting (2004, p.230).

Vandekerckhove and Commers (2004, p.266) employ Jubb’s (1999, p.83) definition of whistleblowing:

“A deliberate non-obligatory act of disclosure, which gets onto the public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an *external* entity having the potential to rectify the wrongdoing.” (Emphasis added)

Adopting Jubb’s definition thus appears to commit Vandekerckhove and Commers to the position that only external disclosure counts as whistleblowing. However, in the very next sentence they declare that “institutionalized whistleblowing is the set of procedures allowing potential whistleblowers to raise the matter *internally* before they become whistle blowers in the strict sense”( Vandekerckhove and Commers, 2004, p.226)(emphasis added). In my view the ‘institutionalized’ which purports to materially qualify whistleblowing merely distracts; what does it mean to so distinguish these ‘institutionalized’ whistleblowers from whistleblowers ‘in the strict sense’? It is a circular definition. If a whistleblower ‘in the strict sense’ is someone who discloses externally; then a person who uses the institutions procedures to effect an internal disclosure is performing an act which however it is characterized, does not warrant the label whistleblowing. Internal disclosure can be the mechanism whereby whistleblowing is justified, but is not in itself whistleblowing.

Vandekerckhove and Commers claim that there is no contradiction between whistleblowing and organisational loyalty is defensible *only if* whistleblowing is defined as internal disclosure. Distinguishing between the organisational setting and the organisational identity allows internal disclosure to correct goal-displacement and this act can be perceived as loyalty in so far as the object of loyalty is so distinguished. Rational loyalty may be able to correct a house so divided *against itself*. However, whistleblowing, as an act of external disclosure, sets the organisation, in either its physicality or mission statement, *against society* in that its wrongdoing threatens society. It is this act, disclosure to external agents, which is potentially disloyal in that it hands sovereignty to correct the wrongdoing, or goal-displacement, to agencies outside the organisation.

The problem with internal disclosure is that it misses what some regard as a crucial element of whistleblowing - dissent (Bok, 1980; Jubb, 1999). Dissent concerns defining what constitutes corporate wrongdoing and whether particular acts or omissions did in fact harm the public interest, as well as what responses, if any, these disputed acts should elicit from the organisation. Dissent, as an instance of disagreement, is what would lead one to question one's loyalties to the organisation in the first place. If there is no disagreement about whether a corporate action does or does not affect the public interest then the potential for conflicting loyalties disappears. One may express concerns, but expressing one's concerns does not always manifest itself as dissent. Only if one persists in voicing disagreement, escalating the complaint further and further up the managerial chain, does it become dissent (Jubb, 1999, p.79).

Breaching organisational loyalty then amounts to opposing higher management, who may regard the alleged wrongdoing contained in the accusation as trivial (Bok, 1980, p.337). Concern and disagreement become an indictment, labeling certain corporate actions or omissions as misconduct, fraud, or incompetence (Jubb, 1999, p.79). The alleged impropriety is *blameworthy* and some person or group of persons is *accused* of wrongdoing (Bok, 1980, p.337). Some person or group of persons must be held accountable. External disclosure is perceived as organisational disloyalty, because, "external disclosure attacks and accuses the organization [whereas] internal disclosure shields the organization" (Jubb, 1999, p.91). Internal disclosure shields

the organisation, argues DeGeorge (1986, p.232), because it allows the firm to rectify harmful actions, procedures or policies before “it is charged in public.”

Internal disclosure can also be viewed as collegial disloyalty, as opposed to organisational disloyalty, as when one ‘breaks ranks’ and reports wrongdoing by ones colleagues’ to a superior. However, argues Jubb, (1999, p.91) such disclosure represents “dissent from the peer group and not dissent from the organization’s values”. Internal disclosure is often seen as merely fulfilling one’s work duties, and thus not a breach of organisational loyalty.

Society has come to recognise that in order to expect the whistleblower’s warning, it must offer it its protection against organisational retaliation. To that end, legislation, such as the Sarbanes-Oxley Act (SOX) 2002 and the Dodd-Frank Act 2010, has required organisations to institute official whistleblowing policies in the workplace which stipulate, inter alia, which disclosures are protected and which not .Thus a policy would typically state, for example, that if the whistleblower used the channels stipulated by the organisation to make a disclosure then the whistleblower would be able to claim certain remedies against the organisation if s/he was retaliated against in the form of a demotion or harassment. This institutionalisation of whistleblowing policies demonstrates the shifting societal attitudes to the notion of organisational loyalty, in particular whether organisational loyalty can ever accommodate external disclosure. In the next section I evaluate Vandekerckhove’s (2006) analysis of how the ethics of whistleblowing has evolved over the past thirty years within a global context. I critically evaluate what Vandekerckhove calls the ‘OSR normative legitimisation’ of whistleblowing policies, tying that critique to the internal/external disclosure dichotomy outlined above.

## **THE NORMATIVE LEGITIMISATION OF WHISTLEBLOWING WITHIN THE GLOBAL CONTEXT**

Vandekerckhove (2006, p.304) argues that whereas in the early 1970s whistleblowing was a politico-ethical concept pointing at a conflict *between* organisation and society, by the end of the 1990s that politico-ethical concept was being used to legitimise whistleblowing policies, and hence seemed to be presented as a politico-ethical concept able to *eliminate* conflict between organisation and society. Vandekerckhove aims to trace the historical shifts in how the categories of

individual, organisation and society within the whistleblowing context relate to one another (2006, p.30).

Vandekerckhove sees the increased prominence of whistleblowing today as a result of a changed societal context, namely, globalisation which “designates the totality of demands, barriers, risks and opportunities that come along with an intensified - in breadth and depth - domination of private capital over society”(2006, p.19). This totality is captured in what Vandekerckhove labels the globalisation ‘semantic’. The term ‘semantic,’ says Vandekerckhove, following the sociologist Niklas Luhmann (1980), “denotes words gaining their meaning through their connections to other words. Thus a semantic is a network of words that refer to one another in a specific way and it is that specific way that turns the words into concepts, or words-with-meaning” (Vandekerckhove, 2006, p.2). We constantly produce conceptual variation in our interaction with other semantics and thus all semantics evolve, but because we need to be able to continue to make meaning of our reality, i.e. to be able to attribute significance to events and to rationalise experiences, the variation that is selected will be the one that has the potential to stabilize that semantic (2006, p.3).

Vandekerckhove’s project is to trace how certain global trends in legitimising whistleblowing policies attempt to stabilize the globalisation semantic, i.e. attempt to eliminate the conflict between the organisation and society. He argues that certain legitimisation constructs attempt to stabilize this crisis by “containing the conflict between organization and society within the organization or within the limited space of a proxy of society” (2006, p.304). What that conflict entails and how institutionalising whistleblowing policies contain that conflict, especially with regards to how external disclosure is accommodated, is explored next.

### **The globalisation semantic, network perspective and autopoiesis**

The globalisation semantic is comprised of the concepts ‘stakeholder’, ‘flexibility’, ‘decentralization’, ‘governance’, and ‘network’ (Vandekerckhove, 2006, p.73). Vandekerckhove (2006, p.86) expands Freeman’s (1984, p.46) definition of stakeholders as “any group or individual who can affect or is affected by the achievement of the firm’s objectives” to include “multiple, interdependent and simultaneous interactions in stakeholder environments” (Vandekerckhove, 2006, p.91). Flexibility refers to the structure of an organisation that allows it to adjust to

changing demands of the market, so that it can respond and reposition its resources accordingly (2006, p.75). Flexibility requires decentralisation, which is the giving up of central decision making (also referred to as 'flattening' of organisations). This means less hierarchical levels which in turn imply that lower-level employees are given more discretionary power to make decisions (2006, p.77). Decentralisation begets uncertainty which then requires governance. Governance is directed at efficiency and effectiveness.

Another way of confronting uncertainty is adopting a 'network perspective.'

Vandekerckhove explains that "taking a network perspective on an organization implies focusing on the interactions between organizational departments, between individuals within organizational departments, and between organizations ... the overall pattern of interactions makes up the network structure, which is seen as providing opportunities for and constraints on specific actions" (2006, p.82).

Vandekerckhove's network perspective is based on his understanding of "organizations as autopoietic systems... [which] emphasizes process over structure ... [shifting] the locus of rationality from the global to the local ... [while] power is spread over the entire system" (2006, p.81).

Vandekerckhove takes his understanding of autopoietic systems from Niklas Luhmann who writes that "an organization is a system which produces itself as an organization" (Luhmann, 2000, p.45 in Vandekerckhove, 2006, p. 45). This cryptic statement is not made any clearer when, a little further, Vandekerckhove writes that for Luhmann "organizations make self-descriptions, centralizing and bundling constantly occurring self-references" (Luhmann, 2000, p.421-2 in Vandekerckhove, 2006, p.45). However, Vandekerckhove (2006, p.45) states that "Luhmann's theory concerns a *self-driven, endogenous* trajectory of events." (Emphasis added). It is this characterisation, I believe, that allows me to employ Maturana and Varela's (1980), understanding of autopoietic systems (and Luhmann's subsequent application of their ideas, albeit approached through a different text - Luhmann, 1995). Maturana and Varela regarded autopoietic systems, in relation to biological phenomenon, as autonomous (self-driven), self-referential (endogenous), and most importantly, for my purposes, as organisationally *closed* systems This does not mean that autopoietic systems are isolated; but rather that "the 'environment' is drawn into the system, in

order to facilitate its own production and maintenance (Morgan, 2006, p. 244 in Woermann, 2010a, p.97).

Luhmann (1995) appropriated and generalised Maturana and Varela's ideas and applied them to social systems. Luhmann argued that social systems are self-referential if they display a degree of systemic stability (Poli, 2009, pp.9-11). Following Parsons (1951), Luhmann argued that social systems reproduce themselves by reproducing their social roles (i.e. patterns of action typical of a specific system) (Poli, 2009, p.9). Luhmann extended Parsons' ideas, arguing that the "reproduction of a social system is grounded on the reproduction of meaning, e.g. through education and other socializing functions" (Poli, 2009, p.9). Social systems, for Luhmann, are informationally as opposed to thermodynamically closed, because, argues Poli, (2009, p.11) "all the communication takes place within the system; there is no communicative exchange between the system and its environment." The system is however, "able to reproduce the system/environment distinction (wherein the environment perturbs the system and triggers internal processes) within the system itself" (2009, p.11). These self-referential processes cannot, however, resolve the complexity they generate (Woermann, 2010a, p.99). Ultimately Luhmann's emphasis on operationally-closed systems renders the notion of autopoietic systems problematic, with solipsistic and relativistic implications that are difficult to overcome (Woermann, 2010a, p.100). I will demonstrate below that autopoietic systems, as operationally closed systems, fail to underpin Vandekerckhove's network perspective, and consequently fail the normative legitimisations he seeks to advance for whistleblowing policies around the globe today.

Having delineated the concepts which comprise the globalisation semantic – in particular his 'network' concept - Vandekerckhove now constructs normative legitimisations of whistleblowing policies. I will consider only Vandekerckhove's Organizational Social Responsibility (OSR) <sup>1</sup> legitimisation<sup>2</sup> which he splits into the OSR-network and OSR-stakeholder legitimisations.

### **The OSR-network legitimatisation**

Vandekerckhove builds his OSR-network legitimisation around Calton and Lad's (1995) paper *Social contracting as a trust-building process of network governance*.

In neo-classical economic theory market transactions are conceived of as dyadic (once off, two-party) transactions (1995, p.274). Calton and Lad (1995, p.274) argue for a conception of networks “as an emerging alternative to market transactions and hierarchical governance”. More specifically, “social contracting within networks is, essentially, an interactive, participant-driven, developmental trust-building process [which] works to create and sustain a durable and resilient basis for effective and efficient organizational interaction by minimizing the moral hazard of participant opportunism”(1995, p.274). Trust, being “the essential glue and lubricant for long-term, value-creating organizational interactions” (1995, p.274), is thus at the heart of network governance, especially “in the absence of formal, explicit governance mechanisms that safeguard against malfeasance” (1995, p.282).

However, because of the information asymmetry between an organisation and its stakeholders, or between various departments and/or individuals within the organisation, trust between the network participants can only be maintained if the “problem of unequal power within relational contracts” can be equitably resolved (1995, p.283). Calton & Lad’s solution to this problem is to promote “a consent-based, dialogue-driven, micro social-contracting process of collaborative governance” (1995, p.284).

It is at this point that Vandekerckhove brings in whistleblowing as a mechanism that can ensure and maintain trust between the various stakeholders and the organisation, and between the corporate members within the organisation, by managing the power differentials between all these various actors. The organisation naturally exerts an asymmetrical power over its employees, and as controller of its operations and the propriety information it generates, it also tends to exert an asymmetrical power in relation to its stakeholders. These asymmetrical power relations are not necessarily abusive, but what is needed are “institutional structures that serve the function of monitoring and enforcing the terms of the implicit contract” (Vandekerckhove, 2006, p.106).

A whistleblowing policy is such an institutional structure, and “if power is to be balanced through an enhanced flow of information then it is likely that those network agents currently deprived of relevant information will be stipulated as recipients” (2006, p.148). This is necessary because “asymmetry of information implies that

relevant information is generated, but does not get to the appropriate receiver. By specifying the recipient element, network actors are empowered to receive information which otherwise would not get to them” (2006, p.148). Specifying particular stakeholders or corporate members in an organisation as appropriate recipients of information also channels information to those recipients, instead of allowing any random stakeholder or corporate member to receive it, who might choose to hide or exploit that information.

The problem, however, with specifying the recipients and positioning them within a network, is that the crisis at the heart of the globalisation semantic, the conflict between society and the organisation, is evaded rather than solved (2006, p.284). This is because the OSR network legitimisation contains that conflict within the organisation or within the limited space of a proxy of society, such as a regulator or an Ombudsperson, which it does by adopting a tiered recipient approach. A tiered recipient approach assigns a position to a particular recipient in a chain of accountability; acting as a ‘filtering mechanism’ which allows an organisation control over its practices as long as they stay in line with the public interest as defined in the subject element (2006, p.283). Vandekerckhove continues (2006, p.284):

It is only when organizations refuse or are unable to solve problems regarding their own practices that disclosure can be made to a next-level recipient. At this second level, it is a proxy of society - a governmental control agency such as a law enforcement agency, a specially designed investigation agency, or an agency under parliamentary control such as an ombudsperson - who judges the alleged organizational malpractice - again, relative to the public interest as specified in the subject element. Only in a few cases is there a third level, where society can judge the organizational practice in question when a disclosure is made to the media ... hence the tiered approach allows disclosures in the public interest to be made but not or only indirectly to the public.

The tiered approach is however, problematic: the superior the whistleblower attempts to disclose to may ignore or thwart those attempts; approaching a proxy of society, such as an Ombudsperson, places a heavy burden on the whistleblower to procure evidence. The tiered approach also exposes the whistleblower to potential

organisational retaliation; albeit at once or twice remove (These problems are very similar, if not identical to, those facing the whistleblower in the original internal/external disclosure dichotomy). The tiered approach in theory then seems to grant the whistleblower more power, but in practice, the final tier of the media is so far removed as to render its protection almost null.

The problem, I argue, can be traced directly to understanding networks as autopoietic systems: by containing the disclosure within the organisation, or a proxy of society such as a regulator or an Ombudsperson, the organisation draws those proxies into its network such that there can be no communicative exchange between the organisation and its environment - that environment comprising its stakeholder set and/or society - or the whistleblower and the would-be recipient. The network as operationally closed makes the distinction between the organisation and the other tiered recipients, the proxies of society, irrelevant, rendering the tier-mechanism impotent.

A possible solution then seems obvious: there should be no restrictions on the whistleblowing recipients, which is exactly what Vandekerckhove considers in his OSR-stakeholder legitimisation, which centres on business purpose.

### **The OSR-stakeholder legitimisation**

Under the OSR-stakeholder legitimisation whistleblowing aims at “stakeholders warning other stakeholders about organizational practices differing from organizational purpose” (Vandekerckhove 2006, p.157). Solomon (1993, p.181) argues that business, as a practice, has a purpose, which is “to enrich society as well as the pockets of those who are responsible for the enriching” and that business goals are internal to that practice. It is within this disjuncture that Vandekerckhove constructs the OSR-stakeholder legitimisation of whistleblowing. Whistleblowing is legitimate because society needs to be warned when business goals override business purposes; when an organisation’s goals start to have an adverse impact on society (2006, p.108).

What follows from this, argues Vandekerckhove, is that information must be allowed to be disclosed to *all* stakeholders (2006, p.148). The distinction between the OSR-network and OSR-stakeholder legitimisations is that the former “identifies which

stakeholders are part of the organizational network and assigns them a position and importance” while the latter “do not specify which stakeholders are to be regarded as relevant, but instead allows disclosures to be made to a wide range of stakeholders; in the limit to the whole of society” (2006, p.149). In other words, instead of understanding an organisational network as a closed, autopoietic system, the organisation must be made completely open to its environment.

However, this might make disclosure less effective. It might be better to disclose to a recipient organisation (whether part or not part of a tiered specification) that can interpret and analyse the evidence and so make a more informed judgement on whether wrongdoing has indeed been committed and the likely extent of the harm to follow, rather than disclose to the media “who is only interested in reporting the wrongdoing, not correcting it” (Vandekerckhove, 2006, p.312).

Opening up the organisational network wholesale does not therefore present a totally satisfactory solution to the problems associated with organisational networks understood as autopoietic systems. Perhaps what is needed is a hybrid of the OSR-network and OSR-stakeholder legitimisations. Vandekerckhove believes this is possible if the tiered approach of the OSR-network and accountability legitimisations is adopted and 1) the final tier is left open, i.e. disclosures to the media are allowed, 2) there are no extra criteria put on the whistleblower when disclosing to these open-tier recipients, 3) cases in court are on public record (2006, p.312).

However, as indicated above, a tiered approach still faces the same problems as those facing a more traditional external/internal disclosure dichotomy; the addition, or removal of restrictions to a tiered approach disclosure do not alter that. Another solution advanced by Vandekerckhove is enlisting civil society, instantiated in NGOs, the media and trade unions, which can act as a ‘midway’ within the tiers between the organisation and proxies of society (2006, p.312). NGOs which, because they are “parcels of society, constituted by those who care for a particular issue” (Vandekerckhove, 2003) rather than proxies of society, avoid the conflict between society and the organisation (Vandekerckhove, 2006, p.312). NGOs and trade unions can develop know-how to interpret whistleblowing information and put pressure on organisations to correct wrongdoing because they have the resources and liberty to involve the media (2006, p.312). However, Vandekerckhove

anticipates a paradox – “openness of the recipient element requires, as well as makes a strong civil society” (2006, p.313). He elaborates:

Whistleblowing policies need to apply a broad scope to their actor, subject and recipient elements. However, to make such a broad policy effective - given problems of asymmetry of information - one needs to assume an organizational and societal ‘culture’ characterized by the absence of abuse of power in highly independent and transparent organizations. However, to assume such a ‘culture’ annuls the need for whistleblowing.

Vandekerckhove (2006, p.304) argues that, to the extent that “the semantic constructs used to legitimate those [whistleblowing] policies - stabilize the globalisation semantic ... [it] implies that the concepts of flexibility, decentralization, governance, network and stakeholder maintain relevance in our meaning-making”. The problems identified above with the network perspective, as contained in the OSR whistleblowing legitimisation, indicate that the concept ‘network’ (in Vandekerckhove’s sense) might not be maintaining relevance in our meaning-making and thus cannot stabilize the globalisation semantic, i.e. eliminate the conflict between the organisation and society because it does not reconcile the opposing meanings emanating from whistleblowing’s essential aporia - organisational loyalty versus preventing public harm.

Vandekerckhove bases his understanding of the network perspective, and the legitimisations that follow, on networks as autopoietic systems. The problem seems to lie in the fact that organisational networks, as operationally closed systems, cannot satisfactorily deal with the openness required in the recipient element. On the other hand, opening up the organisational network completely to its stakeholder environment leads to other problems, for example, stakeholders who receive information but who then, due to a lack of expertise, cannot effect any changes as a consequence of receiving that information.

In the next part of this paper I undertake an exposition of Critical Complexity and the ethics of Critical Complexity to argue that Critical Complexity allows the organisation and organisational network to be understood as an open system that is nonetheless still bounded. Like the theory of autopoietic systems, Critical Complexity also focuses on the interactions in the system but crucially, is not operationally closed. Critical

Complexity allows the system to generate meaning *only if* the system remains open to its environment. Critical Complexity, I will maintain, allows the concept of ‘network’ to maintain relevance in our meaning-making and so stabilises the globalisation semantic i.e. eliminates the conflict between the organisation and society.

## II. CRITICAL COMPLEXITY AND REFRAMING ORGANISATIONAL BOUNDARIES

In the first part of this paper, I argued that the principal weakness in Vandekerckhove’s (2006) analysis of the normative legitimisations of whistleblowing policies was his conception of organisations, and networks of organisations, as autopoietic systems, i.e. operationally closed systems. The problem, according to my critique, lay in the fact that organisational networks, as operationally closed systems, could not satisfactorily deal with the openness required in the recipient element( i.e. who is eligible to receive a disclosure of wrongdoing). This in turn had direct bearing on the internal/external disclosure dichotomy, i.e. does a disclosure of wrongdoing to a party outside the organisation count as an instance of organisational loyalty? On the other hand, opening up the organisational network completely to its stakeholder environment is also not a satisfactory solution. As a result, current normative legitimisations of whistleblowing policies, as theorised by Vandekerckhove, cannot eliminate the conflict between society and the organisation (about what constitutes public harm and how such public harm should be mitigated) by containing that conflict within the organisation, or within proxies of society such as a regulator or Ombudsperson.

In this second part of the paper I attempt to resolve that conflict by reconceptualising the whistleblower as the collective social conscience of the organisation who represents the boundary, or limit, of acceptable transgression that will be tolerated by society in general, and a specific stakeholder in particular at any given point in time. I will call such whistleblower, the whistleblower-as-*parrhesiastes* (from the ancient Greeks, a *parrhesiastes* was a truth teller). At the heart of that reconceptualisation will be an understanding of the organisation as a complex, i.e. open system. I make that case, by first exploring, in the section to follow, Critical

Complexity theory. The property of 'emergence' found in complex systems leads to the insight that the identities of systems and their components are coterminous. Applying this to organisations means that the identities of organisations and its corporate members are coterminous - they start and end together (Woermann 2010b). As such, the organisation is restrained from retaliating against the whistleblower. Before reaching this conclusion, I examine Painter-Morland's conception of 'normative congruence' (2008) which seeks to accommodate dissent within the organisation without the organisation losing its identity and purpose. I will also employ Painter-Morland to recast corporate responsibility as 'relational responsiveness' (2006). These concepts, together with the understanding of organisations as complex systems will, I argue, require that the designation 'internal' and 'external' remain open and flexible, such that who counts as a recipient of a disclosure remains open and flexible. The whistleblower who makes an external disclosure forces the organisation to uphold this imperative, *and* this act of disclosure amounts to organisational loyalty, because the identity of whistleblower and the organisation are coterminous: retailing against the whistleblower is a harm against itself which could threaten its existence. Finally, as the disclosure cannot be categorically defined as either internal or external - the designation must remain flexible - I conclude that the question of whether an external disclosure can qualify as an act of organisational loyalty becomes moot.

## **CRITICAL COMPLEXITY**

Critical Complexity theory posits that the properties of complex systems emerge from the interaction between the components of a system and the interaction between those components and the system's environment; a complex system is thus constituted through *both relationships* between components, and between components and the system's environment (Cilliers, 1998, p. 2). These interactions are *non-linear*. This means that the system cannot be compressed, and represented by a smaller, equivalent system. It also means that "small causes can have large results and vice-versa" (1998, p.4). One of the key features of complex systems is the ability to self-organise, which enables complex systems "to develop or change internal structure spontaneously and adaptively in order to cope with, or manipulate, their environment" (1998, p. 90). Assisting self-organisation is the presence of feedback loops in the systems' interactions which also produce the 'emergent'

properties of the system, i.e. “the higher order properties which make the system what it is” (Cilliers, 2010, p.4).

Complexity, however, “is not simply a function of the interactions between many components, but of their organisation” (Cilliers, 2010, p.15). If there is too little structure the system risks becoming a mere reflection of its environment, changing chaotically in response to every perturbation, no matter how small. “Complex behaviour is only possible when the behaviour of the system is constrained” (Cilliers, 2008, p.46). However, too much structure and the system becomes rigid, incapable of complex behaviour either (p.46). This is because if it is too tightly constrained it will not be able to adapt to its changing environment.

Constraints should therefore not be seen as something negative, they are also enabling, argues Cilliers (2001, p.139). Constraints can be understood as that which bounds a system, which in turn can be equated with the structure of that system. In order to differentiate one system from another there needs to be some kind of boundary. However, deciding where or how to draw the boundary between one system and the next, or one system and its environment, becomes problematic (Cilliers, 2001, p.140). This is because boundaries are

“simultaneously a function of the activity of the system itself, and a product of the strategy of description involved [...] we can never be sure that we have ‘found’ or ‘defined’ [the boundary of the system] clearly ... the closure of the system is not something that can be described objectively” (p.141).

Further impoverishing our notion of boundaries is our propensity to visualise complex systems as contiguous in space, thinking of systems in an ‘organistic’ manner (p.141). Social systems, however, may be composed of parts existing in different spatial locations. Indeed, the parts may be located in virtual space (p.142). A further implication of a non-spatial understanding of boundaries is that in a complex system

“we are never far away from the boundary ... there will always be a short route from any component to the ‘outside’ of the system ... there is no safe ‘inside’ the system ... everything is always interacting and interfacing with others and with the environment; the notions of ‘inside’ and ‘outside’ are never simple or uncontested” (p.142).

Complex systems are then not just open systems, but radically open systems. The demarcation of a boundary is a function *both* of the system and the description we choose to give that system. Systems are thus identifiable as one particular system rather than another, not because of some a priori identity, but because of the framing strategy chosen to describe that system. Modelling complex systems are however, fraught with difficulty: in order to “frame our description, we have to decide what our ‘distance’ from the system will be: in other words, what level of detail are we going to consider?”(Cilliers, 1998, p.5). Choosing one description will leave some aspects of the system unaccounted for, while another description will pass over still other aspects of the system. Ultimately there is no “a priori procedure for deciding which description is correct” (Cilliers, 2008, p.46). The problem is that, because of non-linearity, we cannot predict how that which we choose to leave out will impact upon the system - “something that may appear to be unimportant now may turn out to be vitally important later. Or vice versa, of course” (Cilliers, 2001, p.138). Framing, or drawing boundaries, thus becomes an *ethical* act - “there is always a normative dimension to the claims we make, and we have to stand in for them” (Preiser and Cilliers, 2010, p.270).

What follows from the above considerations is that we have to accept that our knowledge of complex systems will always be provisional (Cilliers, 2005, p.259). (In the section, organisations as complex systems: implications for whistleblowing I use this notion of provisionality to indicate flexibility in relation to the applications made there). “As the context in which this knowledge is to be useful changes, we will have to continually revise the framework which generated this knowledge” (Preiser and Cilliers, 2010, p. 269). Our knowledge of complex systems will thus always be limited. However, argues Cilliers, (2005: 260) “limited knowledge is not equivalent to ‘any’ knowledge”. This is because

“the complexity we are trying to understand is not featureless. There are patterns and structures that constrain our description. We cannot find a pure description, and at the same time we cannot just come up with any description. The strategy behind the description forms part of the description” (Cilliers et al., 2002, p.12).

Before the case to understand organisations as complex systems and the implications that follow is presented, it is helpful to summarise, from the above, how identity formation occurs in complex systems. Complex identity emerges over a period of time through a process of interaction between the system's components and the system's environment, where the boundaries and hierarchies of the system are in flux. This emergent identity results from a recursive process (constituted by feedback loops) where "the products and the effects are at the same time causes and producers of what produces them" (Morin, 2008, p.49). In other words, the components of the system in their interactions, with other components and the environment, produce the system, which in turn produces the components that produce it. From this process of complex identity formation, a startling conclusion can be drawn: "emergence ... implies that the identity of systems and components are coterminous" (Woermann, 2010b, p.171).

### **Identity formation in corporations**

Delineating a complex notion of corporate identity serves two purposes: firstly, it allows moral agency within the organisation to be recast with direct implications for corporate responsibility; and secondly, it allows the reconceptualisation of organisational boundaries which has direct bearing on the central internal/external disclosure dichotomy of whistleblowing. The first issue is addressed in the subsection below on corporate responsibility; the second issue is taken up in the section thereafter.

It was established that complex identity emerges through a process of interaction; therefore an individual's identity as a corporate member is "delineated within a given work practice" (Westenholz, 2004 in Woermann, 2010b, p.171). Corporate identity refers to "role identities, constituted by acts and events" (Seabright and Kurke, 1997 in Woermann, 2010b, p.171-2). Within the corporation individuals "are differentiated from one another on the basis of their membership to 'social categories that define departments, work units, levels of hierarchy, and/or specialised roles'" (Paulsen, 2003, p.16 in Woermann, 2010b, p.172). An individual corporate member can therefore have multiple, simultaneous group identities; thus an employee may belong to one division, such as finance, while also collaborating with another, such as marketing, in a special unit constituted to launch a new product. Corporations, too,

have multiple identities, and are differentiated across many contexts, “[meaning] various different things to different stakeholders and groups” (Woermann, 2010b, p.172.) A corporation is thus a competitor to a rival in the market but a collaborator with that same rival in sponsoring a rural-literacy initiative. In the previous section it was discovered that emergence implies that the identity of systems and components are coterminous. In the context of the organisation this means that the identity of the corporation and its corporate members “arise and die together” (p.168). The importance of this insight for my argument is presented below, in the section entitled ‘organisations as complex systems: implications for whistleblowing’.

In the course of interacting at work, individual corporate members come to form groups; and cooperative and competitive corporate activities lead to the emergence of formal and informal collegial relationships, task teams and even corporations in themselves (Woermann, 2010b: p.173). Over time group identities and corporate identity, constituted in work practices coalesce into “coherent patterns of being-together” (Stacey, 2003, in Woermann, 2010b: p.174). Woermann (2010b: p.175) describes these patterns as “iterated themes, which perpetually reconstruct the past whilst creating the future.” The corporation then feeds back these iterative themes (constructed out of the patterns emerging from work practices) “in order to produce corporate members through policy, culture and purpose” (Woermann, 2010b: p.175).

In a similar vein, Painter-Morland (2008, p.174) describes how organisational purpose, or values

“emerge as a kind of inarticulate pattern or quality in the behaviour and expectations [of corporate members] creating a certain congruence, both in the actions of an individual over time and under different circumstances, and in the behaviour of all those who identify with a particular organization. As such, they draw the employees of an organisation together in a meaningful and significant, but non-coercive way.”

To recapitulate: corporate identity and the identity of corporate members arise simultaneously through “the dynamic interactions between corporate members and subsystems, and by the iterative themes and feedback loops which create a sense of normative congruence amongst corporate members and subsystems” (Woermann,

2010b: p.175). This way of understanding corporate identity has implications for how corporate responsibility has traditionally been understood.

### **Corporate responsibility recast**

Woermann (2010b: p.177) frames the question of corporate responsibility thus: “can corporations be morally responsible for their actions in the same way that individuals are?” That question has been answered either in the affirmative, by some proponents such as French (1979)<sup>3</sup>, or the negative as for example Ladd (1984)<sup>4</sup>.

Woermann (2010b: p.177) regards the various definitions of ‘intentionality’ within this debate as beside the point, identifying instead how both positions share a common, problematic, understanding of moral agency defined by Painter-Morland (2006, p.90) as “a direct cause and effect relationship between the willing and acting agent and the consequences of his or her behaviour”. Furthermore, traditional notions of moral agency assume that “agents, whether individual or corporate, make deliberate decisions based on a clear understanding of all relevant principles or behavioural guidelines” (Painter-Morland, 2008, p.225).

However, in the organisation, understood as a complex system, it is far more fruitful to understand “the locus of moral agency [lying] in the reciprocal circuits of influence between individual employees’ personal moral sensibilities and the complex network of relations within an organizational environment” (Painter-Morland, 2006, p.93). Accountability has traditionally been viewed as being accountable *for* something (p.93) and therefore focused on “retroactive appropriation of blame” (Painter-Morland, 2008, p.226). If instead, accountability is understood in terms of the relationships within the organisation and the organisation and its environment, then we should view our responsibilities as responsibility *towards* others (Painter-Morland, 2006, p.93). The corporation’s (or corporate member’s) failure to act appropriately is therefore to fail *someone*, which instead recasts corporate failures as a breakdown of stakeholder relationships (Painter-Morland, 2008, p.225).

Understanding accountability in this way, as ‘relational responsiveness’, thus recasts an element identified as crucial to whistleblowing – dissent. In the first part of this paper I noted that dissent was identified by Bok (1980) and Jubb (1999) as the element which rendered internal disclosure as whistleblowing questionable.

However, accountability as relational responsiveness eschews apportioning blame

for an act of organisational wrongdoing; instead dissent manifests itself in this instance as disagreement over which stakeholders the organisation has failed and *how* the organisation has failed them. Dissent, so understood, shifts the focus away from *consensus* (over what type of harm the organisations' actions resulted in, for example) toward *congruence*. Painter-Morland calls this concept of congruence, *normative congruence*, which captures the organisation's "ability to accommodate difference and dissensus, without losing its functional unity of purpose or sense of identity" (2008, p.224).

Consider an example of corporate wrongdoing involving water pollution; under traditional notions of accountability, the corporation would be responsible *for* the degraded water quality its emissions had produced. It would in all likelihood be fined and ordered to reduce its emissions back to the permitted level. Being relationally responsive however, would entail seeing the corporation acting responsibly *towards* particular stakeholders, for example local farmers, who draw water from the polluted river to irrigate their crops; or visitors to a nature reserve situated on that river. Consensus amongst the relevant decision makers over whether the organisations' actions in this instance did constitute an identifiable harm would not be needed. Instead, through a process of normative congruence, the differences of opinion around this question (dissent) would settle around the common identification that the organisational is indeed a socially responsible organisation. This would entail that the organisation accept that its failure consisted in not being responsive to the needs of the local farmers and resort visitors. Correcting the failure *towards* these stakeholders would entail more than just reducing emissions back to the levels permissible. Those levels, acceptable for regulatory purposes, might not ensure a bountiful crop for the farmers, or might be technically safe, but produce an unpleasant odour, thus destroying the aesthetic appeal of the nature resort.

So far this strategy is still compatible with the first and second tiers of Vandekerckhove's tiered approach. The whistleblower discloses internally (thus preserving organisational loyalty) but because the focus of the disclosure has changed, from the blameworthy act to the response necessary to the affected stakeholders, there is a reconfiguration of the organisation. That reconfiguration will pull those affected stakeholders (the farmers and nature resort visitors) into the organisation so that in the future, when deciding what levels to emit, the organisation

consults with those stakeholders. Similar reconfiguring dynamics would occur at the second tier (which includes law enforcement agencies, Ombudspersons etc...). Suppose the resort visitors now decide that they are not content with just picnicking on the banks of the targeted river but that the area surrounding the river should also sustain particular birdlife, and so support even less emissions. The whistleblower would make a disclosure to an environmental protection agency but that disclosure would focus on what the organisation would need to do in order to remain relationally responsive to those stakeholders. This disclosure would also reconfigure the organisation such that the environmental protection agency would now also be consulted when future decisions regarding levels of emissions were considered. In the event, this disclosure - to the environmental protection agency - would not amount to organisational disloyalty.

However, the whistleblower's dilemma remains: The organisation retains the prerogative to specify which proxies of society count as the second tier of disclosure, as well as stipulating what extra requirements are needed to move up to that level. Although consensus has softened to congruence, the organisation still retains a veto, albeit that veto now concerns who the organisation should be responsible to and what form relational responsiveness should take. Thus in allowing disclosure to a proxy of society, such as an ombudsperson, the organisation does not so much 'open' its boundaries as extend them. The boundaries of the organisation widen as it attempts to include other parties not 'central' to its operations, but those boundaries still remain closed, operating as autopoietic systems. Furthermore, the organisation may decide that a particular proxy of society counts as a legitimate recipient of disclosure on this occasion but not on another; so the problem with organisational boundaries is not just how wide or open they are construed, but also how *fixed* they are. Opening the boundaries of the organisational and keeping those boundaries flexible, would for my purposes, require that who qualifies as a recipient of a disclosure remain flexible, dependant on what response was required to a particular stakeholder. How then does the whistleblower ensure that the organisation opens its boundaries to its stakeholders and keeps those boundaries flexible?

## **ORGANISATIONS AS COMPLEX SYSTEMS: IMPLICATIONS FOR WHISTLEBLOWING**

If organisations are better understood as complex systems, as against autopoietic systems, then I believe the following generalisation can be asserted: regarding only internal disclosure (which incorporates the first two tiers of Vandekerckhove's tiered system) as an instance of organisational loyalty amounts to understanding the organisation as a closed system; while allowing the organisation to function as an open system requires that external disclosure be accommodated. The crux of the matter rests on who the organisation decides is 'part of it', i.e. where it decides to draw its boundaries, as well as how flexible it allows that designation to be.

Extending the boundaries of an organisation to include proxies of society, such as an ombudsperson, to which a disclosure can be made, fail to resolve the whistleblowing dilemma because it attempts to fix the boundaries of the organisation at that proxy. Such attempts by the organisation are unethical because it "disregards the complex, non-linear, asymmetrical interactions and interdependencies that exist between corporations and stakeholders ... corporations have a duty to try and remain open and responsive to stakeholders concerns and environmental demands" (Woermann, 2010, p.182).

Remaining open and responsive to stakeholder concerns entails that the designation 'internal' or 'external' to the organisation, and therefore who qualifies as a recipient of a disclosure of wrongdoing, remains flexible, dependant on what response is required to a particular stakeholder. The whistleblower who makes an external disclosure forces the organisation to uphold this imperative. S/he should be protected, I argue, because this act remains within the definition of organisational loyalty. Recall that in complex systems the concept of emergence implied that the identity of systems and components are coterminous, and that in the context of the organisation this meant that the identity of the corporation and its corporate members "arise and die together" (Woermann, 2010b, p.171). If we take it that retaliating against the whistleblower in effect dissolves his/her identity then what follows is that this act of retaliation also dissolves the organisations' identity, i.e. causes it to lose (what Painter-Morland calls), "its functional unity of purpose or sense of identity"(2008, p.224). Disallowing such an outcome would fall under organisational loyalty because it goes to the very heart of the organisations'

existence. As the pivot on which normative congruence within the organisation would turn, the whistleblower would in effect become the boundary of the organisation, more specifically, the *flexible, ethical* boundary of the organisation.

In permitting an 'external' disclosure to stand the organisation is made to acknowledge that that party (the 'outside' party the 'external' disclosure was made to) is included in the considerations of the organisation and that the boundaries between the organisation and that 'external' recipient are fluid and open to each other. Disclosure to the 'external' party in the particular instance allows the organisation to be relationally responsive because, *inter alia*, that 'external' party might have resources the organisation does not have, to assist in stopping and/or correcting the harm emanating from the organisation.

As an example consider the BP oil spill disaster in the Gulf of Mexico in 2010. By itself, BP did not have the resources to stop and quickly contain the spill, or to mitigate the harm being done to the wildlife in the area or residents along the coast affected. Only if 'external' parties such as environmental and wildlife protection groups, normally parties it might be quite antagonistic to, became part of its response to the spill, would BP be able to ameliorate the harm done to the bird and marine-life, as well as the coastal residents, and thus to remain relationally responsive to those stakeholders. If BP had to be more flexible in designating who qualified as 'internal' to its organisation and not be allowed to "operate as a self-contained entity that freely interact[ed] with stakeholders on its own terms" (Painter-Morland, 2006, p.90), then the spill *might* possibly have been avoided; at the very least damage to the environment would certainly have been lessened. This is because disclosures to the environmental and wildlife protection groups would have allowed them to warn BP that continuation of those particular work practices (that eventually led to the spill and/or exacerbated the spill's harm) would threaten a specific harm whose interest they represented - say a particular species of fish. By being made to take cognisance of the possibility of this very specific harm, i.e. being relationally responsive to that species of fish, BP in reviewing those *particular* work practices *may* have discovered that in fact a more *general* harm was likely, and that those particular practices were rooted in more widespread organisational practices, thus necessitating a systemic overhaul. Flexibility in disclosure to that 'external' stakeholder may just have avoided a major disaster. Such an outcome may strike

some as overly optimistic but it should not be forgotten that in a complex system, such as the organisation, characteristics such as non-linearity mean that small causes can have large repercussions.

My argument thus far can be summarised as the following: The whistleblower attempts to make the organisation relationally responsive to a particular stakeholder who has been harmed by the organisations' actions. If the organisation fails then the whistleblower reconfigures the organisation by forcing the organisation to open up and make its boundaries flexible, making the designation 'internal' or 'external' to the organisation, and therefore who qualifies as a recipient of a disclosure of wrongdoing, flexible. The organisation is restrained from retaliating against the whistleblower because their identities are coterminous. The reconfiguring process further restrains possible organisational retaliation: as the disclosure cannot be categorically defined as either internal or external the question of whether this disclosure is an act of organisational loyalty becomes moot.

### **THE WHISTLEBLOWER-AS-PARRHESIASTES**

Business and ethics have always made uneasy bedfellows. Indeed, the accusation that the notion of 'business ethics' is an oxymoron is both pervasive and persistent (Duska, 2000). Accordingly, profits necessarily preclude ethics. The increasing awareness of the detrimental impact of business on the environment as well as the social and economic costs of corporate failures such as Enron in the early 2000s has awakened many to the realisation that such strategies are no longer viable.

Governments around the world have decided that they have a responsibility to ensure that corporations focus not just on profits but on the triple bottom line of profit, society and the environment <sup>5</sup>. To this end, legislative and regulatory interventions such as SOX in the USA have required corporations to institute ethics programmes in their organisations. Part and parcel of these ethics programmes has been to institute an organisational whistleblowing policy which it was hoped would contribute to creating a more ethical organisation. Sadly, the ongoing global financial crisis which started in the US in 2007 has served to confirm our worst fears; ethics has become just one more operational risk to be managed.

Painter-Morland (2008) believes that the institutionalisation of ethics in corporate ethics programmes has failed to create a more ethical organisation because ethics

has become dissociated from practice. Instead “ethics is portrayed as a set of principles that must be applied to business decisions” with the result that “ethics functions as a final hurdle in a deliberate decision-making process” (2008, p.2). This rules-based approach assumes that ethics can be ‘taught’ as a set of solutions to cover any and all problems that may arise in the course of undertaking business; a handbook that may be pulled out, in case of ethical emergency, and the relevant pages consulted for a patch-up.

What Jones *et al.* (2005, p.120) call “the fundamental issue [of] how to provide a legitimate - if dangerous - social identity for the person who speaks fearlessly” can now be addressed. The whistleblower ‘speaks truth to power’, what the ancient Greeks called a *parrhesiastes* - a truth teller. The counterpart to the *parrhesiastes* as truth-teller is the *rhetor*. The *rhetor* is one who merely tries to persuade. Jones *et al.* (2005, p.121) tell us that rhetoric is a technique that can be learnt. Just like a set of ethical principles. The *parrhesiastes* however, who seeks to bear witness to truth, engages in a way of life (p.121). S/he engages in ‘ethics as practice’. As such, s/he cannot understand ethics “that is practised at arm’s length” or as “an abstract cognitive exercise” but as an exhortation to “remain fully engaged with the concrete contingencies and dynamics of the world” (Painter-Morland, 2008. P.87). “Ethics as practice is all about participation, relationships and responsiveness” (p.87).

In living the life of *parrhesia* ethics as practice becomes integrated into the identity of the whistleblower; because the identity of the organisation and its corporate members are coterminous (on the understanding that organisations are complex systems) the organisation must necessarily also enact such integration. If it does not, it risks losing “its functional unity of purpose or sense of identity.” Cilliers (2010, p.16) puts the point more forcefully: “ethics is not only something the organisation ‘does’; the organisation is *constituted* through normative processes” (Cilliers, 2010, p.16) (*italics in original*). Furthermore, understanding organisations *in* society as closed systems, as Vandekerckhove does; see the formation of ‘society’ as ontologically prior to the subsystems, such as organisations, that comprise society. If identity formation is understood as a complex phenomenon then it follows that the identity of society and organisations are coterminous (Woermann, 2010b). As such there can be no society *versus* organisation. Attempts to contain conflicts within an organisation, or society’s proxies, such as Vandekerckhove’s normative

legitimisations of whistleblowing try to do, fail because the boundary between society and the organisation must remain open and flexible.

Understanding identity formation in society and organisations as complex phenomenon also resolves Vandekerckhove's paradox - effective whistleblowing policies, which entail a broad scope in their actor, subject and recipient elements, need an organisational and societal 'culture' characterised by the absence of abuse of power in highly independent and transparent organisations. However, to assume such a 'culture' annuls the need for whistleblowing. The paradox is overcome because if an organisation remains open to its stakeholders and society, it nonetheless still remains constrained by what it can justifiably do - it still needs to maintain relationships of trust, confidence and respect with those stakeholders. These constraints, which are embodied in the whistleblower-as-*parrhesiastes*, keep the organisation ethical, which precludes abuses of power. Remaining open to its stakeholders ensures that the organisation remains relationally responsive to its stakeholders - annulling the need for whistleblowing.

## **CONCLUSION**

Perhaps 'annulling', from the previous section's last sentence, is the wrong formulation. There will always be a need for someone to raise concerns; and in order for those concerns to be taken seriously there will always be a need for the whistleblower. Concerns that animals, for example, were being exposed to unnecessary levels of pain in order to test for the harmful effects of cosmetics on humans was initially limited and then downplayed (Singer, 2009). Getting industry and the public to take those concerns seriously required the disclosure of the horrors of those experiments and the needless suffering they inflicted on the animals (2009, p.52-61). Coupled with a growing animal welfare activism, most corporations in the cosmetic industry no longer test their products on animals.

The whistleblower-as-*parrhesiastes* represents society's on-going debate concerning the just trade-off between business activity and societal welfare. The whistleblower as *parrhesiastes* becomes the collective social conscience of the organisation who represents the limit of acceptable transgression that will be tolerated by society in general, and a specific stakeholder in particular, at any given point in time. The whistleblower then, is not that person who stands in opposition to the organisation

but is its very manifestation. In retaliating against the whistleblower, the organisation (uselessly) retaliates against itself. The whistleblower-as-*parrhesiastes* becomes the *ethical* boundary of the organisation, forcing the organisation to keep the demarcation of its boundaries flexible, thus staying relationally responsive to its stakeholders.

C. Fred Alford (2001, p.133) remarked that “Whistleblowers lift the veil for a moment. Instead of looking at what lies behind the veil, we gaze at the one who lifts it ... in this way we perpetuate the problem ... transforming whistleblowing into deviance.” What I have tried to achieve in this paper is to shift the focus of whistleblowing from the whistleblower to the organisation, and in the process find a place within the organisation for the whistleblower to belong to. In drawing on insights from Critical Complexity theory I hope to have reconceptualised the whistleblowing act such that the internal/external disclosure dichotomy and its bearing on organisational loyalty is made less stark. I believe that Critical Complexity theory, and the ethics of Critical Complexity (Woermann & Cilliers 2012), contains great resources to ask better questions of business ethics in general, and whistleblowing in particular. I hope my use of those rich theoretical seams encourages other researchers to mine its depths further.

## Endnotes

1. Vandekerckhove uses the term *Organizational* Social Responsibility instead of the more commonly used *Corporate* Social Responsibility to make explicit the idea that social responsibility is applicable to both corporate and non-corporate actors (2006, p.104).
2. Vandekerckhove also describes five other ways that whistleblowing policies are normatively legitimated throughout the globe today, viz. accountability; integrity; loyalty; efficiency; and whistleblowing as a human right (2006, pp.73-136).
3. French locates corporate agency in a CID structure (Corporations Internal Decision structure) which he argues “licenses the predication of corporate intentionality” (1979, p. 232).

4. Ladd argues that attributing moral agency to corporations is not only a category mistake but a moral mistake because “corporations are not people but *organizations* of people” (1984, p.249).
5. The triple bottom line is a term coined by John Elkington (1999) He argues that business should not just concern itself with adding economic value (profit), but also environmental (planet) and social (people) value.

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